

VOLUME I

The Temple Papers on the Pennsylvania General Assembly

The Pennsylvania General Assembly Before and
After the 1968 Legislative Modernization Commission:
The Evolution of an Institution

Joseph P. McLaughlin, Jr.

 Institute for Public Affairs
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Foreword

This brief history of the Pennsylvania General Assembly focuses on its institutional evolution around a key turning point: the bipartisan, bicameral vote to move from a part-time to a full-time legislature in 1968. This decision was driven by the frustration of the legislature's leaders and many members with the institution's inability to fulfill its constitutional responsibilities in the face of rapidly changing political, economic, and social conditions. The 1968 vote also was Pennsylvania's response to a national citizens' movement calling for reform and modernization of all state legislatures.

Over the next 40 years, the modernization program transformed the General Assembly into the nation's largest full-time state legislature, a distinction that has become a term of opprobrium for many of its critics. In an earlier era of populist discontent, the legislature's size was virtually doubled in 1874, partly as an anti-corruption measure. Both decisions -- to become large and to modernize -- were thus adopted as reforms. Today, various critics are urging that one or both decisions should be reversed. As this study suggests, the two dimensions involve tradeoffs in values but are not necessarily incompatible.

This brief account does not attempt to summarize or evaluate the General Assembly's legislative outputs across the broad range of public policy issues; Volume II in this series -- a project undertaken by two student interns in Temple's Pennsylvania Capital Semester -- attempts to do that by identifying the most important legislation enacted since the adoption of the 1968 Constitution, as judged by members, former members, key executive branch staff, and expert observers. Rather, by highlighting selected institutional decisions and events, this report calls attention to the ways in which the General Assembly's capacity to represent citizens, make laws, and balance executive and judicial power were changed by the modernization decision.

This topic was the subject of a February 28, 2011, symposium organized by the Pennsylvania Policy Forum, a consortium of faculty members at public and private universities, and attended by 167 members of the General Assembly and dozens of legislative staffers in the State Museum of Harrisburg. Of invaluable assistance in preparing this history were Richard A. Stafford, MS, distinguished service professor of public policy, Heinz College of Public Policy and Management, Carnegie Mellon University; Michelle J. Atherton, MA, assistant director of Temple's Institute for Public Affairs; Megan Mullin, PhD, associate professor of political science, Temple University; and Nathan Shrader, MS, candidate for the degree of doctor of philosophy in political science, Temple University. Both the members' symposium and the research for this report -- and others in the Temple Papers on the Pennsylvania General Assembly -- were made possible, in part, by the William Penn Foundation and the Heinz Endowments but also were supported by Temple University. The views expressed herein, and any errors, are the author's alone.

Joseph P. McLaughlin, Jr., Director
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The Pennsylvania General Assembly Votes for Modernization (1968)

March 6, 1968 proved to be a momentous day in the 329-year history of the Pennsylvania General Assembly. The 1960s were a decade of economic and social unrest and also of widespread calls for state government reform in the Commonwealth and across the country. A new Pennsylvania Constitution, proposed by a recently adjourned citizens' convention, awaited the verdict of the voters in the April primary election. In Harrisburg, recent legislative sessions had been marked by fierce partisan battles and deep and prolonged fiscal crises (in seven of the previous 10 years, state budgets were late by an average of 94 days, and chronic deficits would eventually lead to the adoption of a state income tax). Nevertheless on this day, the Republican and Democratic leaders of the Pennsylvania House of Representatives joined to ask their colleagues to approve House Resolution 207 and thereby set a new course for one of the world's oldest democratically elected legislative bodies. Their statements reflected concern that on all three jobs of the legislature – representing citizens, making laws, and balancing the other branches of government -- the Pennsylvania General Assembly was failing. That view was shared by many members of the public. The first to speak was House Majority Leader Lee A. Donaldson, Jr., R-Allegheny County:

Quite bluntly, the resolution says that our General Assembly today is inadequately equipped and structured to fully meet its obligations. The resolution points the way toward a change and change is needed...If approved by this House and by the Senate, the following things would occur:

Within 15 days following approval, 12 citizens of this Commonwealth will be named to a legislative modernization commission. The commission will be directed to report back to this session within 90 days with recommendations for

modernizing, for improving, for strengthening, if you will, the legislature.¹ The commission will be unlimited and unrestricted in its field of inquiry...When the commission report is given to us this summer, I would hope that we would immediately create an implementation committee and get on with the business of applying as many of the recommendations as possible.

...after two decades of this financial strife, we still have a Ways and Means Committee with no real working office and no staff to do the technical job that should be done. The fact is that this committee should have in its employ the finest talent available, a well-developed tax resources library, and ample room for continuing committee work... I could go on and on talking of committee after committee and in each instance the situation is virtually a carbon copy.

In short...we have allowed ourselves to struggle along as if we were dealing with the state government which existed a quarter of a century ago...As a result, the executive branch...of necessity...became the establisher of goals, the outliner of programs and the decider of priorities. The chief executive in many instances has also become the chief legislator.

Next to speak was the House minority leader, Herbert Fineman, D- Philadelphia:

Mr. Speaker, for the first time in almost 15 months, I can stand at this microphone and state that I agree unreservedly and unqualifiedly with precisely everything the majority leader has stated-and there are no however... it was a very splendid, substantive, meaty statement that pinpoints precisely the problems with which not only this legislature, but legislatures all over the country are confronted... no one can pretend that the General Assembly in recent years has gone over the Governor's revenue estimates and proposals for new taxes with a fine-toothed comb. On the majority side, these proposals were accepted as facts with little or no attempt to develop independent sources of information. On the minority side, we have tried, with the meager resources at our command, to arrive at some independent judgments. But on neither side were we really in a position to act as an equal and coordinate branch of government.

More important even than the weakening of the legislature vis a vis the executive is the weakening of the States in our Federal system. Both liberals and conservatives have come to realize that the heavy concentration of power in Washington has had some unfortunate consequences...only when the States become efficient, proficient and responsive agencies of the popular will, will they then gain respect--and will they then not lack revenue or the ability to raise revenue. And improving the caliber of legislative performance is perhaps the chief ingredient in making them efficient and responsive.

¹ The commission resolution was not finally adopted until June, possibly because legislative leaders decided to wait until after the vote on the new Constitution in the primary election. The commission report was not issued until January, 1969.

The House sent the resolution to the Senate with only 10 negative votes. The Senate journal does not reflect debate on the resolution. A conference committee report on House Resolution 207 was approved 49-0 by the Senate on May 22 and by voice vote in the House on May 28, 1968. On June 17, House and Senate leaders appointed 12 highly respected citizens to The Commission on Legislative Modernization (hereafter referred to as the Modernization Commission). Although the commission regrettably reflected its era in its lack of women and members of minority groups, it was otherwise a well-balanced and well-qualified panel whose members had deep public and private sector experience and reputations for integrity:

Appointed by Speaker Kenneth B. Lee, R-Wyoming, for the House Republican Caucus

Theodore L. Hazlett, Jr., president, A. W. Mellon Charitable and Education Trust;
A. James Reichley, *Fortune Magazine* editor, former legislative secretary to Governor William Scranton, and future scholar, The Brookings Institution and Georgetown University;
Common Pleas Judge Evan S. Williams, 42nd Judicial District.

Appointed by House Minority Leader Herbert Fineman D-Philadelphia, for the House Democratic Caucus

George M. Leader, former governor of Pennsylvania and Pennsylvania state senator;
Gustave G. Amsterdam, president, Bankers' Securities Corporation, and former co-chairman of the judiciary committee of the 1968 Pennsylvania Constitutional Convention;
Bernard C. Hennessy, PhD, professor of political science, Pennsylvania State University.

Appointed by President Pro Tempore Robert D. Fleming, R-Allegheny, for the Senate Republican Caucus

Robert E. Woodside, attorney, former House majority and minority leader, former attorney general, former trial and appellate court judge, and former delegate to the 1968 Pennsylvania Constitutional Convention;
William G. Willis, PhD, vice president and secretary, Temple University;
Alan J. Nesbitt, chairman, WHYY-TV, Philadelphia.

Appointed by the Senate Minority Leader Ernest P. Kline, D-Beaver, for the Senate Democratic Caucus

James A. Michener, Pulitzer prize winning author and secretary to the 1968 Pennsylvania Constitutional Convention;
Arthur Harris, manager of industry relations, Gulf Oil Corporation;
U.S. District Court Judge Charles R. Weiner, former Senate majority and minority leader, former chairman of the Pennsylvania Commission on Intergovernmental Relations, and member of the congressionally created US Advisory Commission on Intergovernmental Relations.

The commissioners elected James Michener and Theodore Hazlett as their co-chairs, and it set to work. Before summarizing its recommendations, it is worth a short detour into history.

A Brief Look Back: The General Assembly before the Modernization Commission

The General Assembly whose transformation was triggered by the Modernization Commission was largely the product of the Constitution of 1874, also adopted in a reform era. In the aftermath of political scandals and financial stress, convention delegates essentially doubled the maximum size of the legislature, bringing the House to 200 members and the Senate to 50. The theory was that a larger legislature would be more expensive for special interests to “buy” and riskier for them to attempt to corrupt (Dilworth 2008).²

But Pennsylvania’s legislatures from the beginning were large, although not always the largest. In 1682, the Assembly had 42 members and was almost double the size of the largest of the other colonial legislatures in the years of their founding (Squire and Hamm 2005: 22-23). Indeed, the maximum size of the Assembly in 1682 was set at 500 (Pennsylvania Commission for Legislative Modernization 1969: 2-4). On the other hand, the Pennsylvania legislature also was small for much of its history in the sense that it had only one chamber from 1682 to 1790, when it shifted to bicameralism partly because of public dissatisfaction with the unicameral structure and partly because it was influenced by the new, bicameral federal government (Squire and Hamm 2005: 43). The first post-colonial legislature, from 1776 to 1790, had between 69 and 75 representatives in its single chamber, and there was no governor. Rather, executive power was exercised by a council of legislators. Each county was designated an electoral district and allocated six representatives, with the number adjusted every seven years to reflect the county’s proportion of taxable residents.

The 1790 Constitution reverted to bicameralism and allowed the legislature to determine the size of both chambers within minimum and maximum limits: the House was to have between 60 and 100 members, and the Senate was to range between one-fourth and one-third the size of the House. Representation continued to be based on the number of taxable residents, with each existing county guaranteed at least one House member. Terms were set at one year for House members and four years for Senators (Kennedy 1999: 2-3).

² Drexel University Professor Richardson Dilworth quotes Penn State historian Frank Evans thus: “The Pennsylvania legislature by 1870 had acquired a reputation as one of the most corrupt public bodies in the nation.’ The 1874 constitution was part of a reform movement that sought to reduce the influence of special interest money on legislators, and increasing the number of legislators was key to that reform. As one delegate to the 1873 constitutional convention noted, ‘I hope for the good of this Commonwealth that we shall largely increase the number of the House, and let us have a Legislature that cannot be corrupted even if there should be a disposition on the part of the most powerful institutions in the State to do so.’ Or as Evans put it, ‘Rejecting the view that increasing the size of the General Assembly would only reduce the price of votes, the convention almost doubled the membership of both the House and Senate in the belief that sheer numbers would make bribery difficult and the costs of extensive bribery prohibitive.’”

The Constitution of 1838 made few changes to the legislature, but amendments passed in 1857 reduced Senate terms to three years and provided that no more than three counties could be joined to form a Senate district and no county could be divided to form a district (Kennedy 1999: 2-3). Within these constraints, apportionment continued to be based on taxable residents.

By enlarging the legislature, the 1874 Constitution arguably increased its capacity to represent citizens in a state that was still sparsely populated. The average number of citizens represented by each House member was reduced from 35,211 in the 1870 Census to 21,308 citizens in 1880 (Dilworth 2008). In a step toward more equal representation, the apportionment system also allowed for the first time for legislative districts that were smaller than counties and that were based, within limits, on the number of total residents, not just taxpayers. The document dictated, however, that every county was guaranteed at least one House seat and no county could have more than four, and that no county could have more than one-sixth of Senate seats. These provisions had to be eliminated after the US Supreme Court's one-person, one-vote decisions in the mid 1960s. The document also changed terms for House members from one to two years and Senate members from three to four, provisions that have survived.

As an additional expression of popular distrust of the institution, the 1874 Constitution prohibited the legislature from changing the original purpose of any bill, adding that constraint to a provision carried over from the 1838 Constitution, as amended in 1864, that every bill must be restricted to a single subject which must be clearly identified in its title.³ Both provisions were intended to insure that citizens and legislators had fair notice of the contents of proposed legislation and that unrelated amendments could not be added late in the process to effectively bypass other constitutional requirements, such as that legislation be referred to and reported from committees (also added in 1874) and be considered for three days in each chamber. Other 1874 reforms established the offices of an elected auditor general and treasurer, extended the term of governors from three to four years but prohibited them and the other statewide officers from running for re-election, gave governors the power to item-veto spending bills, and required a two-thirds vote to override vetoes. The Constitution also required judges to be elected rather than appointed by the governor. Like a larger legislature, elected judges were considered a reform in that era, while today "merit-selection" reformers advocate gubernatorial appointment, a reminder that what constitutes reform in one era becomes a target for reform in another. And also a reminder that institutional changes, once made, are difficult to revoke or alter.

That is almost certainly the case for reformers who thought that just making the

³ Popular distrust of state legislatures was by no means confined to Pennsylvania, and other state constitutions adopted in this era contained similar constraints on the legislative process. An 1892 *Harvard Law Review* observed that 'one of the most marked features of all recent State Constitutions is the distrust shown of the legislature'" (Williams 1987: 92).

⁴ The theory that larger size would deter large-scale corruption is plausible, but the notion that it alone would end corruption was unrealistic. Whether the degree of corruption was reduced by larger size is difficult to say, because unlike most phenomena social science tries to measure, corruption hides.

legislature larger would free it of big money influence.⁴ Historians generally agree that in Pennsylvania, as in many other states in the late 19th and early 20th centuries, large and wealthy industries like railroads, steel, coal, oil, banks, timber, utilities, and insurance at times wielded inordinate influence over legislators who served part-time, were poorly paid by the taxpayers, often worked in the very industries lobbying them as lawmakers, lacked professional staffs to assist them, and depended for re-election on powerful party organizations also allied with the special interests. One contemporary observer said that John D. Rockefeller's Standard Oil "did everything to the Pennsylvania legislature except refine it'... (and) lawmakers by the score came to expect cash and whiskey as their due...No one expected great men in politics..."⁵ In the years immediately after 1874, the legislative influence of the president of the Pennsylvania Railroad, at one point the largest corporation in the world, was legendary to the extent that in its centennial history, the railroad bragged about it.⁶ Reformers were undoubtedly also disappointed when the Pennsylvania Supreme Court quickly ruled in *Kilgore v. McGee* (1877) that the original purpose language was judicially unenforceable under the so-called enrolled bill doctrine, according to which the courts should not look behind the final language of an act when assessing its constitutionality (Williams 1987: 102).

The vulnerability of the General Assembly to powerful special interest group influence was not solved by simply making it larger, according to many observers,⁷ including former Senator (and House member) Franklin Kury, D-Northumberland. Kury voted for the Modernization Commission and served long enough to appreciate its benefits. Speaking at a meeting of the Pennsylvania Political Science Association (PPSA) on April 4, 2003, Kury recalled that the pre-modern legislature gave an advantage to members who had private-sector resources at their disposal to handle constituent problems, but these were no substitute for professional staff to deal with policy issues:

Kury recalled that when elected to the House in 1966, he had little or no staff support or even regular access to phones to make long distance calls. He recounted how there was no staff to help explain bills in caucus meetings or to

⁵ The quote is attributed to Henry Demarest Lloyd in Weibe, Robert H. 1967. *The Search for Order: 1877-1920*. New York: Hill and Wang, 28.

⁶ "Before the doors of the Pennsylvania's office, Matthew Josephson wrote of the PRR, 'politicians scraped their feet respectfully. At the bidding of the railroad, the Pennsylvania legislature passed necessary measures with noticeable speed. When Mr. (Thomas A.) Scott (PRR president from 1874—1880), according to legend, had 'no further business for the legislature, it would promptly adjourn.' Even the Penn Central's Centennial History commissioned by the railroad...told of the state senator who, after two bills of great benefit to the railroad had been enacted, rose to ask, "Mr. Speaker, may we now go Scott free?" Quoted in Daughen, Joseph R., and Peter Binzen. 1971. *The Wreck of the Penn Central*. Boston: Little, Brown & Company, 36.

⁷ Even at mid-century, the Harrisburg lobbyist for Sun Oil was sometimes called the 51st senator and for the Pennsylvania Railroad the 52nd senator (Beers 1980: 192). As a sign of the effects of professionalization, by the 1990s, many in the Capitol half-humorously used the term "51st senator" to refer to one of the legislature's own employees and advisors, the widely respected Stephen MacNett, chief counsel to the Senate Republican caucus.

provide independent analysis of the Governor's budget request. Even basic secretarial services were scarce. But some members like Kury had an advantage. In the pre-modernization legislature, lawyers, insurance agents, and other business professionals could rely on their private offices to handle constituent correspondence and other public business, but other legislators could not. As he put it, "Thank God I was a lawyer and had a secretary back in the district to put out mail for me." Kury was elected to the state Senate in 1972 at a time when staffing for individual members of the Senate was just becoming available. In his PPSA panel comments, he spoke with great pride of his work in the Senate made possible, in large part, by his newly-acquired authority to hire qualified staff to help develop the major legislation he sponsored to reorganize the Public Utility Commission. "This is what I feel proudest about," said Kury. "Until that point in Pennsylvania, whenever the Senate of Pennsylvania wanted legislation drafted [on utility issues] we went to the lobbyist of the Electric Association. We didn't do that. We gave him our bill and asked for his comments rather than the other way around!" (Cassidy 2003: 92-93).

In 1966, voters approved changes that made the General Assembly a two-year continuously meeting body. Responding to the US Supreme Court's one-person, one-vote rulings, the Pennsylvania Supreme Court in *Butcher v. Bloom* (1964) struck down a reapportionment plan based on the 1874 provisions that each county have at least one House seat and that no county could have more than one-sixth of the Senate seats. In September 1965, citing the failure of the legislature to act and the principles of equality of population, maintenance to the degree possible of the integrity of political subdivisions, and compactness and contiguity, the court imposed its own plan (Butcher II), effectively ending multi-member districts in the House as they had existed under previous constitutions. As a result of these decisions, 10 rural counties in the north-central part of the state lost their own House seats.

If the primary impetus behind the 1874 Constitution was legislative reform, the driving motive behind the 1968 Constitution was modernizing the judicial branch. The constitution created a unified judiciary with a new Commonwealth Court and expanded the rule-making authority of the Supreme Court, a power that has led to conflict with the legislature over whether some court pronouncements are tantamount to legislation. As noted earlier, after repeatedly voting down proposals to reduce the size of the House, some sponsored by Michener, secretary to the convention and later co-chair of the Modernization Commission, delegates for the first time fixed the precise size of the

⁸ Votes to reduce the size of the House by delegates to the 1968 Constitutional Convention were as follows: To reduce the House to 101, 14-135; to reduce the House to not less than 100, not more than 150, 40-103; to reduce the House to 151, 40-97; to reduce the House to not less than 100, not more than 200, 25-112; to reduce the House to not less than 112, not more than 199, 35-104; to reduce the House to 161, 48-86; to reduce the House to 175, 50-97. (Pennsylvania Commission for Legislative Modernization 1969: 14).

legislature in the constitution: the House at 203 members and the Senate at 50 members.⁸ The 1968 Constitution also required the establishment of a Legislative Reapportionment Commission to draw new House and Senate districts after each Census.⁹ The four caucus leaders (or their designees) comprise the membership along with an independent, fifth commissioner chosen by these four. Pennsylvania is one of 12 states that employs the commission system; in the other 38 states, the entire legislature votes on the legislative reapportionment plan, a method Pennsylvania uses for congressional districts. An often overlooked aspect of this provision is that the 1968 document thus provides a constitutional basis for the party caucuses, which are often regarded as simply informal institutions with a basis mainly in chamber rules.

The 1968 Constitution allowed governors and other statewide officers the right to run for re-election once. It also required the governor to submit annual capital and operating budgets and a financial plan for not less than five years. It was in the budget process that the modernized legislature made its most immediate impact.

What the Modernization Commission Recommended: "An Agenda for a Decade"...and More With the help of its own first-rate professional staff, the support of a small but competent contingent of attorneys and other advisors in both houses, the Pennsylvania Economy League, and a number of outside consultants, the commission conducted an impressively thorough study of the General Assembly, held committee meetings and public hearings on a wide range of institutional and operational issues, and in January, 1969, issued its final report, entitled *Toward Tomorrow's Legislature*. The report constituted, in the words of one political scientist, "an agenda for a decade" (Wise 1984).

The commission made 58 recommendations. Among those implemented were the commission's recommendations that the General Assembly:

- Increase compensation and staffing for House and Senate members with the expectation that they would give priority to their legislative duties as opposed to their private sector occupations;
- Provide members and committees with adequate offices and working spaces;
- Create a permanent ethics committee;
- Require members to disclose financial interests;
- Strengthen the role of committees as opposed to party caucuses;
- Improve the professional staffing of committees;

⁹ If the four caucus-based commissioners cannot agree on a fifth member, the Pennsylvania Supreme Court makes that appointment. (Pennsylvania Commission for Legislative Modernization 1969: 14).

- Open committee meetings to the public and making the votes of committee members available to the press and public;
- Reduce the number of House and Senate standing committees;
- Increase minority representation on standing committees to reflect more accurately the division of the two chambers between majority and minority;
- Limit the power of a committee chair to kill a legislative proposal, either by not calling a meeting or by failing to submit a legislative proposal to the committee for consideration;
- Take steps to protect against absentee voting;
- Require fiscal notes to assess the cost, on both a one-year and a five-year basis, of every legislative proposal on the calendar so that members and the public were more fully informed as to costs prior to enactment;
- Create a legislative audit advisory commission;
- Increase use of public hearings on legislation;
- Provide a synopsis of every bill reported to the calendar for members and the press.

