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31 May 1995

MEMO TO:           HOWARD WILLENS, ESQ.  
FROM:               HOWARD MANTEL

The attached memo--notoriously longer than requested--covers the part-time legislature set of questions raised in your memo. I will turn now to the other questions raised in Section 5 of the list of research projects. (And will keep it short, hopefully!)

Is there interest in term limits--which I mentioned briefly?

The memo probably will be sent in two FAX's (total pages: 23).

And let me know if you wish any of the articles, etc., cited.

More to follow. Update me on how things are going, etc.

Love to Deanne.



Attachment

PART TIME VS. FULL TIME LEGISLATURE FOR NMI

Issues

Would the needs of the Northern Mariana Islands be sufficiently met if the NMI Legislature operated as a part-time body, whose members serve as public service volunteers, receiving an honorarium for their services? Or is a full time or near full time Legislature required, one that meets annually for either year-round sessions or for extended periods of time; and whose members are paid salaries comparable to other avenues of public or private sector employment? Given either legislative model, a collateral question is whether costs of both Houses can be contained--for members, staffs, conduct of investigations, and logistical support of the Members?

Does the complex array of policy and fiscal questions that confront all States, including the territories, lend legitimacy to the need for full time legislative activities, with full-salaried legislators and with costly technology to aid the legislative processes, and with all the apparatus and costs that go with "big" government. Against this model is the one--however realistic at the end of the Twentieth Century and into the Twenty-First--of the citizen volunteer who seeks elected public office as a public service, not a career; and of limited sets of legislative activities that do not require full-time service, lengthy annual sessions, or large staffs and support services.

There are other questions (or other ways of stating the same issues):

First, can a part-time legislative model assure the checks and balances that usually attend the principle of co-equal branches of government? Can the part-time

legislature meeting for relatively short sessions perform satisfactorily the functions of law making, revenue raising and expending, constituent services, and oversight of government operations? Will its members be dominated by the executive, the political parties, or the legislative professional staffs? In short, who will be the principal determinants of complex legislation? Will individual members "go along" on the big ticket items and prefer to focus on local matters or statewide issues of lesser concern?

Second, can appropriate means be found, within the Commonwealth's Constitution, to assure that the essentials of a part-time legislative model are carried into practice? Will sessions in fact be limited? Will salaries in fact be compatible with the vision of the citizen legislature? Will the infrastructure of the legislature in fact be trimmed? Will Members capable of making sound independent policy judgments and oversee the executive branch? Are they likely to be dominated by their staffs, who have the technical know-how and the long-term contacts? (A recent study of 747 legislators revealed that 56 percent of the legislators polled felt that committee staff influence has increased in recent years, as well as the influence of personal staff (43%).) (Kurtz, p. 22). Finally, is the idea of the citizen legislator compatible with that of the political parties that they represent?

## Discussion

Perhaps no single set of activities exemplify the complexity of state legislation and the job of the state legislator than the annual budget. If legislators lack technical capacity (their own or that of the resources available to and serving them) to grasp the complexities of revenue estimation, tax resources, federal financial aid, the vagaries of the bond market, and the demands for a share of the State revenue "pie", there is little doubt that the executive will be the winner in the ubiquitous balancing act between the two branches. One recent study suggested that the executive has been given the stronger role:

...changes in budget procedures that reconfigure the power of governors and legislatures carry long-term implications for budget decision making. Many states increased the governor's leverage over budget decisions by giving the chief executive the role of budget assembler and forcing the legislature into the role of budget reactor. The progression from legislative dominance to gubernatorial primary outlined in...Illinois...has occurred in many other states. Many governors occupy the central place among budgeting players...(emphasis added) (Clynch and Lauthy, p. 15.)

In the early years of the Republic, and prevailing into the Twentieth Century, the notion prevailed that elected state legislators were largely volunteers, performing public service, often at their own expense. Salaries were (by today's standards) minimal, sessions were short, and the expectation was that the men (women didn't enter the picture until much later on) would interrupt their work--as lawyers, farmers, landowners, artisans, etc.--do their civic duty and return to their respective occupations. Legislative output was limited, and the pressure to stay for more than short periods was reduced. And on the executive side, governors could play reasonably relaxed roles as the chief executive.

