

Background Paper 83-1

SPEEDING UP SESSION WORKFLOW

TABLE OF CONTENTS

	<u>Page</u>
I Introduction	1
II Why End of Session Logjams?	2
III Devices for Improving Scheduling	4
A. Session Deadlines	5
B. Committee Sessions	5
C. The Legislative Cycle	5
D. Recesses	5
E. Rolling Deadlines	6
F. Bill Screening	7
G. Internal Procedures	7
IV Nevada Experience	9
V Conclusion	9
VI Footnotes	11
VII Appendices	
Appendix A	12

SPEEDING UP SESSION WORKFLOW

I

INTRODUCTION

There are a number of recurring themes in legislative studies and efforts at legislative reform. None is more enduring than the matter of the flow of bills in a legislative system and, in particular, the end of session burst that is common to virtually all legislatures. The widespread desire over the years has been to even out the workflow so that a legislature can work at a reasonably steady pace throughout a session. Suffice it to say that there are a number of procedures worthy of consideration that will reduce the end of session frenzy but no innovation has yet been devised that will eliminate it. As stated in a leading textbook on legislatures:

The typical legislature operates at a bewildering pace in the closing days of the session. Few things are more common in the course of legislative affairs, especially in the states, than the last-minute rush to wind up business for another year or another biennium. It is not unusual to find as many as 50 per cent of all bills passed during a session receiving final approval in the last week before adjournment * * * .

The closing rush in the legislature often has been criticized by close observers of the state scene. Major bills are voted "up or down" with but scant debate or explanation, perhaps none at all. Hastily drawn amendments wreak havoc with legislation that has been months in the making. Poorly drafted, ambiguous bills end up as state law, and a future legislature will be required to undo the damage.¹

Much has changed in state legislatures since these words were written in 1968 but the situation described on this subject has not. A discussion of the general reasons for this will be followed by a description of ideas that have been suggested to reduce the end of session rush and then with an analysis of the Nevada situation.

II

WHY END OF SESSION LOGJAMS?

Again, Keefe and Ogul analyze the problem fairly well and they are quoted at length because theirs is a good analysis:

Both institutional restrictions and political factors help account for the legislative log jam near the end of sessions. In the former category are such factors as: (1) the presence of sessional limitations which require an enormous quantity of public business to be transacted in a short space of time; (2) the absence of a consent calendar to facilitate consideration of minor, noncontroversial bills; (3) the existence of substantial disparities in committee workloads, contributing to log jams at the committee stage; (4) the absence of dead-lines for the introduction of bills; (5) the shortage of staff assistance; and (6) the avalanche of proposals introduced each session.

The log jam in state legislatures often is due mainly to political maneuvering. What separates legislative leaders from rank and file in the closing days of the session is that the leaders control the contingencies--they can cause things to happen if certain conditions are met. For example, leaders may find it expedient to stall the consideration of minor or noncontroversial bills until the major program bills have been voted upon. A member whose pet bill is pigeonholed in committee or lost on an overcrowded calendar knows the folkway well: if he votes against a major bill desired by the leadership, his own bill may never be moved toward passage. After the big bills have been brought to a vote, leaders clear the way for the rapid disposition of other bills. In some legislatures, control over the schedule is the principal weapon of discipline available to the leaders. Possibly no other wedge is so successful in wringing accommodations out of skeptical or stubborn opponents.

A second political factor that contributes to the closing rush involves logrolling--a mutual assistance pact by which legislators combine to pass each other's bills. Often, logrolling alliances cannot be negotiated until a number of bills have been sidetracked, usually near the

end of the session. When a number of legislators are involved and enough pressure has been built up, it is not overly difficult to form logrolling combinations sufficient to give proposals new momentum. In the practice of logrolling, what helps one legislator eventually helps all who join the club.

One final political factor that contributes to the problems of legislative scheduling needs identification. This is the budget bill--'key log in the jam.' In state after state the budget bill is introduced long after the session has started; then begins a round of hearings marked by tedious negotiations between the parties, between the chambers, and between the legislature and the governor. Compromises are elusive, and the working out of amendments which will pull a majority vote takes time. The delay is thus considerable and, while negotiations proceed, most of the other bills are left on the shelf. As is true of all good things, negotiations finally end. Sufficient support for the budget bill is won; legislators have been convinced, mollified, or dragooned, and the bill is cleared for passage. A quickening of the legislative tempo results, and the countless little bills clogging the calendars or bottled up in committee are rushed through to passage. Customarily, the legislature is now ready to adjourn sine die.