Some of the commission's recommendations were rejected; others adopted only in part; and still others were adopted and later abandoned. The Senate did not install an electronic voting system, for example, nor did either chamber require that all bills in committee be brought to a vote. The General Assembly, or one of its committees, may have reviewed the independent service agencies with the goal of achieving efficiencies, but if so, no significant action seems to have resulted.¹⁰ Although the House opened committee meetings, some were called off the floor, often on important issues, and members met in the rear of the chamber during a session, making it impossible for the press to attend, a practice which ended only recently. Going beyond the recommendation that the legislature establish a permanent ethics committee to regulate its members, the legislature established a statutory

¹⁰ The General Assembly did end funding in the 2011-12 budget for the Legislative Office for Research Liaison, a bipartisan unit established in 1976 to provide House members with access to higher education faculty members in responding to specific public policy inquiries. Some legislative leaders contended that the growth of House professional staff in the intervening years made the office less necessary. Faculty members who for many years had volunteered their efforts at the request of LORL were obviously disappointed with this decision.

commission to regulate the conduct of virtually all state and local officials.

The General Assembly did require lobbyists to register but, as we shall see, did not effectively require financial disclosure until 2006. The House reduced its standing committees from 33 to 21, but the two chambers did not create 13 standing committees with precisely parallel jurisdictions, as the commission had recommended. The House and Senate committee systems were more closely aligned. The General Assembly did strengthen committees, but some critics¹¹ contend that party caucuses still have too much power. The General Assembly did undertake new-member orientation sessions – and even held educational symposia for all members in 1977, 1979, and 1983 -- but its efforts at continuing education and leadership training have fallen far short of what some other legislatures have undertaken.¹² The legislature did create an independent compensation commission to recommend every four years salary levels for officers of all three branches of state government, but as discussed elsewhere in this report, later abandoned it after a storm of controversy. The House and Senate did end the routine use of unaccountable expense reimbursements but provoked another storm of controversy in 2005, when it created such accounts in the amount of a pay raise members could not legally obtain until after the next election.

True to the remarks of House Majority Leader Donaldson, the commission was given free rein. It considered and rejected recommending that the House and Senate should be reduced in size. It affirmed the value of the legislative parties but called for strengthening the standing committees as a counterweight to caucuses. It decided to recommend no change in the closed primary system for nominating legislators. On a number of important issues, individual commission members published dissents. Michener, for example, argued in a dissent that the House should be smaller, a position he also championed at the just concluded 1968 Constitutional Convention, where motions to reduce the House were repeatedly defeated. His appointment to the commission despite these views and his election as chairman thus underscored his reputation for integrity, Donaldson's commitment in his floor remarks that the commission would be "unlimited and unrestricted in its field of inquiry," and the independence of the body itself.

Nevertheless, pursuing the path laid out by the Modernization Commission, the Pennsylvania General Assembly transformed itself from a 19th to a late 20th Century

¹¹ The critics who attracted the most media attention were members of the so-called Bonusgate grand jury (Report No. 1 of the 28th Statewide Investigating Grand Jury, released May 24, 2010). Although Professor Alan Rosenthal of Rutgers University's Eagleton Institute of Politics, the sole expert witness consulted by the grand jury, said the alleged use of public funds for campaign work indicated the Pennsylvania General Assembly was operating in "a time warp" compared to other states, Rosenthal also said the jury overstepped its expertise in recommending institutional reforms. Rosenthal specifically disagreed with the jury's implied suggestion that caucuses be abolished. (See Coulombis, Angela. 2010. "Grand jury slams a corrupt Pa. Capitol." *Philadelphia Inquirer*, December 9.)

¹² Working with a bipartisan planning committee of House and Senate leaders and members, the Pennsylvania Policy Forum conducted a symposium on the history of the General Assembly on February 28, 2011. The symposium was attended by 137 House members and 30 Senators. It was also broadcast live on the Pennsylvania Cable News Network.

legislature. The transformation did not occur overnight; indeed, for purposes of this report, 1973 seems to be the dividing line between the pre-modernization and post-modernization eras. It was in 1973 that the salaries of members of the General Assembly virtually doubled (as approved in the previous session), with the expectation, as the Modernization Commission had suggested, that members would give priority to their legislative duties as opposed to their private sector occupations. It also was when professional staffing was on the rise.

At various points along the way, the General Assembly, or its two chambers acting individually, took other important steps to adopt reforms, some in reaction to investigations by the press or by prosecutors or both. None of these moments, however, were as dramatic, significant, or as reflective of a bipartisan, bicameral commitment to the institution as the 1968 authorization and empanelling of the Commission on Legislative Modernization. At a February 28, 2011 symposium that reviewed for House and Senate members the history recounted in more depth here, Professor Alan Rosenthal of the Eagleton Institute of Politics at Rutgers University -- widely regarded as the leading scholar of state legislatures and the sole expert witness consulted by the so-called Bonusgate grand jury investigating the legislature -- urged today's legislators to recapture the bipartisan commitment to institutional responsibility most clearly manifested by their predecessors on March 6, 1968. The symposium itself -- the first of its kind in decades -- was perhaps evidence that that process has begun.

BALANCING EXECUTIVE POWER

The General Assembly Professionalizes its Staffing and Asserts Greater Control over the Spending of State and Federal Funds (1970-1978)

The legislature's first professional staff members, according to Charles Greenawalt and Terry Madonna, were three part-time researchers hired in 1967 by Speaker Kenneth Lee, R-Wyoming.¹³ Following the recommendations of the Modernization Commission, however, the pace of change picked up:

Lee's successor, Herbert Fineman began the hiring of college-educated young professionals for each committee. The Senate followed suit, and by the mid-1970s, the legislature had developed its own research and policy development capability, freeing it from excessive reliance on the executive branch and lobbyists. (Greenawalt and Madonna 1992: 92).

Responding to the inequality among members even in ability to handle constituent problems, cited by Kury, the House by 1980 had also authorized the staffing of a district office for each legislator, with staff and rental costs paid by the Commonwealth (Greenawalt and Madonna 1992: 92).

In direct response to the Modernization Commission's recommendations, the House and Senate Appropriations Committees began hiring professional budget analysts and subjecting the governor's recommended budget to more intensive scrutiny. The committees also began providing members with more accurate fiscal notes on legislation, more detailed analyses of state revenue and expenditure trends, and spreadsheets summarizing the entire general fund budget prior to a final passage vote. Previously, members were given oral briefings in the caucuses on what the budget contained. In 1974, the legislature opened committee meetings to the press, including the meetings of the Appropriations Committees and the House-Senate Conference Committee on the budget, where spending legislation was often put into final form and sent to both chambers for passage by the members. In 1975, the leaders of all four caucuses asked the Pennsylvania Economy League (PEL) to conduct a comprehensive review of the state's budgeting process. Among PEL's recommendations was that the General Assembly enact a statute requiring that federal funds be deposited in the state treasury and be spent only as specifically appropriated by the legislature. The National Conference of State Legislatures (NCSL) and US Advisory Commission on Intergovernmental Relations also recommended that federal funds be subject to state legislative appropriations.

At the time, in addition to nearly \$5 billion in state funds appropriated through line items in the state budget, the executive branch and various state agencies in Pennsylvania

¹³ The General Assembly had previously established the Legislative Reference Bureau, Legislative Budget and Finance Committee, and the Local Government Commission as independent service agencies, but the staffs of these organizations did not work directly for legislative leaders, committee chairs, or rank-and-file members, but rather for bipartisan, bicameral boards.

were spending nearly \$1.5 billion a year in federal funds under a one-sentence, carte-blanche authorization at the end of the general appropriations act. Some of the federal funds had been deposited in hundreds of commercial bank accounts across the state rather than in the state treasury and were thus not even visible to the legislature.

During budget hearings in the spring of 1976, the professional staff of the House Appropriations Committee cited examples in which state departments and agencies had used federal funds to initiate or augment programs that had been rejected by the legislature. In some cases, state departments shifted federal funds from supporting services such as day care to restore cuts the legislature had made in departmental administrative budgets. The departments then told the service providers and their constituencies to lobby the legislature for more state funds. In other situations, the federal grants provided 100 percent of the cost of new programs but required increasing state matches in subsequent years, with the legislature eventually forced to replace the federal moneys or abruptly impose deep and unpopular cuts and even layoffs in such areas as law enforcement and social services.

These and similar examples of executive end-runs around the legislative process were cited in debate on the bill (Commonwealth of Pennsylvania 1976: 5471-5479) and later in testimony before the United States Senate by State Representative James Ritter, D-Lehigh, chair of the Pennsylvania House Committee on Federal-State Relations (Skok 1980: 561-67). Such examples, the recommendations of good government organizations,¹⁴ and the underlying principle that the legislature should have the power of the purse were largely overlooked in news coverage that focused on the General Assembly's decision not to continue federal funding for a special prosecutor investigating alleged political and police corruption in Philadelphia.

In June 1976, after requiring the secretary of the budget to identify all accounts in which federal moneys were being held, the General Assembly enacted for the first time a general fund budget that dictated in line-by-line appropriations the use of all federal funds. The legislature had in May passed Senate Bill 1542, requiring virtually all federal funds to be deposited in the state treasury and prohibiting their expenditure without specific legislative appropriations. Governor Shapp vetoed the bill, but the House and Senate overrode the veto by overwhelming margins, and it became Act 117. Shapp then lost a constitutional challenge to the new law when the Pennsylvania Supreme Court ruled 4-2 in favor of the General Assembly and the state treasurer, Grace Sloan, who refused to spend federal funds that had not been appropriated (*Shapp v. Sloan* 1978). By the time the appeal reached the US Supreme Court, the suit was captioned *Thornburgh v. Casey* (1979), but the result was the same.¹⁵ The Supreme Court dismissed the suit for want of a federal question, in effect allowing the Pennsylvania law to stand. Although some state legislatures already were appropriating federal funds to one degree or another, the Supreme Court

¹⁴ In addition to the Pennsylvania Economy League, the congressionally-created US Advisory Commission on Intergovernmental Relations (ACIR) and the National Conference of State Legislatures (NCSL) recommended that state legislatures appropriate federal funds.

¹⁵ Only Justice John Paul Stevens dissented from the decision to dismiss the case.

decision called attention to the Pennsylvania law, and legislators and staffers from other states began looking to Pennsylvania for guidance on this issue.

Throughout the 1970s, the General Assembly continued to professionalize and standardize the budget process and to require the executive branch to provide documentation for revenue and expenditure estimates to its Appropriations Committees, eventually codifying many of these practices:

In 1978, following a study by the Pennsylvania Economy League and special hearings by the General Assembly on the Commonwealth's budget procedures, a Budget Code was enacted that consolidated the Commonwealth's fiscal operations and placed into law specific budget procedures, many that had been already implemented in preceding years.

Specifically, the Budget Code provides for a five-year budget, a February submission of the budget to the General Assembly except for the first year in which a Governor takes office, an annual December briefing to the General Assembly of major fiscal issues, preparation of program effectiveness and management efficiency reports, and preparation of fiscal notes for regulatory actions and administrative procedures of departments, boards, commissions or authorities receiving money from the State Treasury. In addition, the Budget Code requires that all programs appearing in the budget have a stated objective describing the desired results and that all programs have a group of measures that quantify program performance in terms of results obtained.

(Pennsylvania Office of the Budget: 5)

...The Governor and each department or agency of the Commonwealth, upon request of the Chairman of the Appropriations Committees of either the Senate or the House of Representatives, shall provide documentation of any budget request, including revenue estimates upon which the Governor's budget estimate is based.

(Pennsylvania Office of the Budget: 44).

Other important developments include the establishment of a budget stabilization fund, commonly known as the "Rainy Day Fund," in 1985, to accumulate reserves during strong economic conditions to help the state avoid or soften harsh service cuts or tax increases during economic downturns. The General Assembly also required the budget document to identify tax expenditures in 1992. In 2006, the Pennsylvania Supreme Court ruled (in *Uniontown Hospital v. Commonwealth*), that the General Assembly could not include implementing language in a budget bill, and subsequently such language has been included in a "trailer" Fiscal Code bill that is enacted simultaneously with the general appropriations act.

Pennsylvania's recent history of late budgets has understandably drawn strong criticism from local governments, school districts, non-profit groups, and other recipients of state

funds, as well as from reformers, citizens groups, the press, and many legislators themselves. Viewed in broader and longer perspective, however, the late-budget problem is neither new nor unique to Pennsylvania. A recent study by Karl Klarner, Justin Phillips, and Matt Muckler (2010) found that from 1961 to 2006, over 15 percent of all state budgets were late and at least 10 other states had an average days late equal to or greater than Pennsylvania's average over this period of 33 days late. Kentucky was highest with an average of 261 days late and New Hampshire (a state with a citizens' legislature ranked last in professionalism) was second with an average of 86 days late. Most of the states performed far better than the Congress. Although the federal budget structure and process are different, between 1961 and 2006, the average federal appropriations bill was 73 days late, more than twice the 30-day delay of the average state budget. In only four years did Congress complete its budget work on time.

Late budgets are still a serious problem in Pennsylvania but less of a problem than they were before modernization. (See Table A-1 in the Appendix.) If, following the Klarner, Phillips, and Muckler methodology, one uses the date the general appropriations act was signed to determine whether a budget met the statutory deadline, 10 of 14 Pennsylvania budgets were late by an average of 99.9 days between 1956 and 1972. From Fiscal Year 1973, when modernization began to take hold (e.g., legislative salaries more than doubled and the Appropriations Committees began to augment their professional staffing) to Fiscal Year 2011, 14 out of 39 budgets were late by an average of 18.8 days. If one adjusts the Pennsylvania count to include the FY 2004 budget as late,¹⁶ 15 of 39 budgets were late by an average of 29.3 days. In Pennsylvania, late budgets seem to be associated with divided government (a decision the voters, not the legislators themselves, made) and whether taxes were increased.¹⁷

The General Assembly and Voters Establish the Attorney General as an Independently Elected Prosecutor and Legal Counsel for the Commonwealth (1977-1978)

In 1977, the General Assembly by overwhelmingly bipartisan votes gave second-round approval to a constitutional amendment to establish the attorney general as an elective office. Previously, the attorney general had been appointed by the governor. Proponents of the amendment argued that the attorney general should represent the people of the Commonwealth and should be independent of the governor. Governor Shapp opposed the amendment, but governors have no formal role in the approval, or disapproval, of joint

¹⁶ The Fiscal Year 2004 general appropriations act was signed March 20, 2003, which makes it perhaps the earliest state budget in history, according to the Klarner, Phillips and Muckler methodology. However, before signing the bill, Governor Rendell lowered the official revenue estimate and vetoed a number of line items, including the basic education subsidy, arguing that a new approach to school funding and higher taxes to bring the budget into balance were needed. School funding and higher taxes were not enacted until December, 176 days after the deadline. Thus, by commonsense standards, the Fiscal Year 2004 budget was one of the latest on record.

¹⁷ Using a standard statistical test (chi square) for the period from 1956 to 2011, the chance that the relationship between late budgets and divided government is coincidental is less than 1 in 100 ($p < .01$), and the chance that the relationship between tax increases and late budgets is coincidental is less than 5 in 100 ($p < .05$).

resolutions amending the constitution.

Although this amendment did not directly affect the absolute powers of the General Assembly, it could be seen as weakening the governor, who hence forth would rely solely on an appointed general counsel. In an era marked by corruption investigations, indictments, and convictions of executive branch officials and legislators and in the aftermath of the controversy over the elimination of the Philadelphia special prosecutor in the previous session, the General Assembly by bipartisan votes thus approved an amendment that would subject all branches to the investigative scrutiny of an independent officer and agency. The voters approved the amendment by an overwhelming margin in May 1978.

The General Assembly Establishes the Independent Regulatory Review Commission (1982)

Balancing the power of the executive means not just the power of the governor but of state bureaucracies, which issue regulations that further define laws enacted by the legislature and which may, in some cases, either understate or overreach legislative intent. Beginning in the 1960s, state agency regulations have grown rapidly, often driven by federal mandates. Necessarily, regulations are more complex and specific than state laws and are far more voluminous. In 2009, for example, state agency regulations printed in the Pennsylvania Code totaled 5,988 pages and covered 2,588 sections of regulatory activity; laws enacted by the legislature totaled 946 pages in 86 acts.¹⁸ Regulations are also where the rubber hits the roads in terms of their impact on regulated parties who are constituents of legislators.¹⁹

In 1982, the General Assembly established the five-member Independent Regulatory Review Commission (IRRC), with each caucus appointing one member and the governor appointing one. The commission's purpose is to work with state agencies and House and Senate standing committees to review pending regulations and after hearings to recommend modifications and even disapproval by a concurrent House and Senate resolution. As with a bill, to take effect a concurrent resolution of disapproval has to be signed by the governor, take effect without the governor's signature if he fails to act, or be adopted over the governor's veto. Since the IRRC's founding, there have been 11 instances in which one or both houses initiated resolutions of disapproval. Only four reached the governor, all during the Casey administration. Governor Casey vetoed three concurrent resolutions and was overridden once. The other took effect without his signature.

As with other legislative oversight activities, it is difficult to measure the IRRC's impact,

¹⁸ The Legislative Reference Bureau provided the page counts for state regulations and laws.

¹⁹ It should be noted that, particularly at the federal level, studies have found that some complaints about regulation can be traced not just to bureaucratic overreach but to the ambiguity or vagueness of statutes themselves, as legislators leave important issues unresolved in order to achieve compromise, in effect delegating discretion to bureaucracies (Lowi 1979: 92-126). When regulated parties later complain about the regulations, lawmakers join their constituents in criticizing the bureaucracy at oversight hearings.

because state agencies, being aware of the process, may anticipate legislative reaction and incorporate their concerns in the initial draft of the regulations or in modifications after the process begins. Since 2000, perhaps out of concern at the length of time required to complete the IRRC process, the General Assembly has exempted from review regulations issued under 21 newly enacted or amended statutes. Thirteen of the exemptions were enacted in 2005 or later. Regulatory review commissions are generally a feature of professional legislatures.

The General Assembly Increases its Capacity for Citizen Casework

The other important activity that attempts to balance the power of the bureaucracy is legislative casework. Staffs in legislative district offices assist citizens in applying for state benefits and resolving disputes with bureaucracies, and not just state bureaucracies. Partly because Pennsylvania has a large legislature, with 253 districts, and partly because many citizens cannot easily distinguish among federal, state, and local matters, state legislators' district staffs often become involved in helping citizens resolve issues with federal and local bureaucracies.

Although casework is viewed by some observers as an inappropriate, taxpayer-supported form of electioneering, such activity can be, in the view of scholars like Alan Rosenthal, a legitimate form of representation that helps connect citizens with their government. Bureaucrats are trained to be rule-followers. Politicians are empathizers; that is, one of the key characteristics of a successful politician is the instinct to view a problem from the vantage point of the citizen affected by the problem, a healthy perspective in a democracy.²⁰ The question of whether district staff and resources are being used productively and whether taxpayers are receiving sufficient value for the funds expended on casework is an appropriate subject for evaluations of the overall legislative budget, which is discussed later in this report, but casework itself should not be demeaned.

Governor Casey Vetoes the Senate's Budget (1988)

When legislative leaders failed to reach agreement with each other and the governor on a Fiscal Year 1989 general fund budget, the Democratic House sent Governor Casey a general appropriations bill that had already been passed by the Republican Senate. Casey considered the bill unbalanced and used his line-item veto power to strike \$205 million in state spending, including all of the funds appropriated for the Senate. A three-month standoff followed, at the end of which Casey agreed to a smaller business tax cut than the Senate Republicans had been urging. He then signed legislation that restored many of the cuts, including the Senate's appropriations.

Bond raters and fiscal experts contend that state governments should operate with a surplus

²⁰ The Bonusgate grand jury singled out PennDOT casework for criticism, contending that the legislative employees so engaged were duplicating work that should have been done by the agency itself.

equal to five percent or more of its planned general fund expenditures as a hedge against revenue shortfalls or unforeseen spending demands, such as for responding to disasters or court orders. A five percent surplus is enough to run the government for about two weeks. Although both chambers and all four caucuses had traditionally budgeted such surpluses in their accounts, the 1988 veto heightened legislative leaders' anxiety about the vulnerability of their caucuses or their institution to having their funding eliminated by a veto or exhausted during budget battles, weakening their ability to balance the power of the executive. Because the legislature's appropriations are "continuing" and therefore do not expire at the end of the fiscal year, surpluses would allow the legislature to continue meeting expenses, including the salaries of members and staffs, in such situations. After the 1988 incident, the General Assembly began accumulating larger surpluses that eventually became the target for withering criticism from reformers, advocacy groups, and the press, which often characterized the surpluses as a "slush fund." In recent years, however, rather than increase its appropriations, the legislature has been depleting the surpluses as the institutional memory of 1988 fades.

The General Assembly Establishes the Independent Fiscal Office (2010)

In November 2010, the General Assembly also enacted legislation establishing a bipartisan, bicameral Independent Legislative Fiscal Office, modeled generally on the Congressional Budget Office and similar offices in other states, most prominently California. Sponsors of the legislation argued that this step would further professionalize budget-making and might moderate partisan debate surrounding the adoption of the budget. Opponents argued that it was unnecessary, given the competent, although partisan, legislative staffs of the House and Senate Appropriations Committees and their right under existing law to access revenue and spending data underlying the governor's budget proposals. During debate and discussion of the proposal, both supporters and opponents expressed the view that if the new office were established, it should not increase the overall budget of the legislature and that consideration should be given to consolidating existing bipartisan service agencies at the same time, as recommended by the Modernization Commission. The Independent Fiscal Office was given an initial appropriation of \$1.9 million in 2011-12's budget. The new office will prepare revenue and spending estimates, analyze legislation for fiscal and economic impact, and develop and evaluate performance measures, among other tasks. The director was selected by a bipartisan, bicameral committee of legislative leaders based on merit criteria, serves a six year term, and is removable only by a concurrent resolution. The committee hired its first director in 2011, and the office is expected to begin providing fiscal analysis of legislative issues in 2012.