In today's society, a strong case can be made for the full time legislator, whose salary and other payments, e.g., health insurance, retirement, must be sufficient to attract good men and women, and that elected politics is a full time profession. At a recent U.S. Senate Finance Committee session on the welfare bill, Senator Jay Rockefeller of West Virginia noted that there had been several recent special sessions of the West Virginia Legislature to wrestle--unsuccessfully, he asserted--with the difficult issues of financing Medicaid. These burdens on the States and on their legislatures will become greater if current Congressional proposals are adopted that shift federal dollars to the States through broad discretionary grant block programs.

It is appropriate to consider not only today's legislative "plate" of business of the Marianas Legislature, but how that may be reshaped in the future, recognizing the host of issues that are extant or may emerge--immigration issues, land use, social services, the economy, crime, education, and health, inter alia. Legislative duties and responsibilities also

involve the political subdivisions of the Commonwealth, i.e., the governmental apparatus for the individual islands and their cities; and of any public authorities and special districts.

Countering all of this is the recurring public notion that too much time in session gives legislators too many opportunities to waste the public's money, and (by some at least), to interfere unduly in executive functions (micro-management). In the public's eye, the most appealing argument may be that legislatures are too costly and that the shorter session, by part time legislators who get limited monetary rewards for their public service, is much better than the full time professional legislature with all the trappings of a technological state, and who are more likely to be influenced by outside pressures, i.e., by special interests.

The tricky task, should decisions be made to keep legislatures and legislators part time, with limited resources, is how to impose the necessary constraints? What arrangements work best? Which in practice have little if any impact? Should constraints be imposed by Constitution, by statute, by internal rule, by budgets? (To cite a notorious example, New York State's Constitution establishes a fiscal year that begins April 1st. Since 1980, the budget has been enacted either by March 31 or earlier on only two occasions (1980 and 1983). The delays (in number of days) has ranged from two in 1992 to 95 in 1991. In 1995, 59 days had passed—as of May 30th, with no agreement yet in sight.)

### Length of Legislative Sessions

The prevailing practice among the States is to relax limits on legislative sessions, albeit with some efforts to reverse these directions. Thirteen States place no limits on sessions, 31 impose constitutional limits; six have statutory limits; or limits are set in the rules of the legislature, or "...indirect limitations based on cutoffs in legislators' salaries or per diem expense payments..." (Jones, p. 99). Several States in the past decade attempted to limit sessions: "In 1984, Alaska went from unlimited sessions to a 120-day limit, and Colorado voters approved a constitutional amendment in 1988 that limited legislative sessions to 120 days. In 1989, Oklahoma voters approved a constitutional amendment specifying that the

Legislature could only meet from February through May...Louisiana voters approved a constitutional amendment in 1993 that reduced the length of even-year sessions from 60 days to 30 legislative days during a 45 calendar day period and limited the subject matter during the reduced session to fiscal issues." (Rich, p. 100).

More on Louisiana's change: "General session topics are to be debated in odd-numbered years during a 60-day session that opens the last Monday of March. No taxes may be considered in odd-numbered years... ("Not Business as Usual in Louisiana Legislature".) In practice, however, things are not quite going according to what the voters may have envisioned. In 1994, the first year that the constitutional amendment went into effect, the session was to be limited to fiscal matters (budget and taxation). In fact, four special sessions were held, one of which was for 30 days. These sessions dealt with such topics as sheriff's pay, crime, and reapportionment. (Reference: telephone interview with Celia Richie.)

Louisiana may be more the rule than the exception. Longer or special sessions have been held to wrestle with two pervasive issues: budget and fiscal crises and reapportionment. According to Rich, 31 States held more than 50 special sessions in 1991, 27 States held 52 special sessions in 1992, and 22 States held 40 special sessions in 1993. "Arizona, for example, held five special sessions in 1992 and seven in 1993, and Florida held five in 1992 and two in 1993."

A word on arrangements in Arizona, Hawaii, and West Virginia:

Arizona. Its Constitution allows both the Governor and the Legislature to call special sessions. Under Article IV, Section 3, gubernatorially-proclaimed special sessions can deal only with subjects mentioned in the call for the session. Section 1(2), added in 1948, allows the Legislature, on vote of two-thirds of each House, to request the Governor to call a special session; he has no power not to do so ("...the governor shall forthwith call a special session..."). But here, specifically by wording of the Constitution, there is no limit on subjects to be considered: "At a special session so called the subjects which may be considered by the legislature shall not be limited." Apportionment matters seem to surround much of the question of calling special sessions. (Lesly).

