

Strengthening the Legislative Branch: Possible Reforms to Enhance Policy and Budget Development

Opening Hearing of the Senate and Assembly Select Committees on Improving State Government¹

October 22, 2009

[L]egislatures are at a distinct disadvantage... They can and do look bad to the American public because they are naturally inefficient, unpredictable, and messy -- none of which are appealing characteristics to most people."

- "Looking at What Legislatures Do," Heavy Lifting: The Job of the American Legislature (2004), p1.

Introduction: Although Californians have consistently rated the effectiveness and integrity of their own individual representatives much higher, the Legislature as an institution has never been less well regarded than it is today. Put simply, the great preponderance of Californians believe that our legislative process no longer is capable of addressing the most pressing policy and budget challenges facing the Golden State. Observers as varied as progressive big-city mayors, conservative political writers and middle-of-the-road think tanks have all recently expressed understandable public worry that, despite the good faith efforts of many of our elected officials, California's system of governance increasingly appears to be "fundamentally broken" or "outright dysfunctional."

Many commentators have noted that the current economic crisis has exposed inherent weaknesses in the legislative process, placing the primary blame on some of the shortest term limits in the nation as well as on supermajority vote requirements and ballot-box budgeting measures. While most commentators agree that many of the state's governance challenges result from structural defects created not by the Legislature so much as by a piecemeal series of initiative measures adopted in isolation, there is a widespread agreement that the legislative process itself appears to have become overly focused on issues of less than statewide importance and has become too dominated by special interest influences. Moreover, whatever the cause of the problems, the public rightly expects the Legislature to make whatever changes are needed to conduct the business of the state sensibly. Thus, there appears to be strong consensus now that state leaders need to engage in a serious and sober analysis of current governance systems to determine how best to create more effective problem-solving methods. Put simply, "business-as-usual" for state government in general, and the Legislature in particular, will not suffice.

Establishment and Purpose of Select Committees on Improving State Government. Reflecting their own concerns about the state's current crisis in governance, the leaders of both houses of the state Legislature last month created unprecedented select committees to commence a bicameral and bipartisan investigation into reforms to strengthen the state's system of government and better serve the needs of all Californians.

Specifically, the select committees are tasked with:

- Giving Californians more value for their tax dollars by making government more efficient and accountable
- Prioritizing key issues, so government makes the tough decisions and only turns to the voters when absolutely necessary
- Cutting through the gridlock caused by outmoded rules and undue partisanship

¹ The portion of this background paper regarding possible legislative reforms was drafted by the staff counsels of the Assembly Judiciary Committee.

- Making government more transparent and accessible from around the state
- Diminishing the influence of special interests
- Making government more customer-friendly
- Creating a process that encourages decisions that reflect long-term thinking, not short-term band-aids

Given the importance and breadth of the select committees' task, multiple public hearings across the state throughout the fall of 2009 are planned to consider all potential areas of government reform, including possible:

- Legislative Branch and Budget Process Reforms
- "Ballot Box" Budgeting and Initiative Reforms
- Legislative Oversight of State Government Agencies and Departments
- Realignment of State and Local Government Responsibilities

In announcing the creation of these select committees, legislative leaders both commented that they did not seek to undertake this inquiry lightly, and are both committed to working with the committees to ensure that concrete and substantial reform recommendations result from this effort. In that vein, the chairs of the select committees are hopeful that such concrete reform proposals can be available to the Legislature for its consideration at the commencement of the next legislative session.

The Scope and Challenge of the First Hearing: It is appropriate that in this first of a series of in-depth legislative hearings, the chairs of the select committees have chosen to begin the committees' examination of the possibilities of reform by focusing first on the prospects of the branch reforming itself – both with regard to making policy, and with regard to procedures for enacting the state's budget.

Options for Experimentation Available Without the Need for Going to the Ballot: Importantly, many of the possible procedural options for reform considered below in this primer could be adopted by the Legislature alone without a vote of the people. By design, legislative rules are generally not intended to be permanent and inflexible edicts, but instead are meant to be provisional and adaptive policies, subject to experimentation and alteration in response to changing circumstances. Thus, in presenting some of the asserted merits and liabilities of the various possible reforms examined in this primer, the committees need not conclude that any change must or should be permanent – either with respect to the policy or budget development processes. Instead, the committees may conclude that some, or all, of these possible reforms could be considered for possible experimental implementation in, for example, the next two-year session cycle of the Legislature in order to allow political leaders and many others to determine whether or not such experimental changes to the legislative and budget-making processes actually appear to improve outcomes and oversight.