BALANCING JUDICIAL POWER

The House Impeaches and the Senate Removes from Office Justice Rolf Larsen of the Pennsylvania Supreme Court (1993-1994)

On October 4, 1994, the Senate of Pennsylvania by a 49-0 vote ordered Justice Rolf Larsen of the Pennsylvania Supreme Court removed from office for according special and improper treatment to lawyers described as “friends and political contributors” about their pending cases. The House had adopted an impeachment resolution by 199-0 on May 24, 1994. Larsen was the first Supreme Court justice impeached and removed from office in the Commonwealth’s history and the first judge impeached and removed from office since 1811. Urging adoption of House Resolution 324, Representatives Frank Dermody, D-Allegheny, the sole sponsor, and Jeffrey Piccola, R-Dauphin, minority chair of the Judiciary Committee, emphasized the bipartisan manner in which the investigation of Larsen had been conducted. Representative Thomas Caltagirone, D-Berks, majority chair of the House Judiciary Committee, complimented the work of outside counsels retained for the investigation (among them former US attorney Clayton Undercoffler) but also of the committee’s bipartisan professional staff. Senate Resolution 7, removing Larsen from office, was co-sponsored by Senators Craig Lewis, D-Philadelphia and Bucks, and Stewart Greenleaf, R-Montgomery, chair of the Impeachment Trial Committee. Among others who played key roles in the impeachment and removal were Representatives Daniel Clark, R-Juniata, and Michael Gruitza, D-Mercer and Senators Tim Shaffer, R-Butler; Charles Lemmond, R-Luzerne; Jeannette Reibman, D-Northampton; and Hardy Williams, D-Philadelphia.

The Supreme Court Orders the Legislature to Fully Fund the Unified Judicial System (1987 and 1996) But Defers to the Legislature on School Funding (1999)

Responding to a petition by Allegheny County, the Pennsylvania Supreme Court in 1987 ordered the legislature to fully fund the unified judicial system created in the 1968 Constitution. Preparing the budget for the 1988-89 Fiscal Year, Governor Casey’s budget office estimated the cost to the Commonwealth of complying with the order at about \$400 million; county governments, largely responsible for paying the local share of these costs, would presumably realize a similar amount of budget relief. In 1996, responding to petitions from Allegheny County, nine other geographically diverse urban, suburban, and rural counties,²¹ and the County Commissioners Association of Pennsylvania, the Supreme Court, in an opinion by Justice Flaherty, issued a writ of mandamus ordering the legislature to comply with the first decision. Senate President Mark Singel and House Speaker Matthew J. Ryan were named defendants in the mandamus petition. Justice Robert N. C. Nix, then chief justice, and Justice Ronald Castille filed dissenting opinions. The court

²¹ The other counties were Bucks, Cumberland, Dauphin, Erie, Forest, Fulton, Munroe, Snyder, and Tioga.

eventually appointed Frank Montemuro, Jr., a retired Philadelphia Court of Common Pleas judge, to devise a plan for phasing in state funding of the court system. Only the very modest initial phase was implemented. The General Assembly has taken no further steps to comply with the order, and the Supreme Court has made no effort to enforce the order. In 1999, however, the Supreme Court explicitly deferred to the General Assembly on school funding, ruling that the Constitution gave the legislative branch sole responsibility to fund education and that challenges to the adequacy of funding levels for school districts was non-justiciable.

The Supreme Court Subjects the Legislative Process to Judicial Review (1986-Present)

In a series of decisions starting in the mid-1980s, the Supreme Court has moved away from the so-called enrolled bill doctrine articulated in *Kilgore v. McGee*, under which courts have traditionally declined to subject the legislative process -- as opposed to the substance of legislation -- to judicial scrutiny. This trend is particularly important in Pennsylvania, whose constitution contains more provisions affecting lawmaking than all but four states and far more than the US Congress (Atherton 2011). One of the most important rulings in this trend occurred in November 2003, when the court struck down a statute challenged on constitutional grounds by the City of Philadelphia. Among other things, the bill in question changed the governance and/or powers of the Philadelphia Parking Authority, Pennsylvania Convention Center Authority, and Pennsylvania Intergovernmental Cooperation Authority, which is the state board that oversees the city's finances. The court specifically ruled that the enrolled bill doctrine did not shield a law from judicial scrutiny with respect to whether its enactment violated the single-subject rule in the constitution. In this case, the court ruled that the act dealt with a variety of unrelated subjects and was unconstitutional. The history and ramifications of court rulings on the legislative process were explored in an October 25, 2011, symposium for House and Senate members entitled "The Constitutional Foundations of the Lawmaking Process." More information on the symposium, including the background address by Professor Michael R. Dimino of the Widener University School of Law, can be found at the web site of Temple University's Institute for Public Affairs (www.temple.edu/ipa). Volume III in *The Temple Papers on the Pennsylvania General Assembly* explores this topic in greater depth. For additional insights into tension between the judicial and legislative branches, see the discussion of reapportionment in this report.

The General Assembly Creates an Interbranch Commission to Address Corruption in Luzerne County's Juvenile Justice System (2009)

Cooperation as well as conflict has marked the relationship among the three branches of government in recent years. As reported elsewhere, the three branches reached agreement on the regulation of lobbyists, including lawyer lobbyists, in 2006. In 2009, the General Assembly, with the support of the governor and the Supreme Court, enacted legislation

creating the Interbranch Commission on Juvenile Justice to recommend improvements in the juvenile justice system after two judges were charged by federal prosecutors with taking bribes for the placement of juvenile offenders in privately operated facilities. Four commission members, including the chair, were appointed by the Supreme Court, four by the General Assembly (one by the speaker, one by the president pro tem, and one each by the House and Senate minority leaders), and three were appointed by the governor. The commission held several public hearings and filed its final report in May 2010.

REPRESENTING AND LAWMAKING

Trends in Member Compensation, Educational and Occupational Backgrounds, Workload, Staffing, and Budgets (1968-2011)

Under the Pennsylvania Constitution and the US Constitution, legislators are responsible for setting their salaries, a prerogative everyone would like to have but a no-win proposition for elected officials, particularly given the long-standing tendency for almost 50 percent of American citizens to object to the behavior of individual legislators, the legislative process or legislative products or all three. Unless legislators actually cut their pay, they are vulnerable to charges that they are greedy and self-interested. History also suggests that no matter how they go about it, they will encounter a storm of criticism.

In 1972, an independent Commonwealth Compensation Commission formed subsequent to the recommendations of the Modernization Commission proposed legislative pay raises that were characterized in newspaper editorials as “gigantic...fat...grubby.” According to Professor Sidney Wise of Franklin and Marshall College, the General Assembly and the Compensation Commission were accused of engaging in “sleight of hand.” The legislature subsequently terminated the commission. In 1983, legislative leaders stripped an unrelated bill down to its bill number, substituted language to raise salaries for all three branches of government, and sent it to the governor within seven hours. The bill skirted the Constitution’s requirements that legislation not be altered from its original intent and be considered three days in each chamber. It also gave legislators immediate increases in unaccountable expenses, circumventing the constitutional ban on increasing compensation during their current term. Wise reports that the legislation provoked “a hurricane of negatives” including headlines like “Hacks Still Hacks” and characterization of legislators as “a bunch of skulking cutpurses.” The news media largely ignored the substantive case for the pay raises and its relatively small impact on overall state spending, according to Wise. Leaders defended their tactics by saying they believed the raises were justified and could not have been enacted if they had followed normal procedures.

In 1995, Senate Bill 1074 was enacted into law with the signature of Governor Tom Ridge on October 19. The legislation was passed through the Senate by a vote of 26-22 and the House by a vote of 104-91. This particular pay increase represented the first increase in salary provided for the General Assembly in eight years. It also indexed future increases through cost of living adjustments to the Consumer Price Index for all urban consumers for the Pennsylvania, New Jersey, Delaware, and Maryland area and further allowed members to controversially take these benefits immediately upon enactment in the form of unvouchered expenses rather than waiting until the beginning of a new session.

According to the *Philadelphia Inquirer*, SB 1074 raised salaries of the General Assembly by 18.7 percent while increasing the salaries of cabinet secretaries and members of the judiciary “by amounts ranging from 8 percent to 27 percent” (Eshleman a 1995: 1). The General Assembly justified tying their salaries to the urban consumer price index because that step had been taken in 1992 for the wages of judges of the Court of Common Pleas in the Commonwealth (Zausner 1995: 1). Press reports also confirmed that despite the narrowness of the vote in both the House and Senate, no debate took place in either chamber

of the legislature (Eshleman b 1995: 1).

Salaries and Expenses

For 2011, Pennsylvania legislators are the nation's second highest paid at \$79,613 per year,²² behind just California at \$95,291 per year. The National Conference of State Legislatures ranks these two states among the most full-time and (although they don't use the term) the most professionalized (in the company of New York and Michigan).

Although in nominal terms, the increase in legislative compensation from the \$7,200 paid in 1965 to the \$79,613 paid in 2011 is large, when adjusted for inflation, the average annual increase over the 46 year span is 1.2 percent. Calculated in 2011 dollars, the current legislator's salary is 0.3 percent higher than the level achieved in 1973, when legislative salaries were more than doubled with the expectation that members would give priority to their legislative duties as opposed to their private sector occupations. The 2011 salary is also lower, in real terms, than legislators were paid in 1989, 1990, 1997, 1998, 1999, 2002, 2005, 2007, 2008, 2009 and 2010.

Although neither metric perfectly correlates with legislative salaries, a comparison of changes in Pennsylvania per capita personal income since 1965 (Figure 1) and in median household money income since 1984 (Figure 2) shows both have grown more than twice as fast as legislative salaries.²³ The year-by-year history of changes in member salaries compared to 1965 levels also shows that since 1965, and particularly in 1973, legislated pay increases followed losses in the real purchasing power of salaries (Figure 1). Except for the use of unaccountable expenses to enable legislators to realize an increase in compensation before an election, they have been reimbursed for their expenses following federal guidelines.²⁴

Legislative Salaries Compared to Per Capita Income by County

Another factor provoking controversy is that legislators not only must set their own salaries but for all practical purposes, they must set them without regard to widely varying local market conditions. It is unrealistic and would violate the deeply embedded norm in all legislatures of equality among members to pay rank-and-file legislators different salaries based on what part of the state they represent, just as in virtually all bicameral legislatures, House and Senate members are paid the same salaries, despite the much larger districts and constituencies of senators. Pennsylvania legislators represent counties and towns with

²² As of late November, 2011, rank-and-file legislators earn \$82,026 per year with the COLA. Because such recent figures are not available for other states for comparison, the salary for most of 2011 (\$79,613) is used in this report.

²³ Both personal income calculated by the federal Bureau of Labor Statistics and household money income calculated by the US Bureau of the Census include forms of compensation not included in legislative salaries. Median household money income is only available from 1984 on.

²⁴ Data Tables A-2 and A-3 in the Appendix show the underlying numbers for Figures 1 and 2.

widely varying per capita incomes, a reflection of the extraordinary complexity of the state, which ranks high in income inequality. The average legislator's salary of \$73,613 in 2008 was 14 percent above the per capita income of \$63,002 in Montgomery County (and almost certainly below the income of the average Montgomery County lawyer) but 219 percent above the per capita personal income of \$23,100 in Forest County. This disparity explains why legislative salaries are more intensely criticized in rural areas and much less so in the state's metropolitan areas. If legislators' salaries were set at the state per capita income of \$39,762, it would almost certainly be harder to attract talented candidates in the major urban areas and the salary would still be almost twice as high as in Forest County.

Benefits

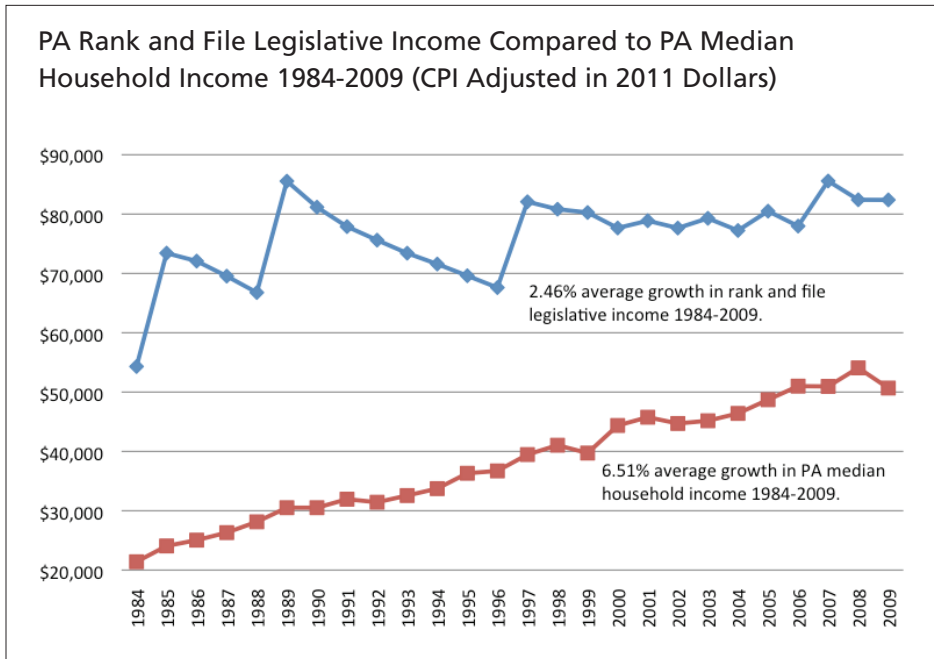
Comparable year-by-year historical data for health care and retirement benefits are not readily available. The Modernization Commission, in its 1969 report, noted that Pennsylvania legislators' benefits were more generous than those of other state employees, more generous than those of legislators in other states, and more generous than those generally available in the private sector. The commission also noted that legislators were contributing about 18.75 percent of their salaries to their retirement plans, which is far in excess of amounts contributed today. Legislators were eligible for the same health care plans as other state employees. Concluding that legislators' benefits were generous, the commission recommended that no change be made in this area, even if, as the commission also recommended, legislative salaries were increased.

It is clear that Pennsylvania legislators continue to have plans that are superior to those of most private sector workers who have employer-based coverage. Advocates for public employees have argued for decades that their superior health care and retirement benefits compensate them for lower salaries than their private sector counterparts and reduce inefficient turnover in the public service workforce. (Legislators, like other elected officials, face the possibility of very brief careers due to the frequency of elections.) Whatever the historic evidence for these arguments, they are clearly being discounted in the current era of fiscal austerity, as state and local governments across the country are pressing public employees to contribute more to both health care and retirement plans and to agree to less generous benefits.²⁵

Reporting on a 50-state survey of how the benefits of state lawmakers compare to other state employees, USA Today noted that even with reforms enacted in late 2010, newly elected Pennsylvania legislators will be able to retire at full benefits at 55 compared to most other state workers, whose full benefit retirement age will be 65 (Franks 2011). The article also noted that state law allows former legislators who have been elected to Congress or taken other public or private sector jobs can immediately start collecting their state

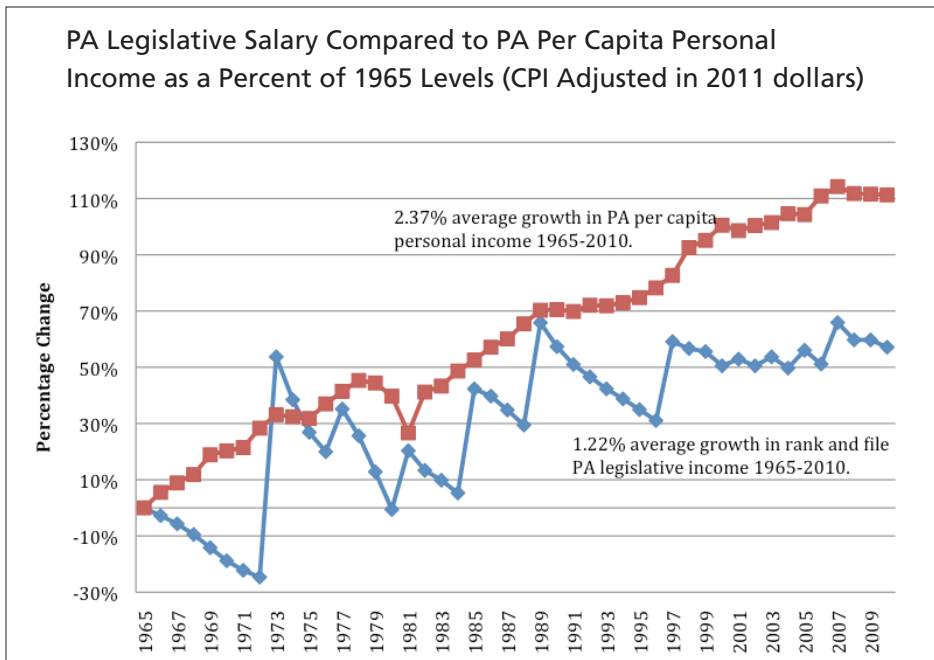
²⁵ House Committee on Appropriations Fiscal Note on House Bill 2497, Printer's No. 4476, November 15, 2010. The note estimated state pension savings in FY 2011-12 at \$115 million but also estimated the costs of a new Independent Fiscal Office for the General Assembly authorized in the same legislation would cost the Commonwealth \$290,169 in FY 2010-11 and \$4,151,566 in FY 2011-12.

FIGURE I



Sources: Pennsylvania Manual and U.S. Census Bureau Current Population Survey

FIGURE 2



Sources: Pennsylvania Manual, U.S. Department of Commerce, and Federal Reserve Bank of Philadelphia

pensions. The 2010 legislation, however, lowered the multiplier for newly hired state employees and school teachers from 2.5 percent to 2.0 percent, increased the full-benefit retirement age, and required higher contribution rates. New employees who wanted to keep the previous benefit multiplier of 2.5 percent (3 percent for legislators) must opt into a plan that requires them to contribute 10 percent of their salaries rather than 7.5 percent. Vesting for new employees was increased from five to 10 years, and the option to take lump-sum payments was eliminated. The legislation re-amortized the unfunded accrued liability over 24 years for SERS and 30 years for PSERS. It also capped employer contributions and allowed the state and teacher pension funds to “smooth” (stretch out) the calculation of contributions required to improve their actuarial soundness. The House Appropriations Committee’s fiscal note estimated that for FY 2011-12, the legislation would enable the state to reduce expenditures by \$111 million and school district expenditures by \$94 million. Long-term savings (through FY 2043-44) were estimated at \$1.499 billion for the state general fund, \$738.5 million for other state funds, and \$621.9 million for local school entities.

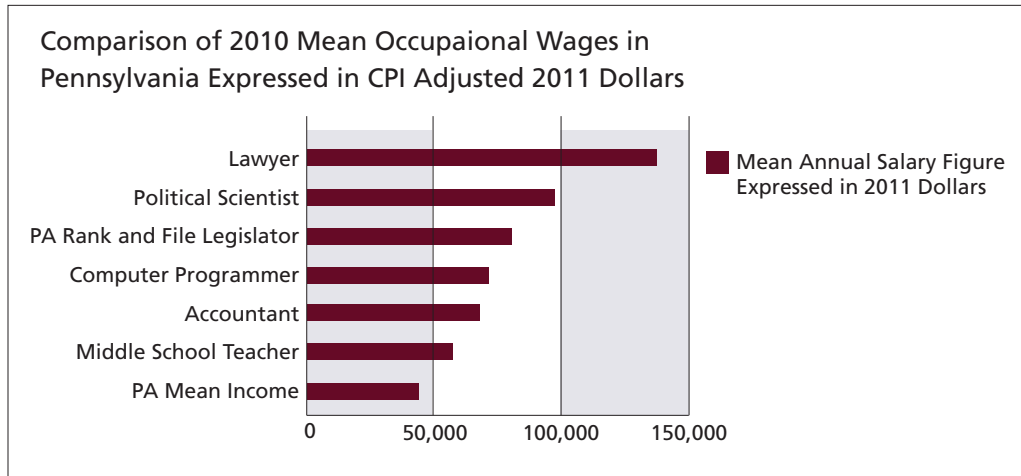
A recent article in the *Bucks County Courier Times* documented some of the differences between the legislature’s plans and those in the private sector (Ciavaglia 2011). According to the Kaiser Family Foundation, the average American with employer-provided health care insurance pays about \$4,000, or 29 percent of the \$13,000 cost of his or her premiums. The Pennsylvania Senate covers 99 percent of health care contributions, and the House has been paying 100 percent but plans to move to 99 percent in Fiscal Year 2012. Premium costs for medical and drug coverage have been estimated as high as \$20,000 per House employee and \$31,000 per Senate employee, not counting vision and dental care, according to the *Courier Times*. Citing the Pennsylvania Office of Administration as its source, the article reports that the state contributes between 97 percent and 98.5 percent of the premiums for 70,556 executive branch employees, including the governor, or about \$10,000 per employee.

Trends in Members’ Educational and Occupational Backgrounds

Today’s members are better educated than their counterparts in the 1960s. Although precise and comparable data are hard to come by, we calculate that the number of House members with a college, business, or technical school degree has increased from 40 percent in 1965 to 63 percent in 2007, and the number with only a high school degree has declined from 36 percent in 1965 to 6 percent in 2011. The number of Senators with a college, business, or technical degree has increased from 30 percent in 1965 to 66 percent in 2007, and the number with a high school degree has declined modestly from 8 percent in 1965 to 6 percent in 2011.