Hawaii. Hawaii's Legislature meets annually in January; the Constitution limits regular sessions to sixty days, but by a two thirds vote of each House, special sessions can be called. The Senate can be convened alone for a special session (also by a two thirds vote) to deal with judicial appointments. And the Governor, on his or her own initiative, can convene both houses or the Senate alone in special session, limited to a thirty day period. Any session can be extended for fifteen days on the request of two thirds of the membership; or it may be granted by the Governor. There is also a constitutionally-set recess for each regular session, "...for not less than five days at some period between the twentieth and fortieth days of the regular session. The legislature shall determine the dates of the mandatory recess by concurrent resolution..." (Article III, Section 10.)

West Virginia. This state limits the annual session to 60 calendar days, but allows an extension if two thirds of the members vote to extend. If the budget bill has not been acted upon three days before the scheduled end of the session, the governor issues a proclamation extending the session. Special sessions may be voted by the petition of three fifths of the members of each House, apparently with no limitation on subject to be considered during the special session (Table 3.2, The Book of the States, 1994-95, fn. cc, citing an attorney general's ruling).

### **Full vs. Part Time Legislators**

One thing that cannot be done easily by constitution or by legislation is to force legislators to be part-time. To be meaningful, the constitution or legislation must either specify the type of outside employment that members may hold (posing the need to address the issue of conflicts); or to limit members' salaries and benefits in order to demonstrate the part-time nature of the job, or to limit the length of sessions. (There are examples where stringent payments to legislators are offset by more generous benefits, e.g., retirement packages (e.g., Rhode Island, discussed infra).

The classic debate is between professional career legislators (so long as they can stay in office) vs. the citizen legislator. "...The traditional argument...that legislatures benefit by having members who represent a variety of vocations, who come to the legislature for a short time and then return to their other occupations..." (Rich, p. 100). The National Conference of State Legislatures issued a task force report, which recommended that legislatures, "...consider

carefully any changes in operations that will further professionalize the legislature." It urged legislatures to balance the benefits from part time citizen bodies with the need to professionalize their operations. This also poses the issue of term limits, which is targeted to reduce incumbency, but at the expense of voter freedom to choose.

A 1993 study by the National Conference on State Legislatures reported that 15 percent of all legislators reported that the legislative job is their sole occupation, up 3 percent from 1976 and 11 percent from 1986. The data must be treated with care, depending, e.g., on whether the legislator was retired, a student, or a homemaker--or a professional politician. In the larger States, e, g., Massachusetts, Michigan, New York, Pennsylvania and Wisconsin, more than half the members consider themselves full-time legislators (with similar positions among legislators in Connecticut, Illinois, Minnesota, Ohio, California, Oregon and, surprisingly, Hawaii.) Part time legislators are more prevalent in the South and Western States, with the exceptions noted. (Lawyers no longer are the dominant profession in most state legislatures, one argument being made that they pay is too little and the demands too high.)

If the model of the citizen legislator is advanced, this poses the question of how closely do legislators mirror the background of their constituents. The data suggest that legislators are comprised more of upper middle class citizens, with fewer persons in the lower-income brackets being elected to state legislative office, no doubt for a variety of reasons, including campaign costs.

According to a survey of 900 legislators from 16 states (Arizona, Arkansas, Colorado, Connecticut, Florida, Hawaii, Illinois, Kentucky, Minnesota, Montana, New Hampshire, Ohio, Pennsylvania and Texas), "...today's average legislator grew up in a comfortable stable family in a traditional community. Most continue to live in the state where they were born, and many still live in the towns and cities where they grew up." They tend to be on the upper middle income tier, i.e., one half reported annual family incomes of between \$60,000-125,000. If you add the above \$125,000 income levels, the percent comes to nearly two-



thirds of the group (10 percent did not respond on income questions in the survey). Only three percent of those reporting were in the \$25,000 and under family income range. More than 90 percent of the 900 legislators had at least some college education, and most (82 percent) held college or graduate school degrees. The bulk (83%) were married, 70% were male, and 89% were White (with 6% listed as Asian Americans and 5% as African Americans). (Woo. Occupational data was not summarized in the article.)