Reform Organizations Are Helping Focus Attention on Options: Debates about whether or not our political institutions should be reformed, and if so how, are of course not new to California. Improving government performance in California and restoring public trust have been topics of concern for many years. Several groups have also sprung up in the last few years advocating various systemic and potentially profound government reforms, including the Bay Area Council, a group of Northern California business leaders that has called for a new constitutional convention; California Forward, an association funded by private foundations co-chaired by a former Speaker of the Assembly which has called for more specific and limited constitutional revisions that would, among other things, give more power to local governments, revise initiative requirements, tailor term limits to work more effectively, and modify the budget process; and Citizens for California, a group headed by two Los Angeles County residents who advocate a return to a part-time legislature.

Such potentially fundamental changes to our system of governance will be explored in subsequent hearings across the state this fall by the select committees. The task before the select committees in this first hearing is a more targeted look at some potential procedural reforms of the legislative process itself, as well as an initial focus on some of the key potential reforms the state may wish to undertake regarding the enactment of its budget. What follows below is a description of just a few of the potentially major reform proposals that are being discussed by

“think tanks”, the media, organizations, observers of the Legislature and commentators and utilized by other legislatures across the country that the select committees may conclude might have some promise in helping to make the California Legislature more effective in prioritizing and solving some of the state’s most pressing issues. This list of ideas is by no means an exhaustive one; it is designed to help spur discussions about what types of specific internal branch reforms might best strengthen the legislative process post-term limits.

I. POSSIBLE INTERNAL REFORMS THAT COULD POTENTIALLY ALLOW THE LEGISLATURE TO MORE EFFECTIVELY TARGET CRITICAL STATEWIDE PRIORITIES AND FULFILL OVERSIGHT RESPONSIBILITIES

Following are just some of the legislative reform proposals that the committees may wish to discuss in their deliberations about possible changes that could potentially allow the Legislature to better focus on key issues and strengthen its oversight activities.

Reform Idea #1: More Formally Establish Annual Legislative Priorities: Many commentators suggest that the first step in meaningful legislative reform may be to ensure that the Legislature better focuses its resources and efforts on California’s top priorities. While the President pro Tempore and the Speaker do address their chambers at the beginning of each year, essentially laying out their priorities for each house, proponents suggest that this could further be highlighted by instituting rules and procedures that more effectively and clearly establish legislative priorities.

Rationale. Those who suggest this approach note that many organizations, including city councils, county boards of supervisors, businesses, trade associations and legislative advocacy groups, pass annual resolutions setting out their priorities for their upcoming work cycles. These priorities help both public and private entities focus their efforts on issues of greatest concern, recognizing that resources are limited, demands may be numerous and distractions are frequent.

Factors to Consider. Prior to each legislative session, legislative leaders, together and separately, in consultation with the leaders of the minority party as well as with the governor’s office, could seek to formally establish a limited set of priorities for the upcoming session. These formalized priorities could seek to establish guidelines for individual members in developing a legislative agenda, and they could even go so far as to direct policy committees to devote their first and primary attention to these issues and, some commentators suggest, could most importantly focus collective attention on a manageable number of important policy challenges whose solutions appear most critical in any given year. In order to formalize these priorities, the legislators of each house could even pass a formal resolution when the Legislature formally reconvenes each year which sets forth the branch’s upcoming legislative priorities. Although members – even those of different parties – often informally appear to agree on what seems at any given time to be the most pressing issues facing the state, historically both houses of the Legislature have not established, in writing, a formal list of priorities.

Possible Concerns and Responses. Detractors of such a proposal may contend that any effort to identify and agree upon a list of priorities could simply become a new source of conflict among lawmakers that would ironically only underscore a lack of cooperation and bipartisanship in the Legislature. However, the select committees may nevertheless conclude that the benefits of legislative priority setting may well outweigh such concerns or actual risks – especially if commenced on an experimental basis. Formal legislative priorities could arguably help in any effort to create a more cooperative climate as both parties, both houses and the executive branch ideally seek to work together to try to at least identify common problems and concerns. Even if there is not a consensus on solutions, a list of legislative priority areas could, some suggest, at least help focus attention on the most pressing needs facing the state, and more clearly identify the differences that must be resolved in order to reach consensus and compromise.

Reform Idea #2: Impose Much Stronger Limitations on Bill Introductions to Better Target Increasingly Scarce Legislative Resources On the State’s Top Priorities While At the Same Time Fostering More Bipartisan Cooperation. In conjunction with or instead of establishing yearly legislative priorities, the select committees may conclude that

the state's legislative process and success might benefit substantially by following the lead of many other states through the imposition of much stricter limits on the number of bills each legislator may annually introduce. Supporters of this proposal suggest that such a disciplining mechanism – which could dramatically reduce the sheer number of bills needing to be processed in the Legislature each year – could allow the body to much more effectively concentrate its efforts on the state's most critical needs while at the same time fostering more bipartisan cooperation. They contend that this potential reform might make even more sense presently, considering the substantially fewer bills typically making it to the governor's desk at all in recent years. (Indeed, Senate records suggest that this year the Legislature sent just 872 bills to the governor's desk – out of approximately 2422 introduced -- the lowest number of bills to be passed by the Legislature in four decades.)