According to a June 12, 2011 story in the *Chronicle of Higher Education*, 76 percent of Pennsylvania legislators have at least a bachelor’s degree, slightly above the national average of 75 percent. California, with the highest paid legislators, has the highest percentage with a bachelor’s degree or above (90 percent), and New Hampshire, whose legislators are

FIGURE 3



Sources: PA Manual and Bureau of Labor Statistics

among the least well compensated, has the lowest percentage with a bachelor's degree or above (53 percent). Thirty-eight percent of Pennsylvania legislators had a bachelor's degree, 38 percent had more than a bachelor's degree, 13 percent had college courses short of a degree, and 7 percent never attended college.

The increases in educational attainment are despite a notable decline in the number of attorneys in the General Assembly, a trend that is also evident nationwide, although there has been a modest increase since 2007. In 1965, 23 percent of the House and 50 percent of the Senate identified themselves as lawyers; in 2011, 21 percent of the House and 28 percent of the Senate were lawyers. The declining number of lawyers might be due to a greater opportunity for them to earn higher incomes in the private sector than they could when legislating was a less demanding job. Whatever the reason, as former Senator Kury noted, members who were attorneys in the pre-modern legislature had an advantage over members who were not, because they could use their firms' resources to support their role as lawmakers. Today's members are on a more level playing field.

There is an argument that salaries for legislators should be comparable to private sector salaries for occupations with similar responsibilities and backgrounds. According to data from the federal Bureau of Labor Statistics (Figure 3), a Pennsylvania legislator's 2010 mean annual salary of \$79,692 ranked just above that of a computer programmer at \$77,870 and just below that of a political scientist at \$83,680 (which many of our colleagues believe is outrageously low).²⁶

In terms of what might be considered political education, there seems to have been a notable decline since the 1960s. In 1965, 36 percent of the Senate and 56 percent of the House reported having in their backgrounds affiliation with a state or local political party organization or with the Young Democrats or Young Republicans. By 2007, only 24 percent of the Senate and 23 percent of the House reported such affiliations. Either such an experience actually is less common or members feel it is less important to identify such affiliations in their *Pennsylvania Manual* profiles.

²⁶ Underlying numbers for Figure 3 are in Table A-4 of the Appendix.

Trends in Workload

Another justification of legislative compensation might be that today's members work harder. Measured rather simplistically by legislative days in session or the number of laws enacted, it would be hard to make that argument. As reported earlier, the pre-modern legislature experienced even more delays enacting the state budget than has the post-modern legislature, despite budgets that were demonstrably smaller and less complex. The quality of laws enacted, not just the number, is important, and there is no simple way to measure the quality. Further, the legislature might be enacting more comprehensive laws, accomplishing more despite fewer statutes. Assessing these possibilities is beyond the scope of this report.

By other measures, it seems likely that legislative workloads have increased. Members are representing, and responding to the needs of, more constituents. Compared to its previous history, the post-1960s state legislature also has an enormously larger, broader, and more challenging role in our federal system, particularly because in education, health care, and social programs for the poor and elderly, the state has become either the dominant funder or almost an equal partner with the federal government. States also incarcerate most of the nation's prisoners and face extraordinary fiscal pressures to fulfill this responsibility. In 2009, states collected and were responsible for spending \$1.49 trillion in revenues (including their federal aid), surpassing federal government collections of \$1.45 trillion, excluding Social Security. The volume of state spending and the number of federal and state programs administered by the state government have grown rapidly. Measured in 2011 dollars, Pennsylvania's general fund budget has grown from \$11,118 million in 1968 to \$28,739 million in 2007, an increase of 258 percent (Figure 4). Measured in 2011 dollars, total state spending from all funds, and including federal funds, has grown from \$24,423 million in 1968 to \$75,333 million in 2008, a 308 percent increase. The House has increased the number of public hearings, a recommendation of the Modernization Commission, by almost 300 percent since 1979, the first year for which there are fairly complete records (Figure 5).

Trends in the Legislative Staffing and Budget

As noted earlier, before 1967, the legislature had little or no "professional" staff (Greenawalt and Madonna 1992). Virtually all 311 House employees in 1962 were in clerical positions on the antiquated statutory payroll, and members had no district staffs to deal with constituent problems or even to respond to mail. Following the recommendations of the Modernization Commission, the number of House employees increased to 1,435 by 1991, with leaders and committees employing professional, clerical, and district staff. In 1969 there were 221 staff members in the Senate. The number of Senate staff increased to 780 by 1991, and leaders and committees were served by professionals. In 2009, according to the National Conference of State Legislatures, the Pennsylvania General Assembly had 2,919 employees, the largest staff of all the states. In numbers of staffers per legislator, Pennsylvania, with 11.54, ranked fourth, behind California (17.55), Texas

FIGURE 4

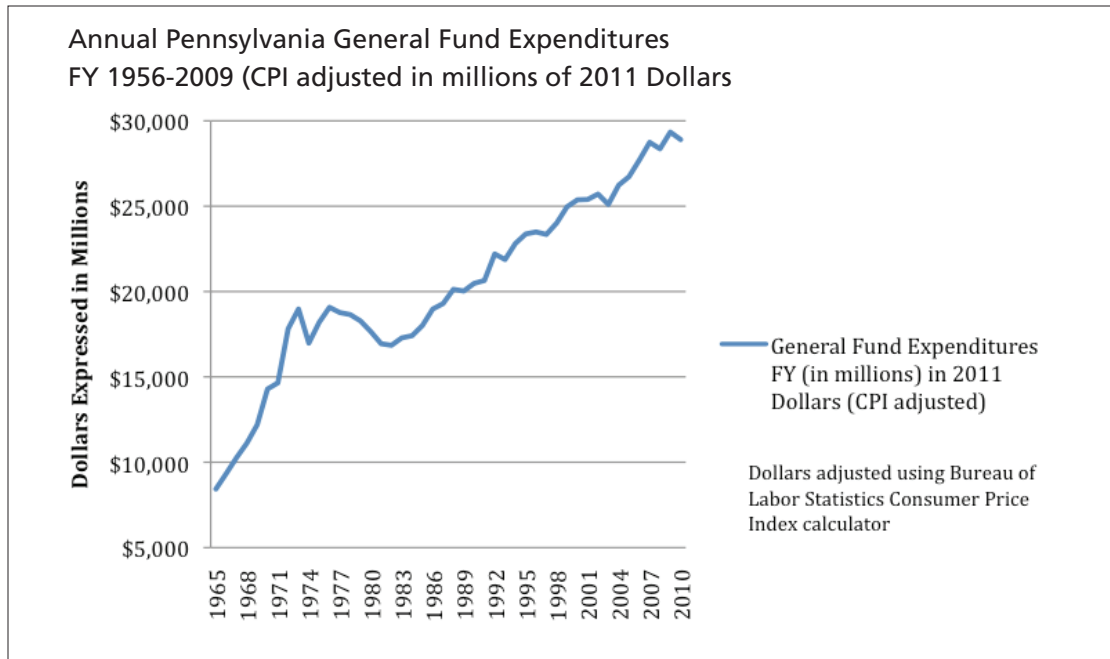
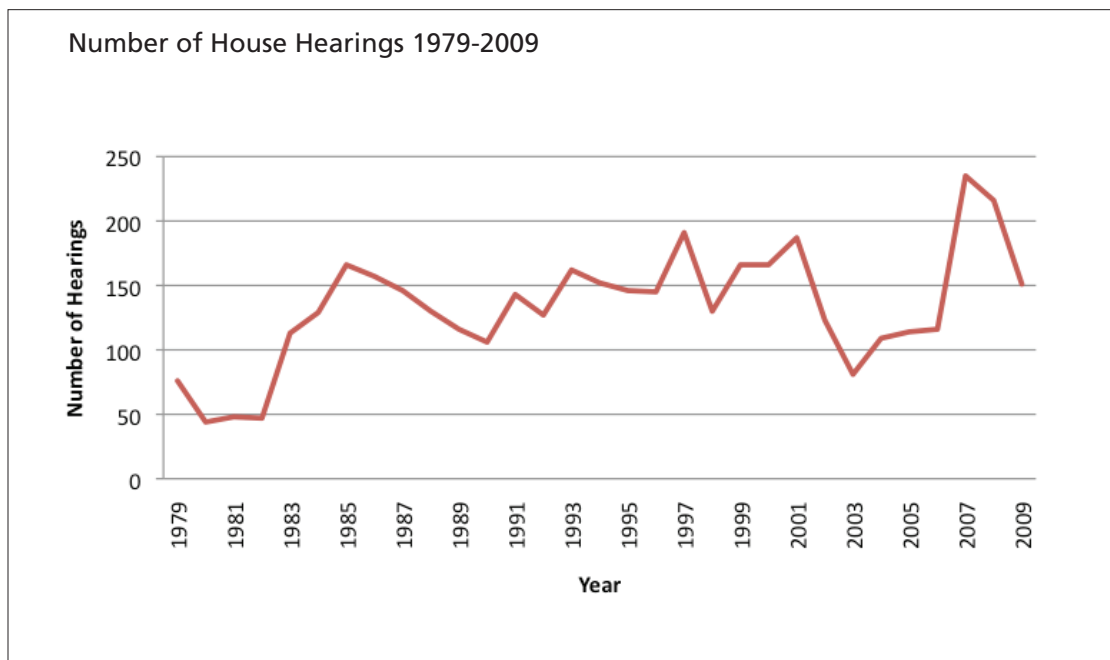


FIGURE 5



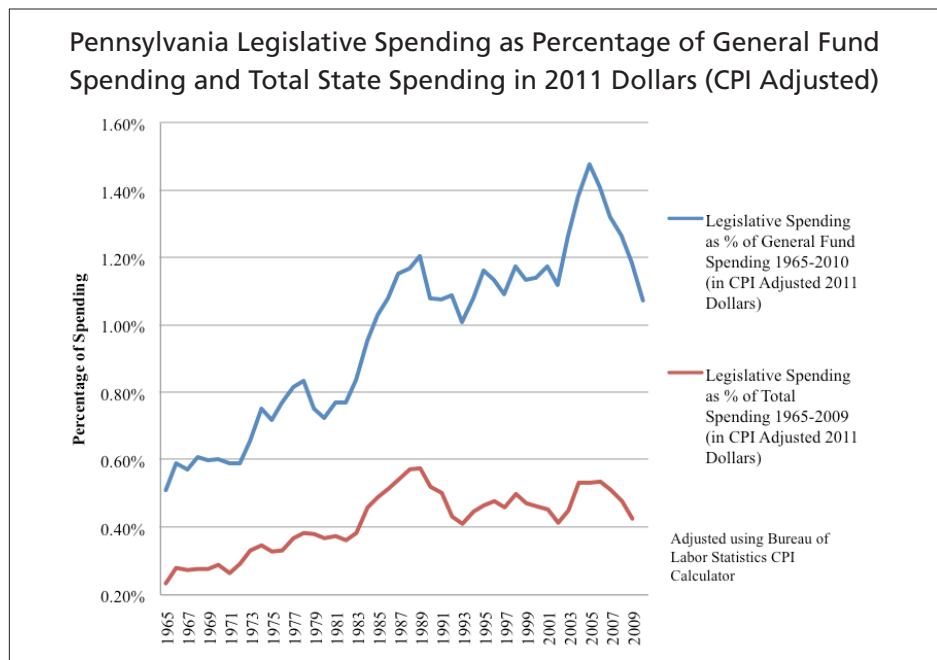
Source: Pennsylvania Policy Database Project: www.temple.edu/papolicy.

(13.19), and New York (13.04).

Given that Pennsylvania ranks second in number of legislators, second in legislative compensation, and first in number of staff, it should not be surprising that it also ranks second in spending on legislative services. According to 50 state data published by NCSL, the Pennsylvania General Assembly's appropriation totaled \$331.7 million in 2009, second only to California at \$344.1 million. Pennsylvania was third on legislative spending per capita at \$26.12, second in legislative spending per member at \$1.31 million, and first in legislative spending as a percent of total state spending at .051 percent.

Legislative spending rose rapidly after the report of the 1968 commission, as the legislature raised its own pay and began hiring professional staff, but the General Assembly has cut its spending by \$85 million, or roughly 22 percent, since the high-water mark in 2005 (Figure 6). Measured in constant 2011 dollars, legislative spending rose from \$124.9 million in 1973 to \$310.5 million in 2010, almost 149 percent. During the same time period, total general fund spending increased by 52 percent and total state spending by 118 percent. From its peak in the post-modern era at \$395.2 million in Fiscal Year 2005, General Assembly spending has been reduced to about \$310 million, or by about \$85 million, in Fiscal Year 2010. Since 2005, it has reduced its actual spending from 1.48 percent to 1.07 percent of actual general fund spending. Over the same time period, the General Assembly's share of total state spending (not just the general fund) has fallen from just over half of one percent to just over four-tenths of one percent. A comparison of the ten most professionalized state legislatures is provided in Table A-5 in the Appendix.

FIGURE 6



Reapportionment under the Constitution of 1968

As noted earlier, the General Assembly that approved the Modernization Commission was elected from districts that had been drawn by the Pennsylvania Supreme Court after it struck down two legislative plans on grounds that they violate the historic one-person, one-vote decisions of the US Supreme Court. Drafters of the Constitution of 1968 responded to the US Supreme Court decisions and also enshrined certain other values. Article II, Section 16, provides in part:

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

The Constitution of 1968 also required the creation of a Legislative Reapportionment Commission (LRC) after each decennial census. The commission is composed of the House and Senate majority and minority leaders and a fifth member appointed as chair by the other four.²⁷ If the other four fail to agree on a fifth member, the Pennsylvania Supreme Court is empowered to appoint the chair. Like other features of the Constitution, establishment of a reapportionment commission was considered a reform in the 1960s, compared to having the legislature itself draw district lines by statute. Pennsylvania is one of 12 states that use a commission to apportion the legislature; 38 states continue to apportion by statute. Volume IV of this series discusses reapportionment systems in other states.

The Pennsylvania Constitution is silent on congressional reapportionment. Like the vast majority of other states, in Pennsylvania, the state legislature apportions the congressional districts by statute. Thus, the governor has no role in apportioning the legislature but can sign or veto bills that implement the congressional reapportionment map. In 1992, when the legislature failed to agree on a congressional reapportionment plan, the Pennsylvania Supreme Court drew the districts.

In the five reapportionments under the 1968 Constitution, the leaders have deadlocked on the choice of a chair four times, the exception being 1981, when the dean of the University of Pennsylvania Law School was chosen. In the other reapportionment years,

²⁷ The floor leaders are authorized to appoint a deputy to represent them as members of the commission and from time to time have done so, always appointing another member of their own caucus.

²⁸ A majority of Supreme Court justices had been elected on the Republican ticket in 1971 and 2011, and a majority of justices had been elected on the Democratic ticket in 1991 and 2001. The court-appointed chairs have been identified with the majority party, except for 2001, when a Democratic majority court appointed a retired Republican judge.

including 2011, the Supreme Court by majority vote of its members has appointed the chair. This power explains in part the intense competition between the parties to elect Supreme Court justices.²⁸

Redrawing legislative boundaries after the decennial Census involves balancing multiple and sometimes competing requirements and values that often cannot be achieved without tradeoffs. Equal or nearly equal district population is a well-defined requirement. Among the values that can come into conflict are compact territory, preservation of municipalities and other communities of interest, and protection of minorities. Legislators also have political goals of partisan gain and incumbent protection, while reapportionment critics and reformers stress the opposing values of maximizing competitive districts and ignoring considerations of incumbency. “Gerrymandering” is the pejorative term used to brand district maps that appear designed to give unfair electoral advantages to certain groups or interests at the expense of others. Gerrymandered districts might favor rural areas over urban, white voters over black, one party over another, or incumbents of both parties over potential challengers. Reformers often argue that districts that fail the aesthetic standard of being compact and contiguous are de facto evidence of gerrymandering for one reason or another.²⁹

Among frequently cited remedies are turning reapportionment over to “neutral” technicians, as has been done in Iowa, or citizens’ commissions, as has been done in California. Yet, redistricting carried out by non-partisan or independent commissions also has stirred political controversies and complaints about bias and conflicts of interest in a number of states in 2011 and 2012 (Goodman 2012; Beckett 2012). (It is worth noting that Pennsylvania’s commission was regarded in 1968 as a bipartisan reform and an improvement over redistricting by act of the entire legislature.) Unlike the legislature itself or commissions in which legislative leaders sit, “neutral” technicians or citizens’ commissions cease their roles when redistricting is finished and are therefore not responsible for whatever impact the new districts might have on the representation of citizens or the performance of the legislature. The lack of accountability of such commissions and their vulnerability to manipulation by partisan and non-profit advocacy groups that do not have to report expenditures or identify contributors strongly suggest that there is no simple way to “reform” what is essentially a political process (Beckett 2012). Racial gerrymandering, or the spreading of minority populations across multiple districts in such a way as to reduce their chances of electing members of their own race, is prohibited under judicial standards and regulations evolved from the federal Voting Rights Act.

A key case with regard to partisan gerrymandering arose in Pennsylvania following the 2001 congressional districting. In a suit brought by Democratic voters, *Vieth v. Jubelirer* (2004), the US Supreme Court declined by a 5-4 vote to strike down the Pennsylvania statute reapportioning the state’s congressional districts on the grounds of unconstitutional political gerrymandering. Among arguments attacking the law was that in 2002, in the

²⁹ “Compact” is a relative standard, indicating districts that are as close to a circle and therefore include as little territory as possible. Districts can be more or less compact. “Contiguous” is an absolute standard; districts must be contiguous, that is, they cannot be composed of disconnected islands.

sole statewide contest, the Democratic candidate for governor won with 55 percent of the major-party vote in a race between non-incumbents. Yet, Republicans won 63 percent of the congressional seats. A plurality of the justices ruled that reapportionment is inherently a political process and there are no discernible standards to determine what constitutes political discrimination. Although Justice Kennedy joined the majority in upholding the Pennsylvania law, he did not agree that claims of political gerrymandering were beyond judicial review, leading to speculation that such a claim might someday succeed. The court also has ruled in *Bush v. Vera* (1996) that efforts to avoid pitting incumbent legislators against one another are not on their face unconstitutional, as legislatures have a legitimate interest in retaining experienced representatives. Indeed, while some states attempt to prohibit incumbency protection as a factor in redistricting, others explicitly allow it.

Many reformers in Pennsylvania and nationally argue that partisan and incumbent gerrymandering reduce electoral competition, producing legislators more responsive to primary as opposed to general election voters and thereby increasing partisanship and inhibiting legislative compromises. Although these arguments have support among some political scientists, others have raised doubts. It is far from clear that gerrymandering alone is responsible for these effects or that there are easy remedies, given evidence that the US population is increasingly sorting itself into homogeneous communities (Bishop and Cushing 2008; Cain 2009). The United States Senate, for example, has gerrymander-proof boundaries and yet reflects increasing partisanship in its dramatically escalating use of the threat of filibusters (Mayhew 2010).

Furthermore, increasing competition may require sacrificing other values with unintended consequences. Maximizing competitive districts may reduce the chances of electing members of minority groups, require more municipalities and other communities of interest to be divided, result in districts that are less compact, weaken continuity and experience in representation and legislative leadership, increase the cost of campaigns, and force legislators to spend more time fund-raising at the expense of legislating.

³⁰ For a dramatization of the tradeoffs in values often required by reapportionment, see “Why the Conventional Wisdom about Reapportionment Reform May Be Wrong: The Case of Safe and Competitive State Senate Districts in Southeastern Pennsylvania,” a policy brief prepared for Temple’s Metropolitan Philadelphia Indicators Project and the Institute for Public Affairs. In a simulation of the “politically blind” approaches adopted by Iowa and California, Temple researchers produced 16 new state senate districts for Southeastern Pennsylvania with the goal of maximizing competition. Although, competitive districts were increased from seven to 11, Philadelphia and minority voters lost representation, the districts were far from compact, and eight of the region’s incumbents in leadership positions ended up in the same districts, incurring half would have to leave the senate if they sought reelection. The new districts also dramatized the difficulty legislators would have in representing constituents’ widely divergent communities. McLaughlin suggests that for purposes of reducing polarization, it is probably more important for legislative caucuses—as opposed to individual districts—to bridge the city-suburban boundaries, with each party having some seats firmly located in the political territory controlled largely by the other party (McLaughlin 2011). A December 4, 2011 article in *The New York Times* reported that city leaders in some other states were complaining that new districts that divided their cities and stretched into the suburbs will weaken city legislative representation. Rather than to increase competition, these new districts, according to urban leaders, were drawn to benefit the Republican party.

Representation may also suffer, as legislators struggle to represent constituents who are sharply divided on social and economic issues, live in communities with widely different needs and priorities, and reflect different cultural beliefs and demographic characteristics.³⁰ Thomas Brunell of the University of Texas argues in a recent book (2008) that a preponderance of competitive districts will result in more dissatisfied voters and more timid and uncertain legislators. He contends that a preponderance of safe districts but with enough swing seats to reflect changing statewide popular majorities will produce a legislature that more accurately represents the public, increases voter satisfaction with election results, and allows legislators to better represent the views of their constituents.³¹

Scholars and practitioners agree that control of the redistricting process influences the outcome of elections, but the evidence both in Pennsylvania and nationally indicates it is far from determinative. In the four reapportionment cycles completed under the 1968 Constitution, the party controlling the Pennsylvania Senate in the redistricting session maintained control in 18 of the 20 subsequent sessions. In the same four completed cycles, however, the party controlling the Pennsylvania House maintained control in only six of 20 subsequent sessions. Although Democrats controlled the Supreme Court, which appointed the chair in 1991, Republicans controlled the House for most of the subsequent decade. Although a retired Republican judge was appointed chair by the Supreme Court in 2001, Democrats won the House in 2006 and 2008. After the 2001 congressional redistricting challenged by Pennsylvania Democrats as political gerrymandering, Pennsylvania Republicans won 12 of 19 US House seats, but in 2006, Democrats took back the House delegation by the same 12-7 margin and then lost it again in 2010. Many other factors influence election outcomes, making any conclusions about the effect of reapportionment uncertain.