Turnover rate data are useful in discerning the professionalization of state legislators. Benjamin and Malbin, in their study of term limits, provide data by different types of legislatures (17 States have adopted term limits since 1990; the table does not indicate which states have legislative term limits or when such limits went into effect):

Ten-Year Turnover by Category of Legislature, 1979-89

<u>Category</u>	<u>Senates</u>	<u>Houses</u>
Full time*	61 %	67%
Hybrid**	73	76
Part time***	79	79

The results, subject to other potential factors not identified, confirm that there is more incumbency when the job pays well and is full time, that is, that those who get elected want to stay on as professional legislators, more so than in the case of legislators' who serve part time and at the lower end of the pay scale. But the numbers are not dramatic, and for the entire ten year period, there is significant (two thirds or more) turnover, even in most full time legislatures.

\* Full time, large staff, high pay: California, Illinois, Massachusetts, Michigan, New Jersey, New York [the turnover here was 38% for the Senate, 55% for the Assembly], Ohio, Pennsylvania, Wisconsin.

\*\* Hybrid: Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Hawaii, Indiana, Iowa, Kansas, Louisiana, Maryland, Minnesota, Missouri,

Nebraska, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, and Washington.

\*\*\* Part time, small staff, low pay: Arkansas, Georgia, Idaho, Kentucky, Maine, Mississippi, Montana, Nevada, New Hampshire [the turnover here was 88% for the Senate and 86% for the House], New Mexico, North Carolina, North Dakota, Rhode Island, South Dakota, Utah, Vermont, West Virginia, Wyoming.

(Reference, Benjamin and Malbin, eds., Table B-5 and B-6. Their source is Karl T. Kurtz, National Conference of state Legislatures.)

### Legislators' Salaries: Who Sets

In the mid-1960's half of the States had legislators' salaries set by their constitutions. "Currently, only five states retain constitutional limits on pay..." (Rich, p. 102). According to Table 3.8 of The Book of the States, 1994-95, these are Alabama (which also utilizes a compensation commission, discussed infra), Nebraska (but in which the Legislature plays a role on setting its salary), New Hampshire, Rhode Island, and Texas.

A 1993 article on the Texas situation notes an earlier proposed constitutional amendment to increase legislators' salaries from \$7,200 to \$22,538 and comments: "In Texas, as in most of the country, the notion of a part-time citizen legislature had long since ceased to be anything but a romantic fiction. No rational person could accuse a Texas legislator, even a mediocre one, of being overpaid. Still, the voters showed no sympathy...they turned down the legislature overwhelmingly, as they had done 18 of 22 times over the preceding 112 years..." Rhode Island, since 1905, pays a flat \$5.00 a day to its legislators (for 60 days service annually. To overcome this basic constraint, "They [the legislators] have gradually given themselves a juicy pension plan." (Mahtesian)

Legislatures sets their members' salaries in 26 States; in five states, a combined arrangement prevails, involving both legislative action and determinations of a compensation

commission also: Alaska, where the Commission makes a recommendation but that does not have the force of law; Idaho (similar arrangement, but see discussion, infra); Massachusetts, North Dakota, and Oklahoma.

The Model State Constitution (1968), Section 4.07, provides for legislative salaries and "allowances" to be set by law, that is by the legislature, with the limitation that any increase or decrease does not take effect in the legislature which enacted the change. The notes to this section argues that the setting of legislative salaries "...has no place in a constitution...freezing such details in the constitution hampers rational action and forces amendment otherwise avoidable." Changes taking place during the legislative session which enacted it "...should prove sufficient protection against danger that legislators might run wild with their own salaries for it requires an intervening election before the salaries become effective." (This overlooks the possibility that the same crowd may be re-elected!)

Fourteen States rely on compensation commissions to set salaries: Alabama (combining constitutional provision and a compensation commission); Arizona, California (see note below), Colorado, Connecticut, Hawaii, Illinois, Indiana, Maryland, Michigan, New Mexico, Utah, Washington, and West Virginia.