Critics who complain about the legislative log jam have a substantial argument. Especially deplorable is the hasty action often given major amendments introduced on the floor in the final days and hours of the session. It is also unfortunate that the log jam may lead to the legislature's forfeiture of the opportunity to override the governor's vetoes of bills passed immediately prior to adjournment.

Nevertheless, the broad indictment of the legislature for its failure to avoid the closing rush may exaggerate the dilemma. Last-minute voting on legislation is one thing, last-minute consideration of legislation is quite another. It is plainly not true that legislation voted upon in the tumult of the closing days has received no attention up to that point. Indeed, virtually all of the bills will have been studied in committee in earlier months at a time when the legislative pace was unhurried. And since legislative bodies customarily follow committee recommendations,

whether made early or late in the session, there is no sure evidence that floor decisions would be markedly different if spaced more evenly throughout the session.²

Even if we assume that the end of session rush is inevitable and not necessarily harmful, with Nevada's open-ended session, a real concern remains about overall session length. The basic flow of a session is bill request, bill introduction, committee consideration, floor action and then the other house. A regular session workflow could be expected only if every component step moved at the same pace, and that the capabilities at each step were utilized in an optimum way. This would mean, ideally, that every holdover senator and unopposed assemblyman would have bill requests in prior to election, well prior if possible. It would mean that all other legislators would have their bill requests in immediately following the general election. It would mean that every bill delivered would be introduced immediately. It would mean that committees would have enough bills referred to them almost from the first day to take up all of their scheduled hearing time. It would mean that committees would take action on bills as soon as they have had an adequate hearing, with hearings scheduled as soon after referral as possible. It would mean floor action and movement to the other house without delay. And it would mean the same procedure in the other house. Since none of these ideals is obtained in any legislature, logjams of some sort are inevitable. The extent to which ideas for moving in the direction of the ideals are implemented determines the extent of logjams. Many ideas have been offered and many tried in various legislatures and a review of those is worthwhile.

III

DEVICES FOR IMPROVING SCHEDULING

Alan Rosenthal of the Eagleton Institute at Rutgers is probably the most perceptive scholar of state legislatures today. In his new book, he says:

Because of the increasing work loads and pressures of time in state legislatures, various efforts have been made to use time more efficiently. Younger members, in particular, are critical of the amount of time that seems to be wasted during a session. They demand better management and better scheduling.³

What are some of the management and scheduling ideas?

- A. Session Deadlines. Most states have some sort of deadlines. They range from a deadline for one thing, such as Nevada's on request of bills, to Michigan's complete set of deadlines for almost all aspects of the legislative process. The main points to which deadlines could be applied are:

1. Bill requests;
2. Bill introduction;
3. Report of bills by committee in house of origin;
4. Passage of bills in house of origin;
5. Report of bills from the other house by committee;
6. Passage of bills originating in the other house.

Enclosed as Appendix A is an example of how the Michigan rule would look in Nevada based on 100 days and using 1983 dates. The critics of deadline schedules say that all that is accomplished by such deadlines is to have several logjams through the session rather than just one at the end.

- B. Committee Sessions. Some states have virtually eliminated general sessions in the first few weeks of a session in order to allow extra committee time. Crucial to this device, of course, is to have a large number of bills early in the session. A variation of this device is to alternate weeks with one devoted only to committee work and the next to committees and floor work.
- C. The Legislative Cycle. Some states have drastically altered session schedules in part to make actual sessions more productive. Kentucky elects its legislature in November of even-numbered years. Shortly thereafter, there is a 10-day organizational session followed by a year of interim work by the standing committees which meet about as frequently as Nevada interim subcommittees. They hold hearings, direct the drafting of bills and the amending of bills. Then, about a year later, the formal session convenes. This change only occurred in 1979 so it is too soon to know how well it is working.
- D. Recesses. In order to make better use of actual time in session, several states recess for certain periods to allow bill drafting to catch up or to allow committee meetings or both. Florida and Louisiana recognize the

difficulty of preparing for a session right after an election. They both elect in November but don't convene their sessions until April of the following year. This delay allows for most bill drafting to be done by the time session starts. In fact, the 1979 Florida House was able to have a bill introduction deadline of the first day!