In a decision that clearly surprised the LRC's members, the Pennsylvania Supreme

³¹ Justin Buchler (2005) finds that compared to fair competitive districts, fair non-competitive districts lead to smaller ideological differences between median voters and their representatives and to a distribution of ideology in the legislature that is more representative of the distribution of the electorate. Buchler suggests that a bipartisan gerrymander will out-perform a set of competitive districts in maximizing representativeness. Taking a different approach, David King (2003) of Harvard University finds that competitive districts often produced more ideologically extreme candidates because activists in both parties, seeing a chance to win an open competitive seat, were more motivated to mobilize in primaries, resulting in unstable districts whose representatives shifted from one extreme to the other in successive elections. In a related example of evidence that conventional wisdom is sometimes wrong, John N. Friedman of the University of California at Berkeley and Richard T. Holden of the MIT Sloan School of Management write in the *Journal of Politics* (2009) that "the political science literature could not be clearer that gerrymandering is not the culprit" that explains rising incumbent reelection rates in recent decades. In an article in 2009 in *State Politics and Policy Quarterly*, Richard Forgette and John Winkle of the University of Mississippi and Andrew Garner of the University of Wyoming find that although the presence or absence of certain state statutory restrictions on redistricting appear to promote electoral competition, other factors, such as geographic sorting and more sophisticated mapping technology may play a larger role. They note that rising incumbent re-elections rates could reflect voter satisfaction with incumbents and conclude that from the perspective of both politics and policy, "the effects of declining legislative and electoral competitiveness are unresolved."

Court on January 25, 2012, struck down the commission's House and Senate maps on the grounds that they violated the requirement that legislative districts not divide counties, municipalities, or wards "unless absolutely necessary." Although the court acknowledged that it had upheld the 2001 legislative maps even though they divided more jurisdictions, it noted that the 2001 maps had been challenged only with respect to specific individual districts rather than subjected to a comprehensive attack, as was done in 2012. The court based its 2012 ruling on two appeals, one by the Senate Democrats and one by Amanda Holt and other citizens. These appellants submitted alternative maps that the court took as evidence that it was possible to meet the equality standard and yet divide far fewer jurisdictions.³² The court ruled that the 2001 House and Senate districts would retain the force of law until the LRC devised alternatives that passed constitutional muster, even if that meant that the 2012 legislative elections would be conducted from the older districts. The ruling suggests that the LRC will have to be far more careful to minimize subdivision splits in the future, given the ability of the opposing party and other plaintiffs to submit alternative maps using widely available redistricting software.

In another decision that surprised many observers, the Supreme Court on February 29, 2012, ordered Speaker Sam Smith to issue writs of elections to fill six vacant seats in the April 24 primary election for the balance of the 2011-2012 session. Such writs have been regarded in the past as solely the prerogative of the presiding officers of each chamber. The decision appeared to pre-empt a possible move by the General Assembly to adjust the date of the primary to allow voters to nominate simultaneously legislative candidates for the 2013-14 session. In a statement strongly disputing the constitutional basis for the decision, Smith nevertheless indicated he would comply with the order. These two decisions were clear signs of mounting tension between the legislative and judicial branches.

The General Assembly's 2011 congressional map, which also clearly divided more jurisdictional boundaries than were absolutely necessary, was not challenged. The constitutional constraints that apply to the redrawing of state legislative districts do not apply to congressional reapportionment, on which, as noted above, Pennsylvania law is silent.

The House and Senate Professionalize their Administrative and Personnel Systems under Bipartisan Management (1977-1981)

On April 4, 1978, the House passed House Resolution 122, co-sponsored by Speaker K. Leroy Irvis, D-Allegheny, Majority Leader James J. Manderino, D-Westmoreland County, and Minority Leader Mathew J. Ryan, R-Delaware County, creating a special commission on operations of the House (Cassidy 2003). The speaker and minority leader appointed seven members who were former members or professors with relevant expertise. The commission was chaired by John C. Pittinger, a former House member, former secretary

³² Comparing the maps submitted by the Holt appellants favorably to the LRC's districts, the court found that, "In total, for the House, 184 fewer subdivisions were divided, and 453 fewer fractures were established; in the Senate, 31 fewer subdivisions were split, and 93 fewer divisions were established."

of education, and later a professor of law at Rutgers University. According to Professor Sydney Wise of Franklin and Marshall College, the committee “was well staffed, met weekly for several months, heard 53 witnesses, including House leaders, members, staffers, lobbyists, and representatives of Price Waterhouse and Company. A 61-question survey was sent to all members” (Wise 1984).

While the Pittinger commission was deliberating, the *Philadelphia Inquirer* published in September 1978 a three-part series entitled, “Pennsylvania’s Assembly: How It Is out of Control.” Characterizing the series as “investigative journalism at its best and worst,” Wise said many of its headlines were exaggerated and issues magnified, but it also contained “truths too harsh to ignore.” According to the *Inquirer*, the House contained multiple accounts being used to pay employees whose duties were vague and attendance undocumented. Expense and per diem accounts were abused. “The charge was that many employees of the House chief clerk hadn’t been seen on the job for years and were in fact being paid for political work in their home districts” (Wise 1984). The Ethics Committee and legislative code of ethics had proved insufficient to prevent the abuses.

The commission’s report, issued in December 1978, noted that during its deliberations the General Assembly had enacted legislation to protect against conflicts of interest by state legislators and officials and had established a new ethics commission to monitor compliance with the law. The commission called for the repeal of the outdated statute that defined the job titles and salaries of the chief clerk and some 300 House employees in ways that no longer corresponded to the legislature’s real needs and that therefore were prone to patronage abuses. The rigidity of the so-called statutory payroll had led to the creation of multiple other accounts that complicated accountability. The commission recommended the creation of a bipartisan management committee composed of the speaker and two caucus leaders to set guidelines for the hiring of professional staffs and to regulate the housekeeping employees under the chief clerk. House employees, the commission said, “should be assured of continuing employment so long as their work is satisfactory...” It recommended that the chief clerk be a full-time professional administrator who could only be removed by a two-thirds vote of the House. It called for a variety of steps to tighten accountability and auditing of House accounts, including the creation of a controller who would report to the bipartisan management committee. Despite change in party control in the next session, House Bill 777, implementing many of the commission’s recommendations, was adopted with unanimous voice votes in the House and Senate and took effect in 1979. It was co-sponsored by new Speaker H. Jack Seltzer, R-Lebanon, new Majority Leader Ryan, and new Minority Leader Irvis (Wise 1984; Cassidy 2003).³³

The Senate was also making changes. In 1978, it ended the 19th century practice of senatorial scholarships, which allowed each senator to award five students with scholarships valued at up to \$60,000 to each of five state-aided universities. Critics charged that the

³³ The legislation also was noteworthy for creating in law the first program for undergraduate internships under the House Bipartisan Management Committee, also a step recommended by the Modernization Commission and still in effect (Wise 1984).

system was prone to abuses, including that some scholarships were awarded on the basis of politics and some even went to relatives of senators. In 1981, Senate Bill 7, sponsored by President Pro Tempore Henry Hager, made changes in Senate operations similar to those adopted in the previous session by the House, making the chief clerk the business manager for the chamber and creating the post of secretary/parliamentarian to manage operations supporting the legislative process. New controls were imposed on purchasing and job descriptions and classifications were adopted for the roughly 200 employees working for each caucus. The act created a Committee on Management Operations composed of the president pro tempore and the majority and minority leaders and caucus administrators.

The General Assembly Establishes an Ethics Commission to Solidify and Enforce Standards of Conduct for Legislators and Other State and Local Government Employees (1978 and 1989)

Although the Modernization Commission had recommended that the legislature establish a permanent ethics committee to regulate the behavior of its members, the General Assembly in November 1978 went further and passed legislation establishing a statutory commission with the power to adopt and enforce ethical standards not just for its own members but for all state and local government employees. The seven-member commission consisted of four individuals appointed by the legislature, one by each caucus, and three appointed by the governor, not subject to confirmation. In its jurisdiction over virtually all state and local government officials, the Pennsylvania law was stronger and more sweeping than similar laws in most other states. The act required candidates and holders of public office to file statements of financial interest, and it prohibited former officials from taking actions that benefit themselves on their immediate family (defined as their spouse and children) and from representing clients or employers before the bodies in which they served for one year after leaving public office. The Pennsylvania Supreme Court soon ruled, however, that judges and attorneys were not subject to the Ethics Commission but were rather subject to its own regulations. The courts also ruled that individuals filing statements of financial interest did not have to disclose the financial interests of their spouses.

With the Ethics Commission facing termination on December 31, 1987, under the state's Sunset Law, the House passed legislation reauthorizing the commission on December 7, 1987. The leaders of the General Assembly then extended the commission for six months to allow the Senate to review the reauthorizing legislation, but when a weaker version of the House bill was finally sent to Governor Casey in November 1988, he vetoed it, casting doubt on the validity of the commission's rulings in the interim. However, the Pennsylvania Supreme Court eventually struck down the Sunset statute itself, effectively resurrecting the commission and its rulings. In 1989, the General Assembly re-established the Ethics Commission, strengthened its conflict-of-interest provisions, expanded the definition of immediate family members to include siblings, and banned honorariums for acts related to an individual's status as a public official. The ban on honoraria was described by sponsors as the first in the nation.

The General Assembly Requires Lobbyists to Register and Report Expenditures (1998 and 2006)

The legislature's first attempt to require lobbyists to report expenditures (Act 93 of 1998) was struck down by the Pennsylvania Supreme Court in 2002 on the grounds that only the judicial branch could regulate lawyers, even those primarily acting as lobbyists, leaving the state with no legal requirement for four years.³⁴ In 2006, the General Assembly, the governor, and the court reached an agreement under which registration and reporting requirements were re-established under a new law (Act 134) and a parallel court order governing lawyers engaging in lobbying.

Doubts Emerge about Modernization (1992-Present)

Doubts about the wisdom of the General Assembly's modernization course appeared in *The Reform of State Legislatures: The Changing Character of Representation*, published by the Commonwealth Foundation in 1992, immediately following the legislature's 1991 votes to raise taxes to eliminate a huge budget deficit and fund transportation improvements. Edited by Eugene W. Hickok, Jr., an associate professor of political science at Dickinson College who later would serve as secretary of education under Governor Ridge and as deputy secretary of education under President George W. Bush, the volume included studies of four states. The Pennsylvania essay, co-authored by Professors Charles E. Greenawalt, II, and G. Terry Madonna of Millersville University, documented the increase in legislative salaries, expense accounts, staffing, and the General Assembly's budget since the Modernization Commission report. They argued that professionalization was not accompanied by increased legislative productivity but rather was associated with rising interest group influence, fewer incumbent defeats, and declining turnout in elections.

Acknowledging that the reform movement had produced "a full-time, professionalized legislature with extensive staff operating to function as a truly independent, autonomous branch of government," Greenawalt and Madonna criticized the General Assembly for failing to amend the Constitution to cut the House in half and install initiative, referendum, recall, and term limits, the last four measures supported, they argued, by the public. In his concluding chapter, Hickok was more cautious about the value of term limits, arguing that the experience of states that adopted them would be telling.

The General Assembly Repeals Its 2005 Pay Raise and Responds to Alleged Abuses of the Legislative Process and Investigations into the Misuse of Public Resources for Political Campaigns

On July 7, 2005, the General Assembly sent the governor -- and the governor immediately signed -- legislation raising the salaries of elected officials in the executive, judicial, and

³⁴ The Senate adopted rules requiring lobbyists to register during the period between the court's decision and the adoption of the new law, and arguably those rules also provided House members and executive branch officials with information about the identity of lobbyists and the interests they represented.

legislative branches and also of members of the governor's cabinet. Act 44 of 2007 defined the salaries of the Pennsylvania officials as a percentage of the salaries of their federal counterparts, thus providing automatic increases when federal salaries were raised. Thus the salaries of rank-and-file legislators were set at 50 percent of the salaries of members of the United States Congress, which amounted to a 16 percent raise. The legislation also provided that Pennsylvania House and Senate members could claim unvouchered expenses equal to the amount of the pay raise during the current session. The storm of criticism that followed was clearly stronger and more persistent than anticipated by legislators, the governor, and judges who attempted to defend it in comments to the press. News reporters and editors, reform advocates, bloggers from both the left and the right, and outraged citizens made their views known in mail, email, demonstrations, and eventually the ballot box. Russ Diamond, one of the most outspoken critics of the pay raise legislation, attributed the dramatic impact of the public reaction to a powerful new tool available to voters, the Internet, and many savvy observers and legislators themselves would come to agree with that assessment (Diamond 2007).

Criticism focused not just on the substance of the legislation but the process. The bill was amended at the last minute to add the pay raise provision and passed during a late night session while the General Assembly also was enacting a late budget that cut spending in other areas of state government. No hearings had been held on the legislation, and critics claimed that neither the press nor the public knew a pay raise for top officials in all three branches of government was pending. Critics noted that in enacting the last pay raise bill, in 1995, legislators had indexed their salaries to the Consumer Price Index for urban areas and had argued that the indexing would preclude the need for future increases. Critics also argued that a provision allowing legislators to immediately claim undocumented expenses equal to the amount of the pay raise was an outrageous end run around the constitution's prohibition against increasing their salaries or reimbursement for mileage during the term that the pay raise had been approved. This provision had also been included in the 1995 legislation, although it did not attract as much public ire as it did in 2005.³⁵ Finally, some observers and critics suggested that the inclusion of a non-severability clause in the bill was designed to insure that the judicial branch would not strike down the law on constitutional grounds, for doing so would invalidate salary increases for judges. The controversy ultimately focused criticism on the overall budget of the General Assembly, which was routinely described as the largest, full-time legislature, and the second most-expensive legislature, in the nation.

On November 16, 2005, the General Assembly repealed the pay raises across the board, but the Pennsylvania Supreme Court in 2006 ruled that the provision repealing judicial salaries violated the state constitutional prohibition against legislated reductions in pay for sitting judges. Consequently, judicial salary increases alone survived. The court also ruled

³⁵ The rationale for the undocumented expenses provision in 1995 and 2005 was that it effectively equalized compensation for the 25 senators who would not stand for election until two years after the rest of the General Assembly received salary increases.

unconstitutional the unvouchered expenses provision and a non-severability clause providing that if any part of the act was struck down, the entire act was void.

Although voters make decisions on a broad range of political and policy factors, this vote appeared to have a profound impact on the composition and outlook of the Pennsylvania General Assembly, affecting both legislative and judicial elections. By the start of the 2011 session, more than half of the legislature had taken office in 2005 or later, and more than 90 percent of legislative leaders were new to their positions since 2005. Also damaging the legislature's reputation were high-profile investigations in Philadelphia and Harrisburg of sitting legislators for using public funds and facilities for political campaigns or personal gain. Public disapproval of the legislature peaked in the fall of 2005, following the pay raise vote, as documented elsewhere in this report.

Since 2005, the General Assembly has enacted laws, and the House and Senate individually have changed practices and rules to address many of the criticisms leveled at the institution. Among the measures were new laws requiring lobbyists to register and report their expenses and significantly expanding public access to the records of state and local governments. Both chambers have adopted rules prohibiting sessions after 11 p.m., unless authorized by extraordinary majorities; detailing waiting periods before amended legislation can be brought to a vote; and requiring records of their committees and the bodies themselves to be posted on their websites. Senate President Pro Tempore Joseph B. Scarnati and Majority Leader Dominic Pileggi have decided, as a matter of policy, that their chamber will not vote on legislation in so-called "lame-duck" sessions, when retiring members are no longer accountable to voters. In 2010, however, the Senate did convene after the election to complete work on legislation to curtail public pension costs and to establish a new Independent Fiscal Office. The Senate leaders defend this decision on the grounds that the legislation had been the subject of public hearings and Senate action prior to the lame-duck session.

Both chambers also have adopted tighter rules and enforcement policies to prohibit legislators and their aides from using state property or resources for campaign purposes and from engaging in campaign activity during hours when they are also being compensated by the taxpayers for legislative duties. Consistent with the practices of most US legislatures, the rules permit legislative staff to work on political campaigns if they take leaves of absence from their positions with the legislature and are not compensated with government funds for campaign activity either during or after their leaves have expired. Although such practices were already against the law in Pennsylvania, and in fact federal and state prosecutors have obtained convictions under preexisting law, the new House and Senate rules spelled out with more precision where the boundaries lie between impermissible campaign-related activity and permissible political activity that is a normal and legitimate part of the legislative process.

A number of House changes were recommended by the Speaker Dennis O'Brien's Commission on Legislative Reform in 2007. Among other steps, the commission recommended that the budget of the General Assembly be immediately reduced by 10 percent below the \$316 million proposed for Fiscal Year 2007. The commission of 12 Democratic and 12 Republican members also held hearings and considered more fundamental changes

to the House, including reducing its size, reforming campaign finance laws, and imposing term limits. These did not gain support from the three-fourths majority vote required for recommending adoption.

In the wake of prosecutions of legislators who established and served on the boards of nonprofits that were heavily dependent on state funds for illegally using the entity's resources for political or personal gain, the Senate in March 2012 adopted rules to prohibit its members and senior staff from affiliating with such organizations.

Public Opinion of the Pennsylvania General Assembly

While the previous section provides the historic context to explain much about how the General Assembly looks today, it does not explain the current negative public opinion towards the General Assembly as an institution. The causes that drive public opinion of the legislature can be grouped into three categories:

1. Observations of the behavior of individual lawmakers. News of alleged improper or illegal behavior on the part of any legislator damages the job of the entire body. (Volume IV of this series discusses studies of the prevalence and causes of corruption in state politics.)
2. Observations of the process of lawmaking. Budget stalemates, procedural maneuvers, and overly partisan bickering have a negative impact.
3. Observations of the product of lawmaking. If a person agrees with an action of the legislature resulting in the passage, or defeat, of particular legislation, then he or she is more likely to approve of the body as a whole. Of course, virtually every major policy issue has people for and people against, so the net effect is what matters.

Since April, 2003, the Quinnipiac University Polling Institute has been asking the Pennsylvania public the question, “Do you approve or disapprove of the way the state legislature is handling its job?” The institute does a poll on this question an average of about six times a year. Results taken from their series are shown in Table 1. Interestingly, the legislature enjoyed a greater percentage of the public approval than disapproval in the early years. The notable exception is the end of 2003 when a partisan education fight (i.e. a “process-driven” result) involving the Democratic governor and the Republican-controlled legislature may have taken its toll.

Then in July 2005, when the legislature late at night enacted what was characterized as a “pay grab” bill, disapproval spiked above approval, hitting a high point in October of 2005. The public reacted both to the “product,” i.e. the legislation itself, and to the “process,” the way the legislation was unveiled and enacted in a late-night session. While in reaction to public opinion, the pay raise bill was repealed, public approval remained relatively low perhaps because of a perceived growth in “partisan bickering” through the elections of 2006 and into the new legislative session when party control of the House changed.

Finally, a big “behavior-driven” result likely began to negatively influence public approval of the legislature as a number of investigations by the U. S. Attorney of Eastern Pennsylvania and the Pennsylvania Attorney General began to hit the public psyche starting in 2006. Pennsylvania is not alone with this issue. Recent news stories such as “Ousted Speaker Indicted” and “Former Senator Convicted” and “Former President Pro Tem Pleads Guilty in Corruption Case” and “Ex-State Senator Pleads Guilty to Fraud Charges” were not about Pennsylvania, but about Florida, New Jersey, New Mexico and New York respectively. Likewise, “Federal Agents Raid Legislative Offices” is from Alaska; “Public Pushing Ethics Changes for Lawmakers” is from Texas, and “Powerful State Senator Indicted” is from Maryland. “Convictions Put Spotlight on Need for Change” is a headline from a story about legislative wrong doing in states across the country in the

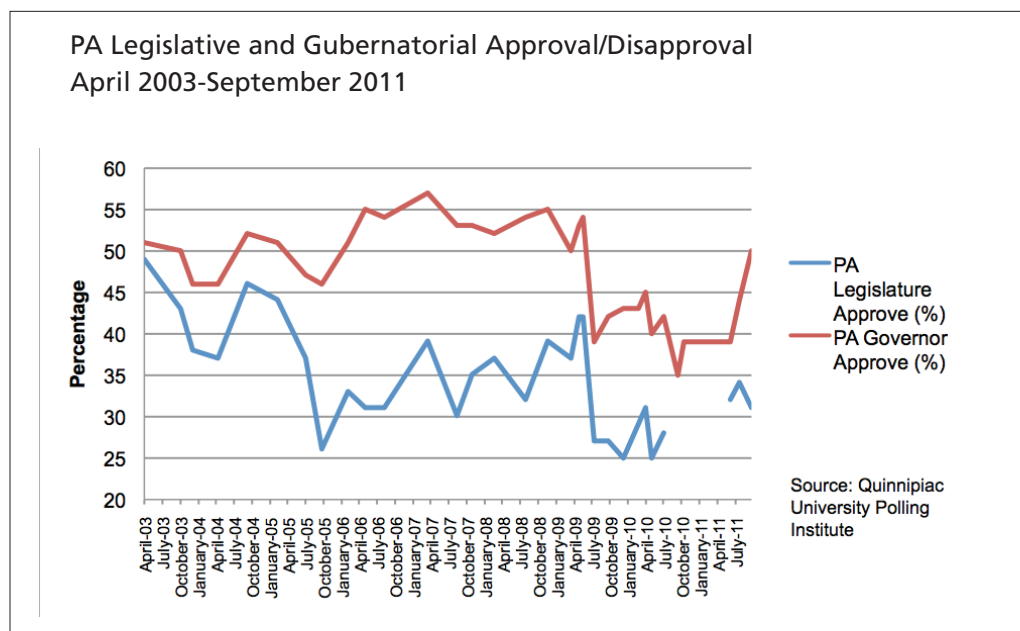
January 2012 issue of *State Legislatures*, a publication of the National Conference of State Legislatures.