Details on selected States follow:

Arizona. Under an arrangement adopted in 1970 (following 60 years of heated debate and change), Article V, Section 13 of the Arizona Constitution created a commission on salaries for elective state officers (specifically, it authorized the legislature to create the commission). Five members are appointed from private life, of whom two are appointed by the governor, one each by the president of the senate and the speaker of the house of representatives, and one by the chief justice. The commission, "At such times as may be directed by the legislature..." makes recommendations to the governor on the pay of elected state officers; the governor in turn makes recommendations to the legislature, with specific proposals, except with respect to members of the legislature.

Salary recommendations of the commission are certified to the secretary of

state and then submitted to the voters at the next regular election. Voters can choose "yes" or "no". If they approve, the salaries automatically go into effect at the next legislative session. Notes Leshy:

This section leaves legislators' salaries fully subject to political whim and the penurious attitude of Arizona voters. The commission's recommendations on legislative salaries are not subject to gubernatorial review but instead go directly on the ballot at the next regular general election for a yes-no popular vote. The track record of the commission and, implicitly, the legislature) is not particularly strong.

A recommended salary raise was approved by Arizona voters in 1980 to the present level of \$15,000 per year. Otherwise, commission proposals to raise the salaries were defeated in 1972, 1974, 1978, 1982, and every second year since 1986. The most recent proposal, to increase state legislators' salaries to almost \$20,000 per year, went down to defeat by nearly a two-to-one margin. (Leshy)

Arkansas. The 1874 Constitution, Article V, Section 16, provided that salaries would be fixed by law. A Century later this power was taken from the Legislature. Amendment 56, Section 3 of the Constitution adopted in 1976, specified a \$7,500 annual salary, plus expenses authorized by law (the presiding officers receive \$10,000 annually). According to Ann Cornwell, Secretary of the Senate and its fiscal officer, the voters in 1992 increased the annual salary to \$12,500 (\$14,000 for the presiding officers, but their lost reimbursement for use of cars!), plus allowances. (Cf. Goss, which is not current on this point.)

California. California's legislature, until 1990, set its own salary. This was changed by voters under Proposition 112 to establish the California Citizens Compensation Commission, which sets salaries and benefits of principal state officials, e.g., the governor, lieutenant governor, secretary of state, and members of the Legislature. (The wording provides for parity of salaries and benefits with other public officials, but, "...recognizing, however, that state officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private sector with comparable experience and responsibilities."

The commission is to be comprised of seven members appointed by the governor, of whom three are public members, one of whom must have specialized experience (e.g., as an economist, market researcher, or personnel manager; one must be a member of a nonprofit public interest organization; and one who must be a

representative of the general population (with suggested backgrounds, e.g., a retiree, homemaker...; two are persons with business experience, "...one of whom is an executive of a corporation incorporated in this state which ranks among the largest private sector employers..." and a small business owner; two labor representatives. Various other balances are proposed by the statute, e.g., "The Governor shall strive insofar as practicable..." Terms are six years, and they are staggered. Further, the Constitution states: "It is the intent of the Legislature that the creation of the commission should not generate new state costs for staff and services..." State administrative agencies are mandated to provide resources to the commission. (Grodin, et al. Data in Table 3.8 of The Book of the States, 1994-95, apparently does not reflect Prop 112.)

Hawaii. Until 1968, the Legislature set its own salary. The 1968 Constitutional Convention first established a commission on legislative salary, was appointed by the governor every four years, but its recommendations were purely advisory, "...and the legislature retained the final word." The 1978 Constitutional Convention had the governor appoint the commission every eight years. It submits its recommendations both to the governor and the legislature. "Either may disapprove the recommendation, but the recommended salary will become law if neither disapproves. This allows the legislature to remove itself from the process if it so chooses...Throughout all these modifications, one element remained constant: Any change in salary applies only to future legislatures." (Article III, Section 9. Reference: Lee, pp. 86-87.) The Book of the States, 1994-95, Table 3.9, reports the annual salary of Hawaiian legislators as \$32,000.