Rationale. California's first legislative session – beginning its work about nine months before California was officially admitted into the Union – produced 146 pieces of legislation that were eventually signed into law. While the current volume of bills – nearly 5,000 in the last session – demonstrates the Legislature's substantially greater output, many commentators suggest that this is certainly not a realistic measure of the Legislature's effectiveness. Indeed, they suggest that the numbing volume of bills now introduced in the California legislature each year prevents the Legislature from achieving success in regard to the few truly substantial issues of statewide importance. A virtual “bill factory” has now evolved preventing the Legislature's policy committees from engaging in any realistic oversight or even paying needed attention in analyzing the avalanche of bills facing them every spring.

Factors to Consider. Supporters of this change suggest that many state legislatures – as well as individual legislators – have understandably come to conclude that introducing and pressing a large volume of legislation is the *raison d'être* of the legislative process. And it is not disputable that authoring bills is one of the primary means by which legislators can appropriately demonstrate immediate accomplishment, a factor that may take on special importance under the strictures of term limits. This priority is reinforced by the practice of many media organizations and other Capitol watchers that track and publicize legislators' ability to get bills enacted.

Most observers acknowledge, however, that the legitimate desire to succeed in the goal of passing legislation is not always, or necessarily, matched by the quality or impact of those bills, and each year the Legislature is subject to a seemingly increasing chorus of criticism for engaging in debate on what many commentators contend to be trivial legislation, at the expense of addressing much more important public policy problems. Moreover, the high degree of time and energy consumed by new legislation clearly prevents the Legislature from devoting substantial resources to its important investigation and oversight function in order to assess the performance of the executive branch and the effectiveness of the tens of thousands of laws enacted in prior years.

Some say that stricter bill limits can be a natural outgrowth of a more formalized oversight process brought on by potential budget reforms that will be discussed by the committees in today's hearing. These reforms include moving California to a two-year budget cycle in which one year there is a concentration on the budget and oversight with fewer bills introduced and the second year a bigger focus on bills.

Possible Concerns and Responses. In considering such a tightening up of the limitations, it should be anticipated that individuals who have grown accustomed to a legislative process with a relatively open spigot of bill introductions will naturally worry that the placement of their bill proposals with potential legislative authors may become more difficult. Supporters of this potential reform acknowledge that smaller bill limits will inherently make legislator's decisions about which bills to introduce more challenging and time-consuming. They contend that if bill limits remain relatively high in California, along with the traditional expectation by most legislators that every bill is entitled to a hearing, lawmakers and legislative staff will inappropriately be required to devote a great majority of their time to drafting, analyzing, debating, negotiating and amending pieces of legislation that are too often marginally important to the larger public welfare, or that may be of interest only to small and specialized groups.

Indeed, according to reports by the National Conference of State Legislatures, in an effort to end the "bill factory" model that attends relatively high bill limits, and in order to place greater priority on "quality over quantity," many state legislatures across the country have sought ways to reduce the volume of bills while devoting more time to fewer but more urgent issues. (See, e.g., NCSL, "Bills and Bill Processing: Mechanisms Used to Streamline the Bill Processing", *Inside the Legislative Process*, chapter 3.) The most direct way they have done this is by substantially limiting the number of bills that each lawmaker may introduce.

The Bill Limits Notion Is Not New Here in California: Commentators, such as Bruce Cain, who support tightened bill limits in California to help the Legislature focus on key issues point out that the Legislature already restricts the number of bills that any single legislator can introduce. However, they also note that the current limits still lead to so many bills needing to be "processed" that the Legislature is effectively precluded from focusing its attention on the most intractable and substantial issues facing the state.

Indeed, some commentators have noted that the Legislature's current bill limits actually generate more bills than some states without any bill limits at all. Not counting resolutions and committee bills, each of the 80 Assembly Members are currently permitted to introduce 40 bills during a two-year session, while the 40 senators are likewise allowed 40 bills each (reduced this session from 50). Thus, over a two-year session at least 3,200 bills can potentially be introduced in the Assembly, and 1,600 bills in the Senate, for a total of 4,800 bills -- not including the many committee bills that can also be introduced as well as bill introductions that fall into various exceptions to the rule.

While not all legislators introduce the total number allotted, a casual perusal of bill numbers from recent two-year sessions demonstrates that the numbers approach the maximum. To be sure, many of these bills do not survive the full legislative process, but that result occurs only after substantial commitment of legislative time and resources that effectively precludes the policy committees of the Legislature from engaging in any real oversight of the administrative agencies within their jurisdictions.