Comparative Public Opinion with the Governor

Interestingly, at no point during this entire period did the governor’s job approval rating fall below that of the legislature. Indeed, his disapprovals never exceeded his approvals, despite his approval of the pay raise. This observation strongly suggests that part of the public’s view of the legislature is unavoidably “process-driven.” The legislature is constitutionally vested with quarreling within itself and with the governor over matters of policy. Many in the public do not understand the conflict even when it is appropriate and in their interest, and focus groups have found they consistently underestimate the extent to which the public itself is divided on issues (Hibbing and Theiss-Morse 2006 [1995]: 154-55). Thus, the natural instinct for many in the public to ask “Why can’t they just get along and get the job done?” will inevitably nag the legislature’s public approval even when they are “doing their job” as it should be done. One element in an effective campaign for improving any legislature is engendering in the public a deeper understanding of this “quarreling” role.

Because legislatures are charged by each state’s constitution and voters with resolving important differences on public policy, often on issues of deeply held and conflicting values, legislatures will almost always suffer from low “product-driven” and “process-driven” approval from some portion of the public. Note that at no point since 2003 has the public approval of the Pennsylvania General Assembly exceeded 50 percent (Figure 7).³⁶ An honest appraisal of the legislature requires us to acknowledge that one important reason

FIGURE 7



³⁶ The corresponding data table is located in the Appendix as Table A-6.

we may disapprove of its performance is that we, as Pennsylvanians, don't agree among ourselves on what the products should be. The Pennsylvania legislature is, in an important and profound sense, a reflection of the people of Pennsylvania, a state of extraordinary political, demographic, economic, and cultural complexity. As James Madison observed in the Federalist 51, "...what is government itself but the greatest of all reflections upon human nature?"

TABLE I

Recent Legislative and Gubernatorial Approval From Quinnipiac University Polling Institute
<http://www.quinnipiac.edu/x1326.xml>

STATE	DATE	LEGISLATURE			GOVERNOR		
		APPROVE	DISAPPROVE	DON'T KNOW / NO ANSWER	APPROVE	DISAPPROVE	DON'T KNOW / NO ANSWER
PENNSYLVANIA (Corbett)	09.29.2011 (Legislature & Governor)	31	54	16	50	32	18
CONNECTICUT (Malloy)	09.15.2011 (Legislature & Governor)	27	57	16	41	48	11
FLORIDA (Scott)	04.05.2011 (Legislature) 09.21.2011 (Governor)	32	51	17	37	50	13
NEW JERSEY (Christie)	11.16.2011 (Legislature & Governor)	30	46	24	56	38	6
NEW YORK (Cuomo)	10.26.2011 (Legislature & Governor)	25	63	13	65	19	15
OHIO (Kasich)	06.29.2010 (Legislature) 10.25.2011 (Governor)	33	47	20	36	52	12
VIRGINIA (McDonnell)	10.12.2011 (Legislature & Governor)	47	35	18	62	22	16

Comparative Public Opinion with Other States

Pennsylvania's legislature is not the only one suffering from public disapproval exceeding approval. In an innovative use of more than 32,500 respondents to a 2008 national survey, three scholars found that "legislatures are held in low regard across the country," with the average approval rate 35 percent, the mean statewide approval at 37 percent, and majority approval in only five states: Alaska, Idaho, North Dakota, Utah, and Wyoming. Richardson, Konisky, and Milyo note that approval is generally lower in states with

professional as opposed to citizen legislatures, which is consistent with previous research. The authors also find, however, that negative assessments of professional legislatures are a function of voter ideology, with conservatives more disapproving than liberals or moderates. (Richardson, Konisky, and Milyo: n.d.)³⁷

More conventional state-level polling data assembled by Rosenthal (2009: 17) also suggest that Pennsylvania reflects the rule rather than the exception. In all eight states he highlights, the legislatures fail to exceed the 50 percent approval rating. Results from recent polling by Quinnipiac in several states (Table 1) show legislative approval falling short of the 50 percent level as well as the governor's job approval consistently exceeding that of the legislature. Even in Ohio where the legislature enjoyed greater approval than disapproval last December, the governor enjoyed even higher job approval, suggesting again that when it comes to job approval, any legislature is at a disadvantage given the conflict built into its job pushing "process-driven" opinion in a negative direction. All of these data are consistent with another widely supported finding of political scientists studying the Congress and many state legislatures over many decades, namely that voters often approve of the performance of their individual representative but disapprove of the performance of the lawmaking body (Fenno 1975). Perhaps this is not surprising given that they actually voted for the person who represents them, but not for the institution as a whole.

Comparative Public Opinion with Congress

Finally, it's worth noting how congressional job approval ratings have fared over the same period of time. As Figures 8 and 9 show, the answer is not well. Taken together with the earlier evidence from Pennsylvania and other states, this suggests that the public is generally not happy with their lawmakers for some combination of behavior-driven, process-driven, and product-driven reasons.³⁸

³⁷ The authors used responses to questions about state legislative approval from the 2007 and 2008 Cooperative Congressional Election Study. They caution that although the surveys include respondents from all states and the samples are nationally-representative, the samples are not necessarily representative of individual states.

³⁸ The underlying data for Figure 8 are located in the Appendix as Table A-7.

FIGURE 8

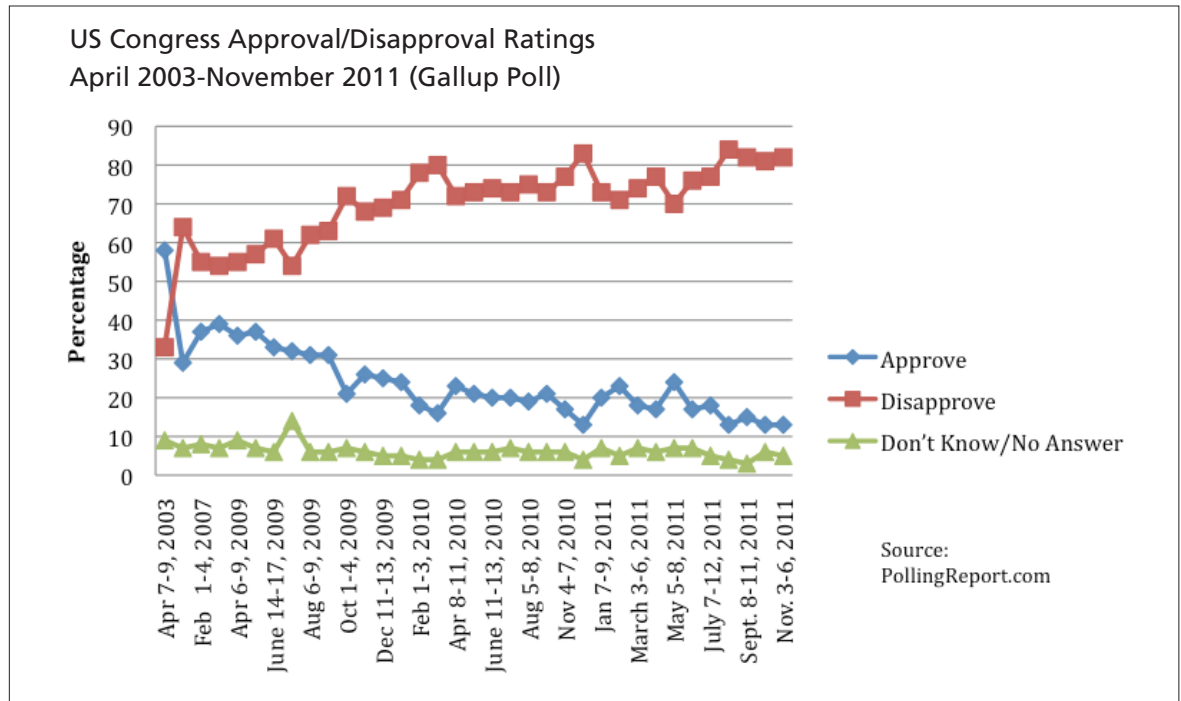
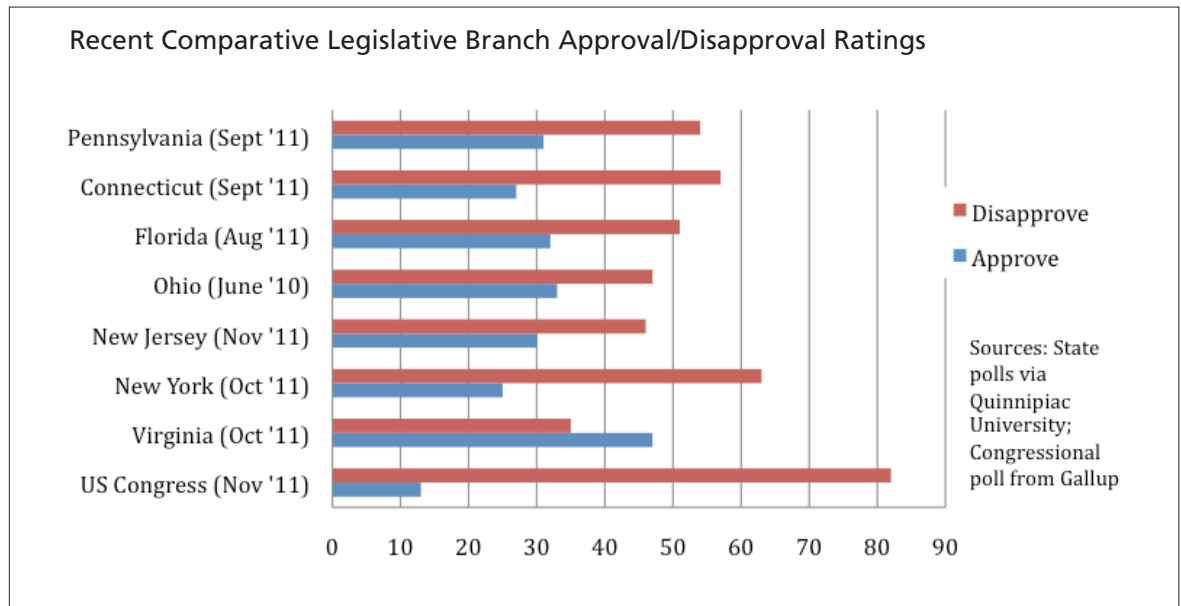


FIGURE 9



The General Assembly and the Fourth Estate

The news media affect both the General Assembly's performance and its reputation. Concerns have been raised in Pennsylvania and across the nation that the financial crisis facing American journalism is affecting the media's ability to fulfill its two traditional roles: watchdog against government corruption and waste and journal-of-record to inform the public about government actions to address policy issues.³⁹ These concerns are particularly acute with regard to media coverage of state and local government.

The 1968 Commission on Legislative Modernization recognized the importance of the media's journal-of-record role and recommended steps to provide reporters with more information and greater access to state government, as is evident from two recommendations:

No. 24. A public information bureau be established to distribute regular summaries of legislative actions to all news media in the state.

No. 25. A room be provided convenient to the halls of the two houses where interviews with legislators may be taped or filmed (the cost of such interviews not to be borne by the Commonwealth).

The House and Senate have gone far beyond these recommendations and created extensively staffed and well-equipped press offices to deal with reporters in the Capitol and in legislators' hometowns, but these staffs operate on a partisan basis and their cost is obviously borne by the Commonwealth. The partisan offices organize press conferences and generate news releases and statements that tell their caucuses' stories but only on rare occasions the institution's story. As observed earlier, some measure of public disapproval of the legislature is an inevitable outcome of the institution's essential function of representing and resolving the conflicting views of the public.

The cost and scope of the partisan offices are not infrequently targets of press criticism, at least partly on grounds of unnecessary duplication. On the other hand, it is difficult to imagine how a nonpartisan information office in a politically competitive state like Pennsylvania could effectively serve the parties' legitimate function of engaging in sharp debates and thereby offering citizens alternative policies and mechanisms to establish accountability. Also often overlooked by their critics is that the caucus press officers should be, and frequently are, internal advocates for forthright responsiveness to press inquiries and criticisms and for supporting the public's right to know (McLaughlin 1977).

The commission was concerned not just about the substance of lawmaking but about the media's potential to affect the reputation of the institution. "The Commission is saying this: Our legislature...is better than many of our citizens believe it to be. Its history, its operations, its members, its faults need to be brought into public view by the most able newsmen and professors in our Commonwealth. Any step in this direction is a desirable one." Accordingly, the commission recommended establishing legislative fellowships with substantial stipends for "citizens, editors, journalists and teachers of political science

³⁹ Financial pressures and technological changes are threatening the health of the news media not just in the US but in developed countries around the world, as reported by the July 9-15, 2011, edition of *The Economist* in a 14-page section entitled, "Back to the coffeehouse."

and public administrators” to be assigned to the House and Senate majority and minority leadership and presumably develop a deeper understanding of the legislature’s policy-making role (emphasis added). A variation on this approach would be to establish the equivalent of Harvard University’s Nieman fellowships, allowing mid-career reporters to broaden their perspectives on policy issues affecting states during an academic term. More specifically, the idea of providing fellowships for news reporters and editors in the Capitol and elsewhere to gain a deeper understanding of the legislative process seems worth trying. Foundation funding would be necessary to persuade news reporters and editors that accepting such a fellowship would not compromise their ability to cover state government objectively. The Pew Center on the States, for example, has conducted national forums to help statehouse reporters improve their coverage of fiscal and economic issues.

The most easily measurable change in what might be called public affairs reporting is the loss of jobs in journalism. The cover of the January 2009 issue of *Governing* focused on “Legislatures 2009” with a subhead “The Disappearing Press Corps.” “Newspapers have lost interest in covering legislatures,” the inside headline said, “Can Web sites replace them?” (Gurwitt 2009). In addition to documenting shrinking capitol newsrooms (and rising coverage by bloggers) in several states, the article reported that a national organization of reporters and editors who cover state government (the Association of Capitol Reporters and Editors) had recently lost two board members whose jobs were eliminated and was considering opening their ranks to lobbyists and other non-journalists in order to survive.

It is clear that there are fewer reporters working in the Pennsylvania Capitol. In an interesting exercise in self-examination, the Pennsylvania House of Representatives published in 1984 a well-researched account of the legislative process by Sidney Wise, a highly regarded political scientist at Franklin and Marshall College (Wise 1984). In his chapter on the news media, Wise reported that “The Pennsylvania Legislative Correspondents’ Association, the oldest such association in the Nation, has 40 members, nine of whom are in television or radio... Twenty-one daily newspapers cover the Capitol... The Associated Press lists seven Capitol correspondents.” The 2009-2010 *Pennsylvania Manual* listed 35 members of the association, but only 21 who actually worked in the Capitol. Six daily newspapers maintained bureaus (*The Allentown Morning Call*, *Philadelphia Daily News*, *Philadelphia Inquirer*, *Pittsburgh Post Gazette*, *Pittsburgh Tribune-Review*, and the *Times Shamrock Newspapers*). The Associated Press bureau listed four staffers. Because the manual lists reporters for a number of news services that may have client relationships with other Pennsylvania daily newspapers, it is difficult to compare the number of daily newspapers served by Capitol reporters with those reported by Wise. It seems safe to say, however, that fewer traditional reporters are covering state government.

As noted above, *Governing* reports the rise of entrepreneurial bloggers covering state capitols, and many observers believe that Pennsylvania’s bloggers mobilized public opinion against the 2005 legislative pay raise in ways the legislature did not anticipate. It is also clear that outside the news media, far more information about state government is readily available to interested members of the public than at any time in state history, thanks to

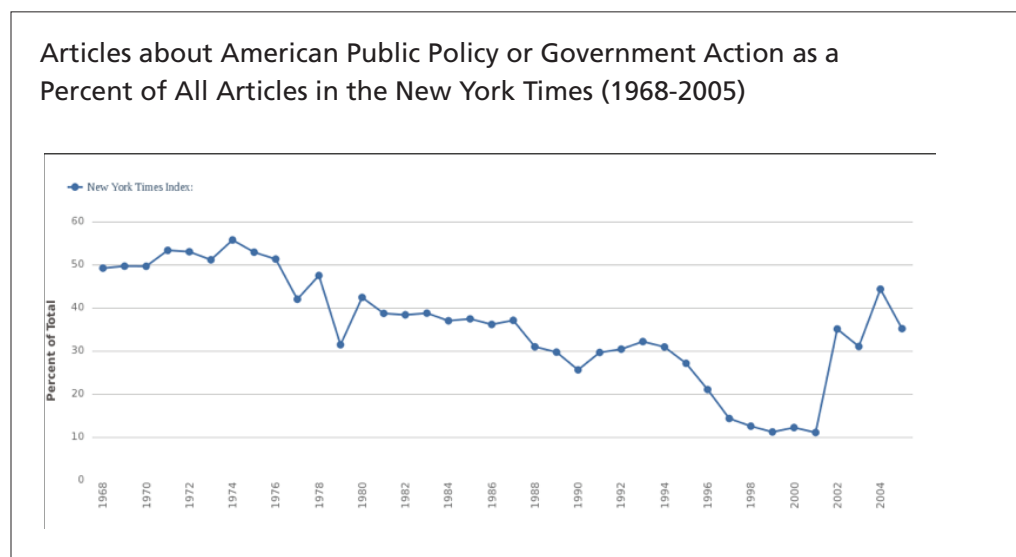
the Internet and also to new rules and statutes adopted by the General Assembly, including the Open Records law. The House and Senate are posting accounts of committee and floor action, including roll call votes. Many state agencies have concluded that it is far more efficient to put information on their websites than to respond to endless individual requests from citizens and groups.

The Commonwealth Foundation launched a free website in 2009 that allows users to track daily votes in both chambers and to target information about particular bills and particular legislators. Foundations in Philadelphia and Pittsburgh, as well in many other cities and states across the country, are supporting the establishment of alternative, web-based news services, although it is not yet clear whether these nascent Pennsylvania projects will produce significant new coverage of state politics and policy.

If the evidence is indisputable that fewer reporters are covering state government, measuring change in the quantity and quality of news content is more difficult. Some worry that public affairs reporting has declined as a share of overall news reporting, losing ground to coverage of such categories as sports, entertainment, and “lifestyle” features, and that within public affairs reporting, politics and scandal are crowding out policy issues. Although far from conclusive, there is evidence to support both observations.

A random sample of *New York Times* articles coded for public policy content by the Policy Agendas project at the University of Texas (www.policyagendas.org) reveals a steep decline in the percentage of articles dealing with American public policy or government action between 1968 and 2001. Although public policy content subsequently increased for several years, it did not reach the 50 percent level of the 1968-76 period, and the trend was downward again in 2005, the last year for which data are available (Figure 10). Even the *Wall Street Journal* has in recent years devoted more space to softer life-style features at the expense of public policy and business news.

FIGURE 10



In a study commissioned by the William Penn Foundation, George Washington University's J-Lab found roughly a 17 percent decline in public affairs reporting by Philadelphia's major print and broadcast media between 2006 and 2009. When the news media cover issues, they can affect the policy process. According to an in-depth study of the Illinois legislature, when the news media present a clear perspective on an issue, legislators and legislative staffers regard that perspective as virtually the equivalent of public opinion, even when more scientific polls might suggest otherwise, perhaps because policy-makers anticipate that the public will eventually move in the direction that news coverage is pointing (Herbst 1998). Similarly, Alan Rosenthal observes that it is not uncommon for some legislators who were supporting a bill flying under the radar to change their votes if the legislation attracts unfavorable media attention.

Rosenthal is among a number of political scientists and communications scholars who cite studies concluding that the professional incentives and innate skepticism of the press tend to breed, or at least reinforce, public cynicism about politics in general and state legislatures in particular. Pulitzer Prizes and other journalism awards generally reward investigative reporting and revelations of corruption and scandal. Journalists distrust what they cannot see, he notes, and legislatures are big and hard to observe. Many important issues in legislatures get negotiated in small informal meetings and discussions, out of sight of the press. Reporters often assume the worst about legislative motivations and generalize from the worst. He cites an online survey in which 50 reporters and 25 senior legislative aides were asked to choose between two alternative explanations for why legislators failed to pass a budget on time: (1) "Because democracy is a messy process. We hold our values dearly and want what's best for our constituents; or (2) Because they spent too much time bickering and being stubborn instead of coming to consensus." Reporters overwhelmingly chose the "bickering" explanation and legislative staffers the "messy process" one. (Rosenthal 2009: 23-27)

Data produced by the Pennsylvania Policy Database Project suggest that in its coverage of state government, the press has generally paid more attention to its watch-dog role than to covering substantive policy issues, although this is not a new phenomenon.⁴⁰ As part of this project, students at Temple and five other universities abstracted and coded for content over 160,000 government and news media records, since 1979.⁴¹ Measured by bills introduced, hearings held, laws enacted, sentences in governors' budget addresses, funds spent, and public opinion polls, education, health care, and the economy have dominated the attention of state policy makers, far outdistancing these same indicators for government operations. The latter category includes campaigns and elections, political conflicts among elected officials, waste, fraud, scandal, and ethical issues, as well as more routine subjects

⁴⁰ In an August 20, 2011, column explaining changes in the Philadelphia Inquirer's approach to the news in the face of declining revenues, Stan Wischnowski explicitly confirmed what many observers of the newspaper had concluded over the last several years: "... watchdog reporting...remains our primary focus."

⁴¹ The database, including the analysis tools and explanations of the news media and government records, are available at www.temple.edu/papolicy.