- E. Rolling Deadlines. There are not examples of rolling deadlines in other states but there is no reason why they could not work. The most obvious problem for Nevada with session deadlines such as Michigan's is the delivery of bills to introducers. In many states, if not most, bills can come from a variety of sources including a special bill drafting staff, personal staff, committee staff, caucus staff, executive agencies, lobbyists and hometown lawyers. In all states, there is a review process so that bills are not passed before they are put in proper style and format. In Nevada, of course, no one drafts a bill for introduction except the legal division of the legislative counsel bureau. This creates a bottleneck just ahead of the introduction of a bill.

Given our bill drafting system and assuming it will remain as is, rolling deadlines become a practical compromise between our current system and a rigid deadline system that probably could not work. The essence of a rolling deadline system would mean that a particular bill would have to be requested by a certain time, introduced by a certain time, heard by committee and acted on by a certain time and so forth. That "certain time" would apply to individual bills. For instance, a bill request deadline could remain the same as now. There could be a two-phase introduction deadline. All bills delivered to requesters would have to be introduced by some point, say the 40th day. All other bills would have to be introduced within 3 legislative days of delivery to the requester. If a requester is having a committee introduce his bill, a couple of extra days could be allowed because of committee schedules.

Once a bill is introduced and referred, a committee would have to hold a hearing within 14 days and report the bill within 21 days. This arrangement could be supplemented by giving bills from the other house priority for committee hearings and committee action after a certain point in the session such as the 70th or 80th day.

The rolling deadlines would avoid the problem of several logjams during a session. They would prevent legislators from sitting on bills waiting for some politically propitious moment to introduce them. You reduce the ability of committee chairmen to hold bills hostage because a bill not acted upon by its deadline would die. There probably would be fewer bills passed since the rolling deadlines would become added obstacles. That would not necessarily be good or bad.

There would have to be exceptions and provisions for waiving the deadlines. If the concept were embodied in a joint rule, neither house could waive the rules without the agreement of the other house.

To preserve flexibility, you could allow a vote of a full house to revive a bill that died because of failure to meet a deadline.

- F. Bill Screening. There is a great deal of the time and effort expended in the preparation of bills, at least half of which will die and many others of which will never even be introduced by the requesters. Connecticut has addressed this problem by allowing individual legislators to request "bill proposals" only. A proposal is a narrative of the bill idea with all substantive detail but not in full legal form. These proposals are introduced, numbered, printed, distributed and referred to committees. The committees decide which bill proposals are worth drafting into formal bills. Only about 25 percent of the 3,200 bill proposals in 1981 were drafted into bills. In addition, committees can themselves direct the drafting of a formal bill. These requests usually include all administration bills.

Another feature unique to Connecticut is worth noting. That state has joint standing committees. If a bill receives a do pass from a joint committee, it will not be referred to committee again in the other house. Rather, it will go directly to the calendar in the second house. This combination of bill screening and joint committees as well as a complete deadline system for various stages of bill passage has, according to those in Connecticut, dramatically speeded up the overall process in that state.

- G. Internal Procedures. Certain problems are inherent in the legislative process and should be noted whether or not they can be solved. Executive agency bill drafting causes

bill drafting delays. There is a statutory deadline for such requests of September 15 of an election year. Many agencies get their requests together early but they may sit for a month in the budget director's office before being sent to the legislative counsel bureau. Other agencies know they want a bill but do not have the details worked out. They will request by the deadline but then send it back for one or more redos after they decide what they really want. Still others miss the deadline altogether and then get legislators to put in the requests. These problems will probably have to be lived with. Executive agencies are billed for drafting. This was enacted to cut down on frivolous bills and trivial redos and has had a beneficial effect.

In 1975, legislators indicated bill drafting priorities, the idea being that no one's second priority bill was to be drafted until everyone's first priority had been done. That system broke down but it is not clear if that was because of inherent problems or because of the general administrative difficulties of the legal division that session. Legislators added to the confusion in 1975 by changing priorities through the session. The procedure now is to draft requests in the order they are received. To the extent that a legislator submits requests early and in the order of importance to him, he should receive bills pretty much in that order and pretty much before anyone else will receive bills requested later. Legal staff go to Las Vegas in December after election in order to facilitate the submission of requests. They usually get only a handful. Generally, legislators don't submit requests until after a session begins.