According to NCSL, California is one of 13 states that impose a limit on bill introductions. (NCSL, *Inside the Legislative Process*, Table 96-3.1) However, for the select committees' consideration, most other state's bill limits are much lower than the California Legislature's. For example, Colorado allows five bills per member per year, although the limit does not apply to appropriations and committee bills; and the Florida House allows six bills per member per legislative session. According to NCSL, bill limits "reduce the amount of time spent on superfluous proposals and . . . allow more time for substantive legislation. Most legislators do not have enough time to read and understand all bills. Bill limits help streamline the legislative process and reduce costs for staff, printing and paper." Indeed, many commentators note that it is virtually impossible for California's legislators to read the actual text of even a small percentage of the thousands of bills that are introduced in any given session.

While NCSL found some concern that "bill introduction limits restrict legislators' rights to propose bills and carry out their legislative responsibilities," including interfering with their ability to respond to emergencies, NCSL noted most "bill limit" state legislatures ensure there is always a way to respond to legitimate state emergencies.

Concrete Results of Bill Limits in Other States Not Effectively Reported: It is not known how dramatically lower bill limits affect the legislative process in other states, particularly in contrast to the large majority of states without any bill limits. While sharply limiting total bill introductions may have the salutary effect of focusing attention on key issues, it should be acknowledged that an extreme reduction might inadvertently skew the legislative process by creating pressure on interest groups to "out-bid" each other for scarce legislative vehicles, potentially "crowding out" valuable proposals by individuals and organizations that lack political power and resources. California is unique in its size, complexity and diversity, and arguably benefits more than other states by ensuring the opportunity for regular legislative attention to, and correction of, smaller policy problems before they worsen.

However, current commentators appear to uniformly agree that the current legislative process needs substantially greater discipline and targeted focus on key issues in order to increase the chances of addressing the state's most

pressing problems and freeing up legislative resources and time to begin engaging in much more effective oversight of existing programs. Thus, should the select committees conclude that substantially tighter bill limitations in California could increase the ability of the Legislature to better achieve these objectives, any reduced bill limits arguably still need to be sufficient to allow for appropriate consideration of important specific issues that do not rise to the level of statewide crisis.

The Bill Limits Notion Could Also Be Designed to Reward and Encourage Bipartisan Cooperation: It should also be noted that when possibly considering a new much stricter bill limits regime, legislative leaders might also consider incorporating some measure of exception to the limits when bills are introduced with bipartisan support to help spur bipartisan cooperation. Such a feature would appear to appropriately reward and encourage both parties working together when possible to address difficult problems.

Reform Idea #3: Seek to Strengthen Policy Committees, Especially Hard Hit in the More Tightly Term-Limited State Assembly, by Vesting Them With the Power to Determine, in Consultation with Legislative Leadership, Which Bills Should Be Heard Each Year. Either in addition to or separate from a reduction in bill limits, some commentators have recently suggested that the Legislature should consider formally adopting another significant internal reform to reinvigorate the committee process, especially needed in the Assembly where shorter term limits have led to especially brief tenures for committee chairs compared to the Senate, by allowing members to introduce a substantial number of bills that compete in the marketplace of legislative ideas, but limiting which of these thousands of proposals are currently deserving of the institution's scarce and invaluable time and effort. Under this approach committee chairs would be empowered to determine which bills within their issue area are sufficiently important to merit the resources and energy of the committee.

Rationale. Many commentators have asserted that one of the principal unexpected results of the relatively short time limits imposed on legislative terms in California has been an inevitable diminution of resources, expertise, and will of the Legislature's policy committees, particularly in the Assembly, to weed out non-meritorious legislation. These commentators note that prior to term limits legislators had the reasonable expectation that they would serve many years in the Legislature, such that their relationships with other members would be long and important in their commitment to the institution and its enduring success. Post term limits, these commentators suggest, legislators, especially in the Assembly, understandably have inherently short-term horizons, less expectation to remain in the institution, and less reason to believe that the decisions they make on legislation are enduring. Authorizing each committee, in consultation with legislative leadership and leadership of the minority party, to set a much more disciplined policy agenda by determining which bills to annually hear could, supporters believe, dramatically improve the Legislature's work product and success – without discouraging less-popular groups or unconventional proposals.

Factors to Consider. The legislative calendar provides members an initial period in which to introduce legislation, and a period for public review prior to hearing. Members typically then engage in negotiations with disparate interests, frequently without the participation of the committee chair or staff with expertise in the issue area. For myriad reasons, including strategic decisions by either supporters or opponents to hold out before offering final compromises, as well as the seemingly universal human tendency to procrastinate when deadlines are still off in the future, committee hearings are frequently postponed. Only when deadlines loom are most bills heard, leaving the policy committees with very little time to evaluate each policy proposal, some of which are still only vague and conceptual "works in progress" at the time the committee is required to vote.