FIGURE I1

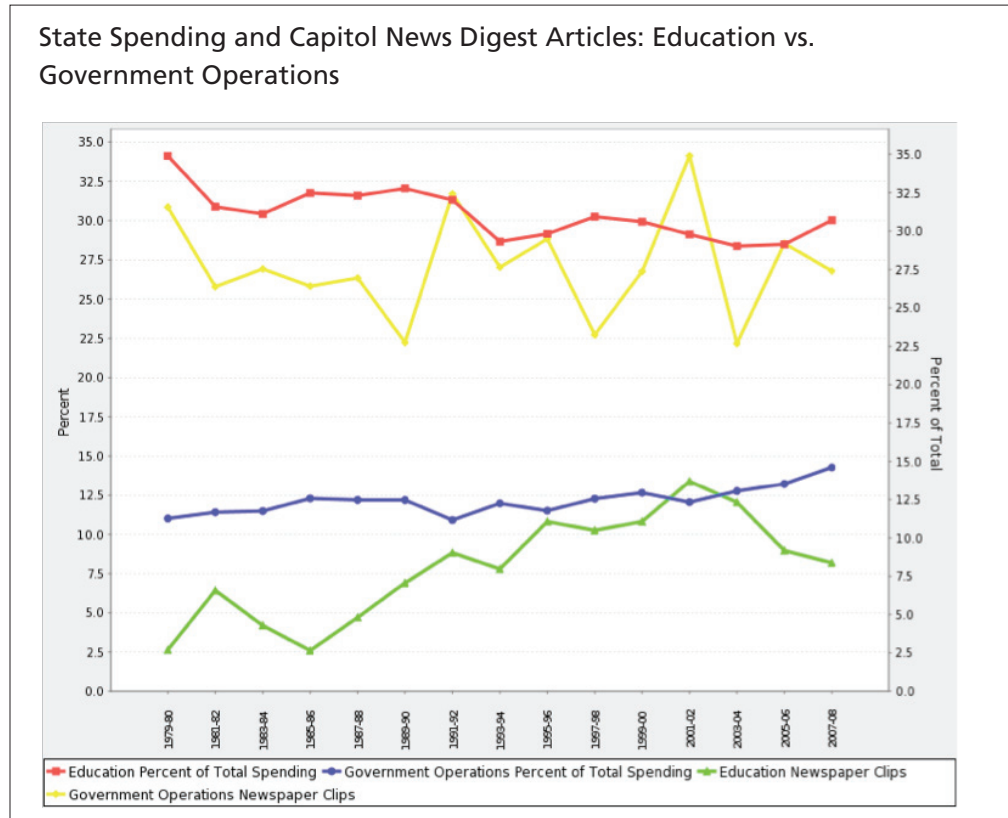


FIGURE I2

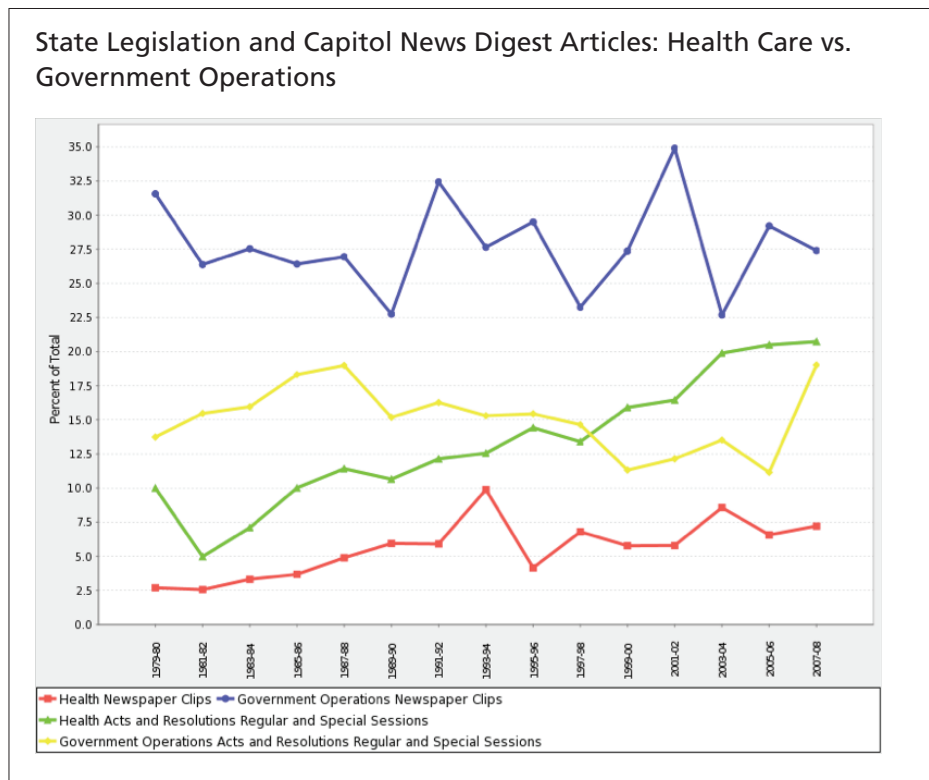
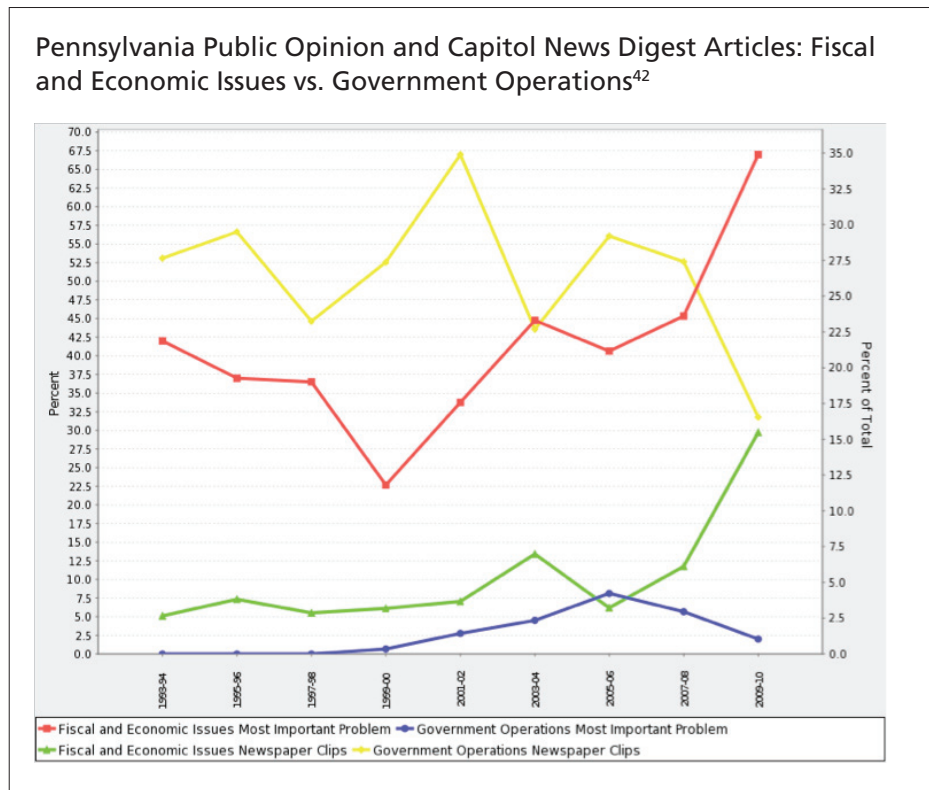


FIGURE 13



like administrative reorganizations, bureaucratic procedures, and public employee benefits and work rules. Yet a 10 percent random sample of more than 600,000 articles appearing in Capitol news digests over the last 32 years reflects much greater coverage of government operations than any of these substantive policy areas. As reflected in these data, government operations coverage does spike during periods of scandal, such as after the 2005 pay raise and subsequent investigations of legislative wrongdoing, but it has been consistently higher than coverage of major policy areas throughout the period (see Figures 11, 12, and 13). Although government operations news stories typically have accounted for more than 20 percent of stories in capitol news digests since 1978 (and in 1980 and 2002 reached 40 percent), this broad topic has never been regarded by more than 9 percent of the public as the most important problem facing the Commonwealth in any one year since the Keystone poll began asking the MIP question in 1994.

These data do not necessarily indicate that the traditional press is making inappropriate editorial judgments, given the constraints editors and reporters face. Thomas Jefferson undoubtedly had the watchdog role in mind when he famously said that if forced to choose

⁴² All Most Important Problem data is from Franklin & Marshall College statewide polls. For all years except 2008, 2009 and 2010 the Most Important Problem data is based on responses to the question “What do you think is the most important problem facing Pennsylvania today?” For 2008 and 2010, the poll asked “What do you think is the most important problem facing you and your family today?” The question was not asked in 2009, and therefore the data point for the 2009-10 session is based solely on the 2010 poll.

between government without the press or the press without government, he would unhesitatingly take the latter. Most reporters probably would agree that the incentives in journalism are weighted to the watchdog rather than journal-of-record role. The data simply reflect that there is a large disparity between what government officials do and what they see reported in the news media. The cost may be a public that is less well-informed about policy and more likely to learn about it from bloggers, talk-show hosts, and other advocates with pre-determined agendas and ideological views and less editorial oversight than from the traditional news media.⁴³

As this brief history has noted, throughout the years since 1968, the press has exposed activities by some Pennsylvania legislators and staff that resulted in indictments and convictions and led to changes in the way the General Assembly is organized and does business. It is not always recognized that in some situations, both the press and legislators favor transparency, although for somewhat different reasons. The press wants access to records to expose problems as evidence that new forms of government regulation are needed. Legislators often favor transparency as an alternative to regulations that they argue often have unintended consequences. Campaign finance is a classic example. Pennsylvania has long had relatively strong disclosure requirements as an alternative to contribution limits.

Ironically, the increased transparency of government may, in the short run at least, increase public cynicism about wrongdoing simply because there is more information available to provoke criticism and second-guessing by a press corps whose incentives are to do just that. Although some blame reporters and editors for inordinate attention to stories about pay raises, scandals, and corruption, readers and viewers also appear more drawn to such stories than to policy debates. As with the legislature, some of what we see when we look at the news media is a reflection of ourselves.

Concluding Observations on Size and Professionalism

The General Assembly's most conspicuous institutional characteristics-- that it is both large and professional-- are the result of decisions made in 1874 and 1968. The Pennsylvania Senate, with 50 members, ranks sixth in size among the states; the House, with 203 members, ranks second, behind New Hampshire. By the most widely used measure of professionalism, Pennsylvania ranks eighth among the states.

It is important to note that these two characteristics are not necessarily related. The legislature considered the most professional, California's, is small compared to Pennsylvania's; the legislature considered least professional, New Hampshire's, is the largest of all the states. As many critics are quick to point out, Pennsylvania stands out because it is the largest professional legislature, although it is not self-evident that this combination of

⁴³ Although it is not clear whether media that project strong ideological views are the cause -- as opposed to the effect -- of a polarized public, the fragmented media may make it easier for the public to tune out public policy news altogether and may also promote divergent issue agendas among elected officials who are also polarized. (Arceneaux and Johnson n.d.)

characteristics is necessarily inappropriate, given the unique history and political, cultural, economic, and demographic characteristics of the Commonwealth.

Many, if not most, scholars of state legislatures would agree that there is no one “right” answer to the questions of either size or degree of professionalization. As with most issues of institutional design, there are tradeoffs in values, and in a democracy, only citizens and their elected representatives can ultimately decide how to weigh those values and what design works best for them. As a result, the answers to institutional reform questions may vary from state to state. A recent poll found that Pennsylvania citizens favor or “somewhat favor” a smaller legislature by roughly 2-1 margins, although they were uncertain of the appropriate population for House and Senate districts. They were more clearly opposed to a unicameral legislature. Most of these preferences were weakly held, however. Respondents to the same survey also thought legislators should have both pensions and health care benefits and should be prohibited from earning outside income, which logically implies they want a full-time, professional legislature.

Although Pennsylvania reformers often cite California’s small legislature as a model to be emulated, there is evidence that California voters feel differently. In 2011, Stanford University’s “Deliberative Democracy” poll of 412 randomly chosen California residents who were exposed to a great deal of information about institutional issues, given time to deliberate, and then were asked extremely detailed questions favored enlarging its legislature and largely rejected proposals that would move it in the direction of a part-time citizen legislature. It seems possible that what underlies views in both states is unhappiness with the status quo for reasons that legislatures generally engender low approval ratings, as discussed earlier in this report. Public discontent undoubtedly has been aggravated in the current environment by the severe fiscal crises affecting almost all state governments, leading to late budgets with service cuts, tax and fee increases, or both. Furthermore, the declining approval ratings have been registered during a long era of declining trust in government at all levels, as registered in both national, state, and regional surveys since the 1960s. It is far from clear that state institutional reform would change those ratings on other than perhaps a short-term basis.

Size

Large legislatures enhance the values of representation and responsiveness, particularly for smaller communities and members of minority groups who might be submerged in smaller legislatures with larger districts.⁴⁴ They also reduce the cost of acquiring information for the legislature, as more members bring more information to bear on lawmaking, and they reduce the cost to citizens of access to the legislators. Put another way, other things being equal, large legislatures increase the budgetary cost of the legislature to taxpayers (although by tenths of one percent compared to overall state spending) but also decrease the economic cost to citizens of access to their legislators, particularly in rural areas.

Political science theory and the empirical literature are in agreement that larger national and unicameral local legislatures enact larger budgets, all else equal. The effect is

attributed to a collective action problem. More districts lower the cost to each district's taxpayers of increases in state spending and thus create incentives to overspend for inefficient district projects (Weingast, Shepsle, and Johnsen 1981). Studies of state legislatures find the same result among upper chambers, where the number of seats has a positive effect on government spending, each seat increasing expenditures by approximately \$10 per capita (Gilligan and Matsusaka 1995; see also Primo 2007). The effect of legislature size holds for both capital and non-capital programs, across different expenditure categories, and in analyses of state budgets from both the first half and the second half of the twentieth century (Gilligan and Matsusaka 1995, 2001). For the lower house, however, studies show either no relationship or a negative relationship between legislative seats and spending (Gilligan and Matsusaka 1995, 2001; Primo 2007). Recent studies find that the larger the ratio between the upper and lower chambers, the smaller the amount of "pork" spending (Chen and Malhotra 2007; Chen 2010). Pennsylvania's 4.06 to 1 lower-to-upper chamber ratio is seventh largest among the states.⁴⁵

Some observers believe that the growing concentration of population in metropolitan areas may increase pressures for legislatures to expand, rather than contract, in size, so as to insure that rural districts do not become unmanageably large. In an October 5, 2010, report, David Harrison of *Stateline* reported on this concern from a national perspective:

As the US population has grown, all legislators, urban, suburban and rural, are going to represent more people. That will affect everything from the cost of campaigns to legislators' workloads and travel time.

But it is the rural legislators, elected from communities that are stagnant or shrinking, who are really going to get socked. Between 2006 and 2009, metropolitan areas added about 8 million people, which accounts for all the increase in the country's population during that time, according to the census figures. The number of people who live in principal cities increased by about 5.3 million,

⁴⁴ In a House with 153 members, two third-class cities would no longer constitute a majority of a state house district. Wilkes-Barre and Chester could be outvoted by their suburbs. The average size of House districts outside the five-county Southeast and Allegheny County would increase on average from 367 square miles to 488 square miles. Under the hypothetical assumption of similar districting and population patterns, the single largest House district (under the 2001 map, the 67th) would increase from roughly 2,168 square miles today to 2,877 square miles. At 40 members, Senate districts outside Allegheny and the Southeast would increase on average from 1,518 to 1,848 square miles. Under the hypothetical assumption of similar districting and population patterns, the single largest Senate district (under the 2001 map, the 25th) would increase from 5,416 to 6,500 square miles. It seems likely that there would be fewer members, and perhaps a smaller percentage, of the House representing districts with a majority of African American citizens. (See Table A-8.)

⁴⁵ The complex literature exploring the relationship between legislative size and overall government spending is discussed more fully in a forthcoming Temple publication reviewing the literature on a wide range of institutional issues in state legislatures.

while the number of suburban residents increased by about 2.7 million. The population outside metropolitan areas stayed level. In 2009, slightly more than half the country's population lived in suburbs and another third lived in cities.

Those figures are rough estimates, since they are calculated from surveys sent to a sample of the population. A more complete picture of the nation's population patterns won't be available until next spring, when full results from the decennial census are released. Still, the picture from the census is unlikely to look very different from the estimates. The makeup of state legislatures will have to change to reflect the country's increasingly urban and suburban population. "The rural districts get geographically bigger as more and more population has to be absorbed in the urban and suburban districts," says Gary Moncrief, a political scientist at Boise State University in Idaho...

That said, Alaska's voters in 2010 rejected a constitutional amendment to add two senators and four House members to its relatively tiny legislature of 20 Senators and 40 House members. One Senate district in Alaska covers 240,000 square miles and is almost the size of Texas. It had a population of 32,189 in 2003.⁴⁶

Small legislatures enhance the values of deliberation and efficiency, as fewer members have more time for debate and consensus building and smaller chambers are easier to manage. Because districts are larger, small legislatures may raise the cost of campaigns, discouraging potential candidates who are not affluent from running and leading to greater influence for wealthy interest groups. Legislators and their leaders may feel they have to spend more time on fundraising and less on representing constituents. The effect of size on some values, like accountability and policy moderation, are unclear or ambiguous. Smaller districts may make it easier for citizens to hold members accountable for district-level impacts; larger districts raise the public profile of each legislator and may make it easier for voters to trace their legislator's actions. On the other hand, it is almost certain that fewer citizens will have personal contact with legislators who represent larger districts.

Some political scientists would argue that smaller legislatures with larger districts will produce less polarized debate and more moderate policy for two reasons. Social scientists, particularly adherents of game theory, generally agree that it is easier to achieve cooperation in small groups than large ones, particularly if the members of the small groups interact frequently over indefinitely long periods of time (Olson 1971; Axelrod 1984). Smaller chambers, therefore, should improve cooperation among members, an observation that

⁴⁶ Some legislators in Pennsylvania and other states have proposed eliminating a legislative chamber as a response to the view that smaller legislatures would be more efficient and responsive, and the Maine House of Representatives has passed such a bill. In most states, this approach would require one chamber or the other to approve its extinction and that seems extremely unlikely to occur in Pennsylvania and elsewhere. Only Nebraska has a unicameral legislature. For a discussion of unicameralism versus bicameralism, see Joseph P. McLaughlin's testimony on House Bill 260 on April 6, 2010, before the House Democratic Policy Committee.

squares with empirical studies of upper and lower chambers. Second, larger districts are likely to be composed of more diverse constituencies, so that candidates and representatives will be more inclined to seek middle ground. But other scholars point to evidence that raise doubts about the strength, if not the existence of such effects. Polarization seems to be a problem in both the US Senate (100 members) and the California Senate (40 members), which have the most populous districts at the federal and state levels. Using a widely accepted measure of polarization based on roll call voting, one recent study found the US Senate less polarized than the US House, but still polarized (Bafumi and Herron 2010). As noted in the earlier discussion of reapportionment, some see the increasing use of filibusters or threats of filibusters as evidence of polarization in the US Senate (Mayhew 2010). Another roll call study found the California senate highly polarized (Stephens 2011.) Assuming one accepts that smaller chambers and larger districts reduce polarization, the effect does not seem large and should be weighed with impacts on representation, deliberation, and efficiency.

One institutional change that might reduce polarization without the difficulty and risks of amending the Constitution to shrink the legislature is to give more weight to committees as opposed to caucuses in lawmaking, a decision that can be implemented by rules changes or simply by the practices of leaders. Committees are classic examples of small groups that interact frequently, and theoretically, they should find it easier to cooperate than the progressively larger groups of caucuses, chambers, or the public at large. Although game theory was not likely on their minds, strengthening committees was one of the recommendations of the Modernization Commission.⁴⁷

Professionalism

Professional legislatures whose members and staff work full-time and are better paid are arguably less dependent on the executive branch, lobbyists, and special interest groups for information and analysis. With more resources in terms of both time and staffing, they are better equipped to balance the other branches of government in an era when the number of pages of new executive branch regulations vastly exceeds the number of pages of news laws enacted by the General Assembly and when judicial rule-making increasingly looks to legislators, and even federal courts, like substantive legislation. Legislatures with larger staffs tend to introduce and pass more bills, but also pass more bills that get vetoed (Grossbeck and Peterson 2004), perhaps a measure of branch independence. Larger legislative staffs also appear to be correlated with larger gubernatorial staffs, suggesting that the legislature is seeking to balance executive power (Bowman, Woods, and Stark 2010). In legislatures with larger staffs, members are less tolerant of committees with extreme preferences (Richman 2008). As noted earlier, professional legislatures have lower public approval ratings than citizen legislatures, but ideology plays a critical role: conservatives are

⁴⁷ On the other hand, studies have also found that legislative committees are sometimes more oriented to organized interests in their policy domain and less representative of the public at-large than the legislature itself (Rhode 2005: 217-18; Baumgartner and Jones 2009: 193-215).

more negative toward professional than citizen legislatures, but liberals and moderates are not (Richardson, Konisky, and Milyo n.d.)

Longer legislative sessions, a characteristic of professional legislatures, have been associated with budget delays (Klarner, Phillips, and Muckler 2010) but also have been found to produce policy that is more in accord with public opinion. In a forthcoming 50-state study, Jeffrey R. Lax and Justin H. Phillips, Columbia University political scientists, assess the degree to which state policies are congruent with public opinion (states have policies supported by a majority of residents) and the degree to which they are responsive to opinion (states are more likely to have policies that have higher levels of public support). They find that professionalism and, paradoxically, term limits, are more likely to produce policy that is both congruent and responsive to the public will, as reflected in opinion survey measures on 39 issues in the areas of abortion, education, electoral reform, gaming, gay and lesbian rights, health care and law enforcement.⁴⁸

We find that legislative professionalization has a strong, robust, and positive effect on both responsiveness and congruence. To the extent that professionalization leads to disadvantages such as insulation of legislators, this effect seems overridden by its responsiveness-enhancing effects. Interestingly, some have pushed to roll back professionalization to punish unpopular legislators and in response to perceived state government failure (e.g., a ballot measure in California called the “Citizen Legislature Act” to make its legislature part-time. Ironically, then concerns about shortfalls in government performance may lead to greater shortfalls in government performance. Indeed, we find that the length of legislative sessions is the key component of professionalization (so that the California ballot measure would be particularly counterproductive). On the other hand, the citizen initiative (even at high levels of use) and an elected judiciary do not seem to do much for majoritarianism. The term limits effect may be an indirect effect of the citizen initiative, to the extent that the term limits are almost never enacted in states without the initiative (Lax and Phillips 2012).