There have been proposals that each legislator be limited to a certain number of bills, say 10, until all other bill requests have been filled. This was also tried in 1975 but again, it was not clear whether its failure was a result of inherent problems or legal division problems. There are criticisms of any quantitative approaches since bills differ so much in length or complexity. Treating them as though they were so many widgets is bound to cause inequities. Also implied in a quantitative limit is the concept that each legislator will have about the same number of ideas for bills. This clearly is not the case.

Bill drafting resources have also been examined. After the 1975 session, the size and salary levels for the professional legal staff were dramatically increased. There are now 12 full-time attorney positions. This staffing level compares favorably with other states when total number of bills drafted is considered. It is also a level that can be effectively utilized in the interim. Past experience has shown that hiring bill drafters just for a session is inefficient and ineffective. In short, no one has suggested that the answer to speeding up the process in Nevada is more bill drafters.

IV

NEVADA EXPERIENCE

Session workflow in Nevada reflects the national pattern described previously. Charts for sessions 1969-1981 bill introductions by week and enactments by week have shown a good deal of variation in the pace of introductions but, surprisingly, enactment rates also vary with some sessions showing a marked end of session burst and others a more moderate session climax.

In addition, since 1975, the legislative counsel bureau has kept track of bills into committees and bills out of committee. Those show that different sessions take on a particular pace. The 1981 session compared to previous sessions did start slowly, never did speed up and then went on and on.

V

CONCLUSION

There are a number of probable improvements in session workflow. Every procedural change in a political environment, however, reduces someone's power. Deadlines for reporting bills from committee, for instance, would reduce committee chairmen power. A requirement that a bill be introduced within so many days of delivery to a legislator will reduce individual power. Change in general in legislative procedures is opposed by those who know the existing system best. It is part of their strength. Since the 1983 session will follow reapportionment, it may be a better opportunity to try changes than others.

Some of the most attractive ideas would require either constitutional change or dramatic procedural changes. The Florida approach of its 1968 constitution calling for a later November organizational session with a 3-5 month interim before the full session should allow for most bill drafting to be done prior to opening day. Committee work could be at 100 percent from the first day. This, of course, would require a constitutional amendment. Our constitution was amended in 1974 to allow for consent calendars. They are used but don't help much because in Nevada, getting a bill on the floor for a vote has never been a problem. Also, floor time has generally been adequate.

The legislature could provide by statute for a November pre-session orientation and bill drafting request period combined with a bill request cutoff of the first day of session for individuals. This approach would encourage the use of pre-filing which is now provided by law but virtually never used.

The Kentucky concept of an organizational session followed by a year interim for committee work is an intriguing possibility that bears watching. It too would require a constitutional amendment.

The Connecticut bill proposal idea has appeal also. It will not, however, be as beneficial in Nevada as it has been in Connecticut because the ratio of drafted bills to passed bills is much smaller in Nevada. Close to half of all bills drafted pass.

In short, there are a number of ideas that are proven elsewhere, as well as the rolling deadline concept which may be unique, that have very good potential for speeding up the process in Nevada and cutting session length. Any new idea will alter existing power relationships and carries with it some uncertainty. Thus, no idea is without risks.

VI

FOOTNOTES

1. Keefe, William J. and Morris S. Ogul, The American Legislative Process: Congress and the States, 2d Ed., Prentice-Hall, Englewood Cliffs, N.J., 1968, p.56.
2. Ibid, pp. 56-58.
3. Rosenthal, Alan, Legislative Life, Harper & Row, New York, 1981, p. 143.

APG/jld:10:82:BGone.1-11

A P P E N D I X A

MICHIGAN RULE APPLIED TO NEVADA WITH MODIFICATIONS

January 17	(Monday)	(3rd Monday in January)	Session opens at 12 noon.
February 16	(Wednesday)	(after 4½ weeks)	Final day to file requests for bills.
March 2	(Wednesday)	(after 6½ weeks)	Final day for introduction of bills.
March 16	(Wednesday)	(2 weeks later)	Final day for committee to report bills in house of origin.
March 23	(Wednesday)	(1 week later)	Final day for passage of bills in house of origin.
April 6	(Wednesday)	(2 weeks later)	Final day for committees to report bills originating in other house.
April 20	(Wednesday)	(2 weeks later)	Final day for passage of bills originating in other house.
April 21-24	(Thursday, Friday, Saturday, Sunday following)		Each house meets at 10 a.m. for conference committee meetings, consideration of amendments of other house and conference reports.