NCSL, which has surveyed all state chambers about this phenomenon, summarizes its findings as follows:

The legislative process is based on freedom of expression, consensus building and compromise. Legislators need time to work toward agreement on controversial and complex legislation... However, the availability of ample time is no guarantee that the time will be well spent. Often, the processing of major and minor pieces of legislation is not separated. If too much time is spent on

non-controversial issues, action on major bills is put off until the last moment. So, mismanagement of legislative time contributes to logjam. . . .

Determining which bills to hear, rather than dedicating legislative resources to every proposal is, supporters contend, a widely-used approach that has stood the test of time and repeated experience. Although foreign to the California legislative experience, it is by no means a radical legislative approach, according to the National Conference of State Legislatures. NCSL notes that in both the United States Congress and the majority of state legislative chambers across the country, committee chairs – in close consultation with legislative leadership – already have the power and responsibility to determine which bills appear to comport with the Legislature’s annual priorities.

In California the State Senate's Rules Would Appear to Already Permit An Easy Transition to the "Congressional Model" of Bill Setting: Perhaps surprisingly to most Californians and local political observers, only a minority of states, including California, still require by rule or practice that policy committees must hear all bills that are referred to the committee. Actually, in the California Legislature presently, only the Assembly expressly requires that all bills referred to a committee must be heard in a two-year session. The Senate appears to be silent on the issue. Specifically, Assembly Rule 56.1 provides that "All bills referred to a standing committee pursuant to Assembly Rule 51 shall be set and heard, if requested by the author, as specified by the Joint Rules." On the other hand, the Senate rules do not contain the same express requirement, so it would appear that a formal change of this nature would be less substantial to the Senate rules and practice regime than the Assembly's.

How Other Bodies Follow the So-Called Congressional Bill Setting Model: Although it is generally accepted that a committee chair in Congress has the power to not hear a bill, both the Senate and House rules make this power implicit rather than explicit. That is, Rule XI (2) (g) (3) of the House rules and Rule XXVI (4) (a) of the Senate rules simply state that the committee chair must announce the time, place, and subject matter of any hearing on any measure within seven days of the hearing. According to staff at the House and Senate Rules Committees, the power to call a hearing on any measure implies the power not to call a hearing on any measure. According to the House Parliamentarian's summary of the committee process, "If the bill is of sufficient importance, the committee may set a date for public hearings."

According to NCSL, the "majority of legislative bodies give great flexibility to committees in setting their agendas, and the committee chair usually determines which – and when – bills will be heard. . . ." (NCSL, *Inside the Legislature*, chapter 4.) As with the so-called "Congressional model," the states that give committee chairs this power do so implicitly, not explicitly. According to NCSL, while some members of the minority party may worry that limiting bill hearings will unfairly affect their legislative prospects, it is, interestingly, not seen as unfairly silencing minority views in the many jurisdictions that employ it. This could be because minority party members remain entitled to freely introduce legislation and seek hearings on their proposals – particularly those that have bipartisan appeal – as well as to fully debate and propose amendments to the legislation heard by each committee.

In conclusion, proponents of the proposal that the California Legislature consider adopting the "Congressional model" used by the majority of legislatures in the country hope and contend that allowing committee chairs, in consultation with the leadership of both parties, to decide which bills to hear in their jurisdictions each year could go far toward helping to focus limited attention and resources on legislative priorities and issues of significance – as well as increased legislative oversight, as discussed below – rather than consuming legislative time on less important proposals often advanced by groups with narrow interests. They also note such a change would appear less of a modification to the Senate rules regime than to the Assembly's.

Reform Idea #4: Seek to Develop New Rules that Effectively Bar End of Session "Gut and Amends". The committees may also wish to consider new rules to substantially reduce or eliminate late-session use of the "gut and amend" process.

Rationale. Media and other critics of California's current legislative process complain that end-of-session logjam problems are greatly exacerbated when a legislator is permitted to delete the contents of a bill and replace it with an entirely different subject matter at the end of the legislative process when few are able to notice these changes. This process is generally known as "gut and amend." It is something that lawmakers from both parties simultaneously engage in and complain about and media commentators contend that it reflects the worst of the current legislative process. Thus many commentators suggest that this practice should be halted once and for all in the California Legislature.

Factors to Consider. Critics of this process suggest that the "gut and amend" process is often used as a means of undermining existing bill introduction deadlines and avoiding public transparency. That is, under the guise of an "amendment," the author introduces an entirely new and unrelated bill idea after the usual February deadline date for bill introductions. Although one could fairly argue that a "gut and amend" should *never* be permitted after the bill introduction deadline, if used early enough in the process the "gut and amend" is arguably not as problematic – so long as it is done early enough to permit adequate time to be fully and publicly vetted by the relevant committees.