Among professional legislatures, however, Pennsylvania scored lowest in policy congruence, having adopted only 33 percent of the policies supported by a majority of the public, whereas the mean congruence score for all 50 states was 48 percent. Lax and Phillips did not attempt to determine whether a legislature’s relative size affected their findings with respect to professionalism. It is worth noting, however, that three “amateur” or “citizen” legislatures of varying size – New Hampshire (424 members), West Virginia (134 members), and Wyoming (90 members) – were tied with Pennsylvania at the bottom. Similarly, two professional legislatures of varying size -- Massachusetts

⁴⁸ The authors acknowledge that the issues they have chosen, while broad, are not a random sample, and they suggest caution in generalizing results. These were issues for which they were able to construct comparable measures of public opinion in all 50 states.

with 200 members and California with 120 members (and also with term limits) -- were among the top five in congruence. Other possible factors affecting Pennsylvania's score are different weights for the issues selected in terms of their salience and/or the degree to which the public is divided in its views and different patterns of partisan control of the governor's office and two chambers. In particular, relatively stable Republican control of the Pennsylvania Senate in recent decades may help explain the authors' finding of a net conservative policy bias on the issues selected.⁴⁹ It should also be noted that while a majority of the public would almost certainly agree (and democratic theory argues) that policy in general should conform to majority opinion, voters often disagree strongly (and democratic theory is ambiguous) about whether specific policies should be in accord with public opinion.

Some argue, for example, that professional legislators are less willing to cast tough (unpopular) but necessary votes that would endanger their careers and their public salaries and benefits. Citizen (or amateur) legislators, according to some, are more empathetic to their constituents, less invested in their political careers and the status quo, and more willing to cast tough but necessary votes.

Although independent, these two dimensions -- size and degree of professionalism -- have implications for a third dimension, the cost of the legislature, although again not necessarily in consistent directions. The California legislature, which is relatively small, is the most expensive; the New Hampshire legislature, which is the largest, is one of the least expensive. Although legislatures certainly cannot and should not exempt their own institutions from budget cutting when they are cutting programs and services that directly benefit citizens, the question from the viewpoint of institutional design is how to weigh potential savings in a legislative budget that represents less than 1.25 percent of the general fund and less than half of 1 percent of overall state spending against values like representation, responsiveness, deliberation, efficiency, accountability, and the constitutional balance of powers, particularly when the ultimate effects of institutional change are often unanticipated.

⁴⁹ The speculation about other factors affecting Pennsylvania's congruence score should be attributed to the author of this study, not Lax and Phillips. Although every state has more voters who identify themselves as having a conservative as opposed to liberal ideology, 49 percent of opinion majorities in the 50 state survey are liberal. This study and others have found, that voter ideology helps explain the relative liberal or conservative direction of policy in the states (e.g., Erikson, Wright and McIver 1993) but does not fully predict liberal or conservative opinion on specific issues.

Final Thoughts

One advantage to a public debate (in which both sides are fairly presented, not just one) about the appropriate size of the legislature is that it seems more likely to capture public attention than many institutional issues that citizens may regard as rather abstract. Such a debate, then, might amount to the equivalent of what educators call “a teaching moment,” an opportunity for the legislature itself to advance public understanding of what the legislature does and to obtain from citizens either reaffirmation, or revision, of the values they want its structure to reflect. Increased public understanding of the institution and of the legislative process would be a public benefit, regardless of which side were to win the debate. The legislature itself, or a legislative commission similar to the 1968 Commission on Legislative Modernization, could be the venue for such a debate, without incurring the costs or risks of a Constitutional Convention. This approach would be consistent with the Commonwealth’s previous use of commissions to assess the need for constitutional revision and with poll findings that public’s views on constitutional reform issues are in general weakly held. If undertaken by the General Assembly in the form of a proposed constitutional amendment (rather than a statute establishing a commission or a convention), the debate would necessarily extend over two legislative sessions and then be subject to a popular referendum. Given the significance of a change in size and the difficulty of reversing constitutional decisions, such prolonged consideration seems appropriate.

Today, many critics in Pennsylvania and across the country argue that the professionalization of legislatures has gone too far, and they advocate a return to the ideal of citizen legislators who meet in limited sessions, have private-sector careers in business or other occupations, and retire from the legislature after a relatively brief period of public service. Term limits are an institutional response to this longing, although a response that appears to be losing steam.⁵⁰ Those making such arguments in Pennsylvania include some legislators, traditional “good government” reformers, editorial writers, bloggers, governors, gubernatorial candidates, and investigating grand juries. The pros and cons of these and related proposals should be evaluated by citizens and legislators with an understanding of their potential but uncertain impacts on representing citizens, making laws, and balancing the other branches of government. And also with an understanding of the world the General Assembly left behind in 1968, when it adopted House Resolution 207.

⁵⁰ Since 1997, term limits have been repealed by the legislature or voided by the courts in six of the 21 states that initially adopted them, and no state has adopted term limits since Nebraska in 2000. A recent poll by Terry Madonna found public support for term limits, albeit in a question that combined this measure with reducing the size of the legislature.

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Statistical Appendix

TABLE A-I

Passage of General Appropriation Act, Divided Government and Taxes					
Fiscal Year	Days Late	Divided Government	Income Tax Increase/ Decrease	CNI Tax Increase/ Decrease	Sales Tax Increase/ Decrease
1956	336	1		6.00%	3.00%
1958	19	1			
1960	134	1			4.00%
1961		1			
1962	0	0			
1963	0	0			
1964	44	0			5.00%
1965	0	0			
1966	9	1			
1967	55	1			
1968	61	0		7.00%	
1969	0	0			6.00%
1970	31	1		12.00%	
1971	248	1*	2.30%		
1972	62	0			
1973	7	0		11.00%	
1974	12	1			
1975	0	1	2.00%	9.50%	
1976	0	0			
1977	0	0			
1978	51	0		10.50%	
1979	0	0	2.20%		
1980	4	1			
1981	0	1			
1982	0	0			
1983	0	0			
1984	11	1	2.45%		
1985	0	1	2.40%		
1986	0	1	2.35%	9.50%	
1987	0	1	2.16%		
1988	3	1	2.10%	8.50%	
1989	0	1			
1990	0	1			

Statistical Appendix

TABLE A-I CONT'D

Passage of General Appropriation Act, Divided Government and Taxes

Fiscal Year	Days Late	Divided Government	Income Tax Increase/ Decrease	CNI Tax Increase/ Decrease	Sales Tax Increase/ Decrease
1991	0	1			
1992	35	1	2.60%	12.25%	
1993	0	0	2.95%		
1994	0	1	2.80%		
1995	0	1		11.99%	
1996	0	0		9.99%	
1997	0	0			
1998	0	0			
1999	0	0			
2000	0	0			
2001	0	0			
2002	0	0			
2003	0	0			
2004	0	1	3.07%		
2005	4	1			
2006	7	1			
2007	2	1			
2008	17	1			
2009	4	1			
2010	101	1			
2011	6	1			
2012	0	0			
Total		30			
Average	23.39				

TABLE A-2

PA Rank and File Legislator Salary and PA Median Household Income 1984-2009

Year	Rank and File Legislator Salary	Rank and File Legislator Salary (CPI adjusted in 2011 dollars)	PA Median Household Income	PA Median Household Income (CPI adjusted to 2011 dollars)
1984	\$25,000	\$54,312	\$9,853	\$21,406
1985	\$35,000	\$73,423	\$11,473	\$24,069
1986	\$35,000	\$72,082	\$12,162	\$25,048
1987	\$35,000	\$69,544	\$13,245	\$26,318
1988	\$35,000	\$66,781	\$14,745	\$28,136
1989	\$47,000	\$85,556	\$16,763	\$30,516
1990	\$47,000	\$81,170	\$17,669	\$30,516
1991	\$47,000	\$77,891	\$19,278	\$31,950
1992	\$47,000	\$75,615	\$19,541	\$31,440
1993	\$47,000	\$73,417	\$20,848	\$32,568
1994	\$47,000	\$71,585	\$22,150	\$33,737
1995	\$47,000	\$69,612	\$24,524	\$36,324
1996	\$47,000	\$67,615	\$25,522	\$36,718
1997	\$58,367	\$82,085	\$28,067	\$39,473
1998	\$58,367	\$80,826	\$29,641	\$41,048
1999	\$59,246	\$80,270	\$29,320	\$39,726
2000	\$59,246	\$77,659	\$33,852	\$44,374
2001	\$61,889	\$78,880	\$35,907	\$45,766
2002	\$61,889	\$77,652	\$35,636	\$44,714
2003	\$64,638	\$79,294	\$36,821	\$45,171
2004	\$64,638	\$77,237	\$38,834	\$46,405
2005	\$69,648	\$80,497	\$42,147	\$48,713
2006	\$69,648	\$77,981	\$45,553	\$51,004
2007	\$73,613	\$85,582	\$46,812	\$50,962
2008	\$73,613	\$82,417	\$51,585	\$54,082
2009	\$78,314	\$82,396	\$48,171	\$50,683

Legislator salary data extracted from PA Manual volumes 97-118.

Income figures adjusted to constant dollars using Bureau of Labor Statistics CPI calculator (<http://146.142.4.24/cgi-bin/cpicalc.pl?cost1=78%2C314.00&year1=2009&year2=2009>).

PA median household income data 1984-2009 via U.S. Census Bureau.

TABLE A-3

PA Rank and File Legislator Salary and PA Per Capita Personal Income 1965-2010

Year	Rank and File Legislator Salary (CPI adjusted 2011 dollars)	PA Leg. Salary Increase Since 1965 in Percent (CPI adjusted 2011 dollars)	PA Per Capita Personal Income (CPI adjusted 2011 dollars)	PA Per Capita Personal Income Increase Since 1965 in Percent (CPI adjusted 2011 dollars)
1965	\$51,593	0%	\$19,683	0%
1966	\$50,160	-3%	\$20,767	6%
1967	\$48,659	-6%	\$21,430	9%
1968	\$46,701	-9%	\$22,014	12%
1969	\$44,283	-14%	\$23,396	19%
1970	\$41,887	-19%	\$23,671	20%
1971	\$40,128	-22%	\$23,904	21%
1972	\$38,879	-25%	\$25,261	28%
1973	\$79,307	54%	\$26,207	33%
1974	\$71,425	38%	\$26,060	32%
1975	\$65,451	27%	\$25,937	32%
1976	\$61,885	20%	\$26,960	37%
1977	\$69,727	35%	\$27,834	41%
1978	\$64,808	26%	\$28,602	45%
1979	\$58,203	13%	\$28,423	44%
1980	\$51,280	-1%	\$27,502	40%
1981	\$62,079	20%	\$24,931	27%
1982	\$58,477	13%	\$27,788	41%
1983	\$56,656	10%	\$28,210	43%
1984	\$54,312	5%	\$29,259	49%
1985	\$73,423	42%	\$30,036	53%
1986	\$72,082	40%	\$30,927	57%
1987	\$69,544	35%	\$31,507	60%
1988	\$66,781	29%	\$32,564	65%
1989	\$85,556	66%	\$33,515	70%
1990	\$81,170	57%	\$33,561	71%
1991	\$77,891	51%	\$33,428	70%
1992	\$75,615	47%	\$33,866	72%
1997	\$82,085	59%	\$35,955	83%
1998	\$80,826	57%	\$37,897	93%
1999	\$80,270	56%	\$38,407	95%
2000	\$77,659	51%	\$39,468	101%
2001	\$78,880	53%	\$39,086	99%
2002	\$77,652	51%	\$39,443	100%
2003	\$79,294	54%	\$39,651	101%
2004	\$77,237	50%	\$40,278	105%
2005	\$80,497	56%	\$40,210	104%
2006	\$77,981	51%	\$41,514	111%
2007	\$85,582	66%	\$42,171	114%
2008	\$82,417	60%	\$41,686	112%
2009	\$82,396	60%	\$41,641	112%
2010	\$81,067	57%	\$41,589	111%

Legislator salary data extracted from PA Manual volumes 97-118.
 Income figures adjusted to constant dollars using Bureau of Labor Statistics CPI calculator (<http://146.142.4.24/cgi-bin/cpicalc.pl?cost1=78%2C314.00&year1=2009&year2=2009>).
 PA per capita personal income data 1969-2009 via U.S. Department of Commerce: Bureau of Economic Analysis (<http://www.bea.gov/regional/spi/default.cfm?selTable=summary>).
 PA per capita personal income data 2010 via Federal Reserve Bank of Philadelphia estimate (<http://www.philadelphiafed.org/research-and-data/regional-economy/releases/personal-income/2010/PersonalIncome2010Q1.pdf>).

TABLE A-4

Comparison of Mean Occupational Wages in PA

Occupation	2010 Mean Annual Salary Figure Expressed in 2011 Dollars
PA Mean Annual Income	\$44,563
Middle School Teacher	\$60,805
Accountant	\$71,022
Computer Programmer	\$73,796
PA Rank and File Legislator	\$81,067
Political Scientist	\$98,112
Lawyer	\$137,437

Sources: PA Manual and Bureau of Labor Statistics

TABLE A-5

Top 10 Most Professionalized Legislatures Compared: Budgets, Staff and Size

State	Expenditures on Legislative Services (FY 2009) Expressed in Thousands	Rank	Number of Permanent and Session Staff (2009)	Rank	Number of Staff Per Legislators	Rank	Expenditures on General Government Functions (FY 2009) Expressed in Thousands	Rank	Population 2010 Expressed in Thousands	Rank	Legislative Expenditures Per Capita	Rank
California	\$344,154	1	2,106	3	17.55	1	\$211,083,320	1	37,254	1	\$9.24	5
Florida	\$168,181	4	1,570	4	9.81	4	\$66,056,700	3	18,801	3	\$8.95	7
Illinois	\$73,444	7	1,023	5	5.78	7	\$57,159,617	5	12,831	4	\$5.72	9
Massachusetts	\$59,052	9	903	8	4.52	9	\$40,908,513	9	6,548	9	\$9.02	6
Michigan	\$98,457	5	973	7	6.57	6	\$50,584,008	7	9,884	7	\$9.96	4
New Jersey	\$78,045	6	988	6	8.23	5	\$48,208,101	8	8,792	8	\$8.88	8
New York	\$221,343	3	2,751	2	12.98	2	\$133,940,570	2	19,378	2	\$11.42	2
Ohio	\$42,386	10	465	10	3.52	10	\$56,354,660	6	11,537	6	\$3.67	10
Pennsylvania	\$331,770	2	2,919	1	11.54	3	\$64,612,112	4	12,702	5	\$26.12	1
Wisconsin	\$59,709	8	640	9	4.85	8	\$30,176,862	10	5,687	10	\$10.50	3
National Avg.	\$58,607		682.2		4.76		\$31,081,483				\$9.54	

TABLE A-5 (CONT'D)

Top 10 Most Professionalized Legislatures Compared: Budgets, Staff and Size

State	Size of Legislature	Legislative Spending as % of Overall Government Expenditures	Rank	Legislative Expenditures Per Member Expressed in Thousands	Rank	Legislator Salary per Year 2011	Rank	Professionalism Compared to Congress (1,000) (Squire 2000)	Rank
California	120	0.16%	7	\$2,868	1	\$95,290.56	1	0.571	1
Florida	160	0.25%	2	\$1,051	3	\$29,697.00	10	0.249	9
Illinois	177	0.13%	9	\$415	8	\$67,836.00	6	0.236	10*
Massachusetts	200	0.14%	8	\$295	10	\$61,132.99	7	0.332	5
Michigan	148	0.19%	4	\$665	5	\$71,685.00	4	0.516	2
New Jersey	120	0.16%	6	\$650	6	\$49,000.00	9	0.320	6
New York	212	0.17%	5	\$1,044	4	\$79,500.00	3	0.515	3
Ohio	132	0.08%	10	\$321	9	\$68,584.00	5	0.315	7
Pennsylvania	253	0.51%	1	\$1,311	2	\$79,613.00	2	0.283	8
Wisconsin	132	0.20%	3	\$452	7	\$49,943.00	8	0.459	4
National Avg.	149	0.19%		\$393					

* Hawaii (.252) ranked 10th among all states. Illinois was 11th.

Sources: State legislative spending and general government functions from U.S. Census Bureau. Legislative staff size and legislator salary figures from the National Conference of State Legislatures.

Statistical Appendix

TABLE A-6

Job Approval Ratings for Pennsylvania Legislature and Governor
 From Quinnipiac University Polling Institute: <http://www.quinnipiac.edu/x1326.xml>

Date	Pennsylvania Legislature			Pennsylvania Governor		
	Approve (%)	Disapprove (%)	Don't Know/No Answer (%)	Approve (%)	Disapprove (%)	Don't Know/No Answer (%)
Apr 10, 2003	49	24	27	51	19	30
Oct 16, 2003	43	37	19	50	28	22
Dec 16, 2003	38	44	18	46	34	19
Apr 22, 2004	37	38	25	46	33	22
Sep 16, 2004	46	33	22	52	30	17
Feb 17, 2005	44	33	24	51	33	16
Jul 14, 2005	37	47	16	47	39	14
Oct 5, 2005	26	60	14	46	38	16
Feb 15, 2006	33	52	15	51	33	16
May 12, 2006	31	53	16	55	31	14
Aug 16, 2006	31	52	17	54	31	15
Mar 28, 2007	39	41	20	57	33	10
Aug 22, 2007	30	55	15	53	37	10
Nov 7, 2007	35	48	17	53	36	11
Feb 28, 2008	37	42	21	52	34	13
Aug 5, 2008	32	51	17	54	37	9
Nov 26, 2008	39	42	20	55	34	12
Mar 25, 2009	37	43	20	50	38	12
May 4, 2009	42	40	17	53	38	9
May 28, 2009	42	40	18	54	37	9
July 21, 2009	27	57	15	39	53	8
Sep 30, 2009	27	64	9	42	51	6
Dec 17, 2009	25	64	11	43	49	7
Mar 3, 2010	29	59	12	43	49	8
Apr 8, 2010	31	54	14	45	45	10
May 13, 2010	25	59	16	40	51	9
July 13, 2010	28	57	15	42	50	8
Sep 21, 2010	NA	NA	NA	35	57	8
Oct 22, 2010	NA	NA	NA	39	54	6
Feb 16, 2011	NA	NA	NA	39	11	50
Apr 27, 2011	NA	NA	NA	39	37	24
Jun 14, 2011	32	50	18	39	38	23
Aug 3, 2011	34	50	16	44	36	20
Sep 29, 2011	31	54	16	50	32	18

TABLE A-7

US Congress Approval/Disapproval Ratings
 April 2003-November 2011 Gallup Poll: <http://www.pollingreport.com/CongJob1.htm>

Date	Approve	Disapprove	Don't Know/No Answer
Apr 7-9, 2003	58	33	9
Oct 13-16, 2005	29	64	7
Feb 1-4, 2007	37	55	8
Mar 5-8, 2009	39	54	7
Apr 6-9, 2009	36	55	9
May 7-10, 2009	37	57	7
June 14-17, 2009	33	61	6
July 10-12, 2009	32	54	14
Aug 6-9, 2009	31	62	6
Aug 31-Sep 2, 2009	31	63	6
Oct 1-4, 2009	21	72	7
Nov 5-8, 2009	26	68	6
Dec 11-13, 1009	25	69	5
Jan 8-10, 2010	24	71	5
Feb 1-3, 2010	18	78	4
Mar 4-7, 2010	16	80	4
Apr 8-11, 2010	23	72	6
May 3-6, 2010	21	73	6
June 11-13, 2010	20	74	6
July 8-11, 2010	20	73	7
Aug 5-8, 2010	19	75	6
Oct 28-31, 2010	21	73	6
Nov 4-7, 2010	17	77	6
Dec 10-12, 2010	13	83	4
Jan 7-9, 2011	20	73	7
Feb 2-5, 2011	23	71	5
March 3-6, 2011	18	74	7
April 7-11, 2011	17	77	6
May 5-8, 2011	24	70	7
June 6-9, 2011	17	76	7
July 7-12, 2011	18	77	5
Aug 11-14, 2011	13	84	4
Sep 8-11, 2011	15	82	3
Oct 6-9, 2011	13	81	6
Nov 3-6, 2011	13	82	5

Statistical Appendix

TABLE A-8

Pennsylvania House Districts: 203 Seats v. 153 Seats		
Attribute	203 Seat House	153 Seat House
District Population	62,573	83,022
Philadelphia Majority Population Seats	24.3	18.3
Pittsburgh Majority Population Seats	4.8	3.6
Third Class Cities Sustaining Majority of At Least One Seat	10*	8**
Average Square Mileage of All House Districts	226.58	300.62
Average Square Mileage for Allegheny County House Districts	39.5	53.45
Average Square Mileage for All Philadelphia House Districts	5.81	7.56
Average Square Mileage for All Southeastern PA (Bucks, Chester, Delaware, Montgomery) House Districts	53.31	70.45
Average Square Mileage for All Other PA House Districts	367.2	488.21
Largest House District Square Mileage (67th)	2,168	2,877***

Based on 2010 Census Data

*Allentown, Altoona, Bethlehem, Chester, Erie, Harrisburg, Lancaster, Reading, Wilkes-Barre, and York.

** Both Wilkes-Barre and Chester would be incapable of sustaining the majority population of at least one House seat.

***Calculated using 203 House size times 203/153.