Idaho. Under Article III, Section 23, the Idaho Constitution provides, bluntly, "The legislature shall have no authority to establish the rate of its compensation and expense by law. There is hereby authorized the creation of the citizens committee on legislative compensation..." composed of six members, three appointed by the governor and three by the supreme court; they must be Idaho citizens but not paid public officials. Under a cumbersome procedure, these salaries prevail, "...unless prior to the twenty fifth legislative day of the next regular session, by concurrent resolution, the senate and house of representatives shall reject or reduce such rates of compensation and expenses. In the event of rejection, the rates prevailing at the time of the previous session, shall remain in effect." One final provision allows officers and committee chairs to receive additional compensation (Crowley and Heffron) \_\_\_\_

Nevada. According to Table 3.8 of The Book of the States, 1994-95, Nevada utilizes a compensation commission. This does not accord with the reference guide to the State Constitution. Article 4, Section 33 provides that compensation is to be fixed by law, "...for not to exceed 60 days during any regular session...and not to exceed 20

days during any special session convened by the governor..." and increases do not become effective until the following regular session. Provision is also made to cover expenses, e.g., "...postage, express charges, newspapers and stationery not exceeding the sum of Sixty dollars for any general or special session..." and the presiding officers receive "...an additional allowance of two dollars per diem." (See also Section 28). Because of the 1958 repeal of Section 29, which limited the length of legislative sessions, the members cannot receive payment for the additional days spent either in regular or special sessions--although they can receive the allowances. According to Bowers, "An amendment to eliminate the sixty-dollar cap on postage and stationery expenses was decisively defeated by the voters in 1992."

North Carolina. The Legislature sets its own salary under Article II, Section 16 (increases in compensation or allowances take effect at the beginning of the next regular session). The chronology of this provision is of interest:

- 1868. Constitution is silent, thus allowing the legislators to set their own salaries.
- 1876. Constitution sets the amount, originally \$4 per diem for a sixty-day session.
- 1876-1967. Constitution amended from time to time to raise the rates.
- 1967-present. Constitution again allows members to determine salaries (this is the provision as currently written).

### Salary Ranges

The salary range for state legislators is vast. At the low end is the \$100 per year paid to New Hampshire legislators. South and North Dakota, also on the low end of the annual scale, pay small annual salaries (under \$5,000 in South Dakota (there is a small difference for in alternating years, albeit there are annual sessions); and slightly over \$2,000 in North Dakota, plus a daily rate while the legislature is in session. On a daily rate basis, Montana pays \$57, Nevada \$130, subject to a maximum number of days.

On the high end of the scale, New York State pays an annual salary of \$57,500, plus

benefits. According to Rich (p. 102): "Eleven States will pay lawmakers annual salaries of \$30,000 or more in 1994, with five of these states paying in excess of \$40,000 annually. All but five states pay legislators a per diem to cover living expenses."

Additional compensation typically is paid to legislative leaders, e.g., speakers and majority/minority leaders. And in at least 13 states, similar payments are made to other leaders, including (in 11 states) committee chairs. Most states provide health insurance coverage to their legislators. All but a handful of states (at least 41), make legislators eligible for retirement benefits. *California in 1990 adopted Proposition 140, which amended Article IV, Section 4.5 of the State Constitution to prohibit future legislators from being eligible to join the retirement program.*

A special word on New Hampshire, which combines the very low honorarium with the largest state legislative body in the nation.

New Hampshire. There is a tradition that service in the Legislature is a public service, and the members' time is donated. Although the New Hampshire Senate is not unusual in size (24 members), the House of Representatives has 400 members, outranking all other States and territories (the next largest body is Pennsylvania, with 203 House members). New Hampshire also is one of the relatively small number of states with a two year term for its Senators (11 out of the 50 States) as well as for its House members--which is similar to most States (four year terms for House members are Alabama, Louisiana, Maryland, and Mississippi). One immediate consequence of the low salary for New Hampshire legislators is the relatively high age of the members: In the 1993 session, only 30 out of the 400 House members were in their thirties; and the average age was 60, many of whom are retirees. (Mahtesian, op. cit., p. 39.)

According to a former New Hampshire House member, there is a high turnover rate, especially for younger members. In his case, he realized that it was unlikely that he could capture a Senate seat and decided--after three terms in the House--to leave legislative service. He also suggests that one consequence of the very large body is that power tends to focus in the party caucuses and in the Senate, where more riders are likely to be added to legislation and where lobbyists are more likely to be successful in stopping legislation they oppose.