However, many see a "gut and amend" coming at the end of the session as fundamentally undermining the deliberative democratic process. Committees must scramble to research existing law – if they are even aware changes have been made – in order to attempt under very short time frames to evaluate the need for the bill, analyze the likely consequences of the bill, and prepare a committee report that makes the bill and the problem it seeks to address comprehensible and transparent. Interested stakeholders may not have sufficient time to express their concerns. Committee members, who are occupied with debating bills and voting on the floor during the final rush of the session, must take time out of busy floor schedules to decide, based on relatively little information, on whether to send the bill to the full body. On the floor, lawmakers who do not hear the bill in committee must make a decision based on their own hurried reading of a hastily produced bill analysis or on whatever information their already over-burdened staff can provide to them. In addition, where a "gut and amend" inserts language from a bill that has already been rejected after a full hearing, this tactic provides another bite at the apple under more frenzied circumstances.

In addition to circumventing the usual process and forcing lawmakers to vote on matters about which they may not have been thoroughly briefed, the "gut and amend" tactic may, critics contend, sometimes reflect a deliberate effort on the part of a particular interest group to push through a potentially controversial measure without providing for a full public hearing or giving affected stakeholders an opportunity to comment on the legislation. Moreover, such an approach creates the impression – whether true or false – that legislators and lobbyists make major public policy decisions at the last minute, behind closed doors, and out of public view.

Possible Concerns. It is not clear which groups or individuals might oppose the elimination of this controversial practice, but arguments could be made that it is contrary to public policy to eliminate all opportunities to create new bills that are needed at the end of the legislative session. Thus, such opponents might argue to consider some sort of "middle ground," that greatly discourages the use of this mechanism, but allows it in rare circumstances.

Thus the select committees may wish to discuss this issue and might conclude that the "gut and amend" process should almost always absent extraordinary circumstances be deemed inconsistent with the Legislature's goal of restoring public trust by making the process more open, inclusive, and transparent.

Reform Idea #5: Condense the Legislative Sessions to Permit More Attention to Government Oversight and Accountability: The select committees may wish to consider experimenting with revising the legislative calendar to compress the period in which bills may be acted upon, both to free up needed time for meaningful oversight activities and to potentially allow legislators to spend more time in their districts assisting with district challenges. In addition, with the discussion of a two-year budget cycle, it could be envisioned with a short legislative session the first year in order to use the remainder of the year to tackle the budget and oversight function. The second year of the two year session could be longer, with more focus on processing and acting on bills.

Rationale. In the last forty years, most states have begun meeting annually. Today, 44 states meet annually. Among the vast majority of states that meet annually, the length of the sessions vary greatly. At one extreme, seven states meet year-round: Illinois, Massachusetts, Michigan, New York, Ohio, Pennsylvania, and Wisconsin. California comes close: although it formally convenes in early December each year, it carries out the bulk of its activity from January through August or mid-September. Although sessions in all states routinely vary between even- and odd-numbered years, most of the other states begin their sessions in January or February and wind up their business by May or June, if not earlier. Some states have *very* short sessions. Wyoming, for example, meets from January to March in general session in odd-numbered years, and meets for only about three weeks in even-numbered years. New Mexico's session is equally brief, meeting for 60 days in odd-numbered years and 30-days in even-numbered years. These are truly "part-time" legislatures, and, for the most part, restricted to the less populous, rural states.

Factors to Consider. In its 1996 Final Report, the California Constitutional Revision Commission (CRC) issued a report – some of whose findings are briefly mentioned below (the executive summary of the report is also available online) – advocated shortening California's legislative session to six months, from January 1 to July 1. To help facilitate this shorter session, the CRC stated that bills could be acted on within 10 days after they are introduced (instead of the current 30 days), so committees could begin hearing bills in January rather than waiting until March. A significant advantage of the shorter session, the CRC felt, would be that policy committees could engage in real and effective oversight during the period from July through December in order to pro-actively investigate the effectiveness of state government and prior legislation. Such increased oversight may also respond to the apparent public perception, as reflected in the recent Field Poll, that a substantial majority of Californians believe the state could avoid budget cuts and tax increases by eliminating waste and inefficiencies. As stated above, under a two year budget model, a shorter session the year that the budget is enacted would allow more time for oversight with fewer bills to be heard.

Reform Idea #6: Develop New Calendar Rules Postponing Most Policy Review Until the Budget Is Adopted. In addition to the foregoing proposals, some commentators suggest that the Legislature may wish to consider postponing consideration of some, or all, policy bills until the budget is resolved. Or as another option, potentially even alternating years where most policy issues are tackled in the first or second year of a two-year session and the budget challenges are addressed in the other year of that session.

Rationale. As difficult and protracted budget negotiations are conducted, the Legislature naturally desires to make progress on other issues. As it does so, however, the budget deadlock dominates the headlines and critics complain that the Legislature is wasting time on relatively trivial matters.

Factors to Consider. In order to demonstrate that resolution of the state's fiscal needs is the most pressing legislative priority, the Legislature could adopt a rule postponing consideration of some or even all policy bills. It could make exceptions for those bills that meet certain priorities, contain urgency clauses or involve the expenditure of funds above a certain threshold, until the budget bill is passed. To be feasible, this reform would arguably need to be accompanied by reduced bill introduction limits and/or greater committee control over which bills are deemed sufficiently weighty as to require a policy committee hearing.

Reform Idea #7: Develop New Committee "Suspense Calendars" During Tough Economic Times. Alternatively, some have suggested that the Legislature could demonstrate the importance of addressing the state's budget issues by adopting a "suspense file" in each policy committee by which fiscal bills would not be forwarded to the Appropriations Committee until each of them had been considered.

Rationale and Factors to Consider. The Senate and Assembly Education and Revenue and Taxation committees have reportedly used this approach with some beneficial effect in the recent past. In addition, the Legislature could adopt a rule requiring all fiscal bills, or perhaps those beyond a specified cost threshold, be considered first by the Appropriations Committee, Rules Committee or a new body, including potentially a joint working group, before

referral to the appropriate policy committee. This would obviate the need for policy committees to expend time and energy on proposals that are deemed too costly, allowing the committees' resources to be devoted to the oversight and big-picture issues discussed above.

Possible Concerns. Although such an approach arguably could have the salutary effect of making the Legislature's work more disciplined, opponents could be expected to argue that such a change would briefly improve the situation, and then effectively eliminate the skilled and highly specialized work of the Legislature's fiscal committees. Thus the penny gained by such an approach could turn out to be pound foolish.

Reform Idea # 8: Seek to Halt the Continuing Drain of Experienced Legislative Staff to Address the Inherent "Memory Gap" Under Term Limits: Political commentators on both sides of the aisle have increasingly urged the Legislature to focus its internal attention on the alarming exodus of experienced legislative staff to determine, what if anything, might be available to slow this increasing decline in institutional memory and expertise. Commentators, such as Bruce Cain, contend that in a term-limited environment, even if term limits are relaxed to some degree in the future, it is imperative that efforts be considered, short of additional financial mechanisms during these tough economic times, to retain staff with long institutional memories to assist new legislators constantly entering the process under the state's strict term limits regime.

Rationale. According to University of Minnesota Professor John Bryson, "State legislative staff are the custodians of a central institution of American democracy." (See also, Karl Kurtz, *Custodians of American Democracy* ("The strength of the legislature often lies behind the scenes with the sometimes unnoticed but hard-working staff.") State Legislatures (July/Aug. 2006).) Among other things, legislative staff develop, draft and analyze legislative proposals, conduct research and analysis on a huge range of policy and fiscal issues, and provide constituent services. They also help provide needed oversight of the executive and judicial branches of government. While much of what they do involves in-depth policy analysis, they also work in a political environment and must understand – and operate effectively in – the politics of the institution and of the state.

Factors to Consider. One of the unpredicted side-effects of term-limits in California has been a dramatic reduction in the number and experience levels of legislative staff and, with that drop, a huge reduction in institutional knowledge and capacity. While the number of legislative staff across the nation has remained relatively flat in the last 20 years (34,110 today, compared with 33,330 in 1988), legislative staff in California has declined by an unprecedented one-third in that same period (2,106 today, compared with 2,978 in 1988). [(NCSL, *Size of State Legislative Staff: 1979, 1988 1996, 2003, 2009* (June 2009).] Despite being the largest state in the nation, California now employs significantly fewer legislative staff than New York, Pennsylvania and Texas.

The increasingly serious problem of declining experience among legislative staff – both the departure of many staff veterans and the failure to retain newer hires – is, according to some political observers like Cain, occurring at the very time the Legislature can least afford it. Most observers now believe that rather than empowering legislative staff, term limits has transformed paid lobbyists into one of the few repositories of policy expertise and historical memory regarding the reasons for existing law and the virtues of proposed changes.

The following tables underscore the dramatic increase in staff turnover in the state Assembly after the passage of term limits in 1990 in California. Prior to term limits the average staff turnover in any given calendar year was typically well under 25%. However since the enactment of term limits in 1990 Assembly staff turnover rates have risen as high as 42% *annually* -- an average of a remarkable 35.2% during the post-term limits era according to Assembly records. Many commentators have questioned whether any institution, private or public, can succeed when it endures such unprecedented employee volatility.