## **Annual Legislative Sessions**

Following World War II, all but four States met biennially. Thirty years later the reverse occurred. The prevailing practice (43 of 50 states; and the five territories) are annual sessions. The Model State Constitution recommends that the legislature be a continuing body, meeting annually, and without constitutional restriction on length of sessions. Section 4.08 (both for a unicameral and bicameral legislature) authorizes special sessions called by the governor or at the written request of a majority of the members of the legislature. The commentary in the Model State Constitution makes the argument:

Legislative problems should be faced when they arise and not in spasms. True emergencies should be the only reason for special sessions. Moreover, legislative action should be preceded by intensive study and analysis.

States that do not provide for annual sessions are:

Arkansas  
Kentucky  
Montana  
Nevada  
North Dakota  
Oregon  
Texas

Highlights among selected states may be noted:

Arkansas. Article V, Section 5 requires the General Assembly to meet every two years on the first Tuesday after the second Monday in November, "...until said time be altered by law." By statute this has been changed to the second Monday in January in odd-numbered years. Section 17 limits the sessions to sixty (calendar) days but this may be extended by a two-thirds vote of the members of each house. Under Article VI, Section 20, the Governor can adjourn the General Assembly, "In cases of disagreement between the two houses...at a regular or special session, with respect to



the time of adjournment..." Under Section 19, the Governor may convene a special session and only the purpose specified by the Governor "...shall be transacted until same shall have been disposed of, after which they may, by a vote of two-thirds of all members...remain in session not exceeding fifteen days." (Goss)

Idaho. In 1968 Idaho's Constitution was amended to repeal its mandate for biennial legislative sessions. Article III, Section 8 now provides for the annual session to commence on the second Monday of January, unless a different date is set by law, "...and at other times when convened by the Governor." There is no constitutional limitation of length of sessions. Article IV, Section 9 allows the Governor to convene special sessions, and the Legislature can deal only with the subjects specified in the Governor's proclamation, although the Legislature can "...provide for the expenses of the session and other matters incidental thereto. He [the Governor] may also...convene the Senate in extraordinary session for the transaction of executive business." Crowley and Heffron note:

Section 9 also implicitly gives him the power not to call a special session, if for whatever reason he prefers not to have the legislature back in session, a power that also has been used frequently, as in 1991 when Governor Cecil Andrus refused to call a special session to consider legislative appointment.

Montana. Montana is fourth among the States in land area, but 44th in population. Under its Constitution the Legislature has a biennial session, meeting in the odd year. Sessions are limited to 90 legislative days; special sessions may be called by petition of a majority of each House. This is happening more frequently in recent years, with the Legislature reconvening in the even numbered years for a brief (two week or so) period to deal with budget or other issues.

While regular sessions can be extended, in fact this rarely happens; and there are examples where things are wound up before the expiration of the ninety day period. Montana may be a good example of a functioning part time legislative body, with members receiving \$57 daily rate salary only when the Legislature is in session, plus \$50 per diem living expenses. Salary levels are set by the Legislature; apparently not a matter of public concern. There is an optional retirement plan. Legislators share staff, which is available only during the session. (Reference: The Books of the States, 1994-95, passim; and telephone interviews with Lorene Thorson, legislative fiscal analyst (her office serves both houses), and with William N. Cassella, who cited Montana as a State with a modern Constitution (adopted in the 1970's)).

Nevada. Article 4, Section 2 provides for biennial sessions commencing on the

third Monday of January, "...unless the Governor of the State shall, in the interim, convene the Legislature by proclamation." In 1958 the Constitution was amended to go to annual sessions, but this was repealed in 1960. Apparently this action followed a ruling of the Attorney General "...that the legislature could not limit its even-numbered-year sessions to budget matters only; that would require a constitutional amendment (Attorney General's Opinion 11, February 19, 1959)." Again, in 1970 voters rejected a return to annual sessions. Perhaps the most apt statement was one made by delegates to the 1864 Convention:

The fact is, that whenever the Legislature is in session, the people wait with fear and trembling for it to adjourn, and then they thank God that it is over."  
(cited in Bowers)

Under Article 5, Section 9, the Governor may convene the Legislature, which can deal only with the matters "...for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in Session." Special sessions cannot be called by the Legislature itself, nor may they take up matters not specified by the Governor, who can adjourn the Legislature when the two houses disagree on the time of adjournment.

There is no constitutional limit on the length of regular or special sessions. Until its repeal in 1958, Article 4, Section 29, limited regular sessions to 60 days and special sessions to 20 days. Bowers notes, "The experience by 1958 was that this artificial limitation was not reasonable in a legislature that met biennially; however, limits on legislative pay continue to maintain the sixty- and twenty-day limits..."

New Hampshire. The State Legislature meets annually, limited to 45 legislative days, with a supermajority able to provide for longer sessions (15 legislative days). According to Eugene Pantzer, there are recurring proposals to move to biennial sessions, but there is concern that this would allow too little legislative oversight.

North Carolina. Under Article II, Section 11 of the North Carolina Constitution, the regular session of the legislature first was to meet in 1973 (i.e., after adoption of that amended provision), and "...and every two years thereafter..." In practice, the Legislature meets annually. John Orth notes, "Regular sessions may (and now usually do) extend over two years..." In addition, special sessions are authorized under Subsection 2 of Section 11 by the presiding officers on written requests of three-fifths of all members of each body.

## Options

Several options can be offered on possible modifications to the NMI Constitution as a way of encouraging a citizen, part time legislature--if this arrangement proves desirable.

1. Annual vs. Biennial and Length of Sessions.

One option is to modify Article II, Section 13 of the Constitution by changing the 90-day regular session to a basic 60-day session, which convenes every other year; and a shortened period 30-day session for the second year, limited to the budget. Special sessions could be called by the Governor, to deal with emergencies. And the Legislature, by a two-thirds vote of the members of each House (not just by the call of the leadership), could extend sessions or call for special sessions--subject perhaps to gubernatorial veto.

The Legislature probably should be allowed to extend sessions for short periods (say for up to two, five day periods) without gubernatorial approval. There should be time constraints on extended or special sessions.

The modified constitutional "floor" (60 instead of 90 days for the regular session; and 30 days for the budget session year) helps set the tone for keeping legislative sessions short.

2. Salaries and Expenses: Who Sets.

A tentative judgment from the review of State legislative practice is that constitutionally-set salaries are confronted by the realities of time and the changing value of the dollar. If the Legislature itself can't exercise proper constraints over its own salaries and other remuneration, the continued use of a

salary commission, as prescribed by Article II, Section 10, may be warranted--with some modification of present provisions.

What might be proposed, then, are: (a) that the word "advisory" be dropped from the name of the salary commission; (b) that some facets of its composition be included in the Constitution (but not as cumbersome as the recent California constitutional amendment on that subject); (c) that if a citizen Legislature is envisioned, that there be some change from the standard of the composite price index; and (d) that the concept of a daily rate of pay, rather than an annual salary, be considered, plus provision for expenses.

If, then, the salary commission is not to be an "advisory" body, should its judgments be final? Perhaps one approach would be to mandate in the Constitution that it conduct public hearings; that it publish its tentative findings by a date certain; that it not issue a final report until there has been a period for review and comment by the Legislature, the Governor, and by the public; and then its final report would take effect without further review or action (subject to the requirement that changes take effect with the next Legislature).

### 3. Salary Rates.

Regardless of who sets salaries, the issue arises what it should be, as well as the concomitant question of: what else? Out of pocket expenses, including automobile reimbursement, expenses for staying in the state capital during legislative sessions, office expenses, provision of equipment (which may include automobiles, e.g. for leaders), special emoluments for committee chairs and leaders, and two special matters: health insurance and retirement benefits.

Although the notion of volunteerism, e.g., in the case of New Hampshire with

its nominal \$100 per session payment, may be the ultimate way of trying to assure the citizen, part time legislature, reality dictates otherwise. Per diem rates may be a reasonable compromise between virtually no salary and an annual salary comparable to other employment. The Constitution might allow the salary commission discretion between an annual salary or a per diem rate.

A case can be made not to bar the salary commission from including health insurance coverage, especially if members are likely not to have other coverage for themselves or their families. Retirement benefits are more problematical, since it implies long term service.

## **Sources of Information**

Much of the information in this memorandum is taken from The Book of the States 1994-95, especially Chapter Three, State Legislative Branch, comprised of both statistical information and an overall summary of recent legislative practices (especially for 1992-93) by Rich Jones. This was supplemented by use of reference guides to a number of State Constitutions, all recently published. The Model State Constitution, last revised in 1968, has been consulted. Preliminary searches of other available literature included popular-style articles, with some data, in Governing and State Legislatures. Additional information was supplied by telephone interviews.

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