TABLE SHOWING ASSEMBLY STAFF TURNOVER RATES PRE-TERM LIMITS

Four Years Pre-Prop 140	
Calendar Year	Pct. Turnover
1986	22.7%
1987	21.9%
1988	24.3%
1989	20.4%
Four-Year Average	22.3%

TABLE SHOWING ASSEMBLY STAFF TURNOVER RATES POST-TERM LIMITS

Post-Prop 140 Years	
Calendar Year	Pct. Turnover
1996	42.2%
1997	39.8%
1998	37.5%
1999	36.8%
2000	41.0%
2001	32.3%
2002	34.1%
2003	27.7%
2004	35.9%
2005	32.1%
2006	34.5%
2007	30.5%
2008	33.0%
Post-Prop 140 Average	35.2%

Thus commentators who highlight this concern suggest the select committees may wish to turn their attention to this continuing “memory exodus” to explore what, if any, non-fiscal reforms, such as the development of formal mentoring programs by seasoned staff for incoming newcomers and ensuring veteran policy staff are not rotated out of their positions when their current supervisors change jobs, might help bring greater stability and satisfaction to their jobs and also improve the strength of the institution as a whole, thereby helping to stem the tide of veteran staff departures.

Reform Idea #9: Voting Changes: The Select Committees may wish to look at the rules of both houses when it comes to vote changing, habitually abstaining on votes, and expunging the vote records. The practice of vote changing is different in each house because of different house rules and different voting procedures. Examples of vote changing in the Assembly include going to a computer kiosk any time during the session to change one’s vote or going up on the dais upon adjournment of the session and publicly announcing the change. In the Senate, vote changing is limited to the time while the roll is still open and must be done verbally. Also, in the Senate, votes cannot be changed from Aye or No to an abstention. A Senator must abstain from the beginning of the roll call if they wish to be listed as an abstention.

Members may argue that vote changes are necessary due to the hectic nature of the floor sessions. Bills are presented in rapid fire; discussions must go on between colleagues; committee hearings are taking place off the

floor and it is easy to either miss a vote or two or be distracted and cast an incorrect vote. Vote changes are necessary for a variety of reasons. And it should be noted that vote changes are not allowed if they were to change the outcome of the vote. But in order to enhance the public process, many contend that such vote changes only should be made publicly from the dais at the end of session, not via computer during session, or, as in the Senate, while the roll is still open. In addition, vote changes could be limited to either yes or no, but not abstentions.

As pointed out by the *San Francisco Chronicle*, abstaining or “walks’ are becoming more prevalent” in the Legislature. (*San Francisco Chronicle, Do-nothing politics – When the going gets tough, more and more lawmakers are taking a walk*, (June 25, 2002).) Under the current Legislative rules, bills require a majority of all committee members or 41/21 votes on the floor, not just the majority of those voting. This creates a situation where an abstention by a member has the same effect as a no vote. Not only does this affect the outcome of bills but many suggest it also allows members to avoid making tough decisions. This leads to the public appearance that the Legislature is not doing its job and, as stated in the above news article, members are ‘elected to make tough choices and to serve their constituents. And they are elected to vote, as defined by “yes” or “no.”’ (*Id.*) Excused absences or recusing oneself due to a conflict of interest, are considered acceptable reasons for abstentions. The Rules of both houses could be amended to require all members, who are present, to vote either aye or no.

The process of expunging the record is a particular house rule that is limited to the Assembly. Expunging the record has the effect of erasing the vote; it is as if the vote never occurred. Given the public nature of the Legislature and the legislative process, it is difficult to come up with a strong rationale to justify allowing the record to be expunged. In a time of the internet and instant communication, the fact a vote is expunged does not of course mean the vote did not happen. Commentators concerned about this process contend that the Legislature cannot and should not control this important voting information and it should be available to the public. The select committees may wish to consider the rationale behind expunging the record, and whether this approach may no longer be appropriate.

Conclusion: It should be noted that the select committees do not have the authority to make any of the changes outlined above. However many if not all of the reforms discussed above could be made internally in each house if they deem them promising, even if on an experimental basis. They can be included in the rules of each house as well as the Joint Rules that are adopted by resolution of both houses at the beginning of a two year session. The chairs of the select committees, with hoped-for consensus from their members, will at the end of this five-hearing series, be making recommendations to their respective leaders and Rules Committees asking that various proposed changes be adopted. In the case of the legislative calendar, there may be a need, for example with respect to the budget deadlines, to amend the state constitution to implement these reforms. Elements of these and other Legislative reform proposals can also be incorporated into broader reforms to our state constitution and/or budget process. The chairs hope that this background paper will help spur continued discussions on how to best improve the legislative process. They note that additional ideas are not only encouraged but desired. Before these committees can begin tackling the issues of budget reform, initiative reform, and the relationship between state and local financing, it is felt the Legislature itself can benefit right out of the reform gate by exploring ways in which it might be able to improve its own ways of doing business.