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TOWARD A NEW AGENDA FOR LEGISLATIVE STRENGTHENING

THE CHALLENGES OF TODAY'S LEGISLATURES ARE VERY DIFFERENT FROM THE PAST

By Karl Kurtz and Brian Weberg

At the outset of the 1970s the Citizens Conference on State Legislatures launched a remarkable movement to strengthen our nation's legislatures by publishing *The Sometime Governments: An Evaluation of the 50 American Legislatures*, containing sweeping recommendations for change. The prescriptions for change in those days were designed to build the capacity of legislatures—to give them more resources of time, compensation, staff and facilities. Forty years later, that agenda for reform has been largely accomplished or is no longer as relevant.

The challenges before today's legislatures are more complex and less well defined—involving questions of integrity, will, commitment and trust—and the solutions are not at all clear. We believe that it is time now to undertake a new agenda for legislative strengthening designed for the realities of today's government and politics. We propose a process that will help clarify the agenda for change and begin to identify remedies for the problems.

The Citizens Conference on State Legislatures was a private nonprofit organization formed in 1964, focused on improving state legislatures. With a major grant from the Ford Foundation the Citizens Conference launched a national study of the 50 state legislatures in 1969, culminating in the publication of *The Sometime Governments* in 1971.

Based on criteria for “functional, accountable, informed, independent and representative” (FAIIR) legislatures, the book evaluated the state legislatures and ranked them from one to 50. The rankings caused a considerable stir among state legislators and were an effective call to action: No one wanted to remain ranked in the bottom half of the list or to be below its neighboring or rival states.

The book contained both general recommendations for all states and specific recommendations for each of the 50 legislatures. The recommendations focused on legislative structures and capacity building such as the amount of session time, the number of members, committee organization, facilities, and staffing. They were highly prescriptive and specific. During the period of the study, the Citizens Conference was directed by Larry Margolis, former chief of staff to California Speaker Jesse Unruh who led the transformation of the California Legislature into a full-time, professional body in the late 1960s. The implicit standard of *The Sometime Governments* was that all legislatures should look like California's, which, not surprisingly, came out #1 in the rankings.

Whatever its flaws, *The Sometime Governments* was a success. It provided state-specific marching orders and a battle plan to reform-minded political troops ready and able to carry out its agenda. At the time of its publication, a perfect storm for change was forming in American politics, fueled by the one-person, one-vote court decisions of the 1960s (and their implications for redistricting after the 1970

census), a substantial commitment by private foundations (principally the Ford Foundation and the Carnegie Corporation), and a surge of Kennedy-inspired, post-Vietnam, Watergate-weary legislators who arrived in America's state capitals in 1974.

For the next two decades, legislative leaders in almost every state engaged their members, the public and other stakeholders in efforts to re-design and re-build state legislatures. These efforts were historic in scope and accomplishment. Forty years after the Citizens Conference issued its ideas, state legislatures are more muscular, more agile, more intelligent and more independent than at any time in American history.

The reform agenda of *The Sometime Governments* fell on hard times in the 1990s as a backlash developed against what political scientists call the professionalization of state legislatures. Almost all of the 24 states that provide for voter initiatives had measures placed on the ballot to limit the terms of state legislators. Virtually all of them passed, though some were later invalidated by courts or repealed, leaving 15 states today with term limits. An NCSL-led study published in 2007 showed that term limits had significantly weakened state legislatures, especially in relation to the governor. Other initiatives placed tax and spending limits on legislatures in many states, further limiting their authority.

In the atmosphere of public distrust and cynicism toward government reflected in these anti-government initiatives, it became difficult for legislatures to engage in the kind of capacity building advocated by *The Sometime Governments*. In the last 20 years, outside of the area of technology (which has its own momentum and societal drive) legislatures mostly have stopped taking steps like adding staff, building more facilities, or increasing the amount of time spent on the job.

By the 1990s the Citizens Conference's recommendations had run their course. They had done their job of stimulating positive change.

But building capacity was not enough. The process of legislative improvement is never-ending, requiring constant tinkering and adjustment, state by state. Partly as a result of the success of the capacity-building movement, legislatures face new problems today. In his book, *Engines of Democracy: Politics and Policy in State Legislatures*, Rutgers University political scientist Alan Rosenthal identifies six ailments confronting contemporary representative democracy:

- The effects of partisanship. Partisanship is a good thing in that it organizes conflict and disagreement. But it is a bad thing when it is excessive and leads to incivility and a lack of willingness to negotiate and compromise. Hyper partisanship, as some have called it, undermines political trust and support for democratic institutions. Some state legislatures today (but by no means all) suffer from excessive partisanship.
- The issue of legislative integrity. The overwhelming number of state legislators have integrity and behave ethically. But the misdeeds of a few members are amplified by the media and tar the entire institution. The public believes that the majority of legislators are out to serve themselves and that they are for sale to the highest bidder.

- The erosion of study and deliberation. The work of standing committees, which was a major focus of the earlier legislative strengthening movement, has been undermined in many states in recent years by partisan considerations to the detriment of their key role in substantive study, analysis and deliberation on issues. Top legislative leaders and party caucuses too often bypass or downplay the committee process. Term limits have also weakened committees as they have been deprived of experience and expertise.
- Diminished responsibility. Rosenthal questions how responsible legislatures nowadays are as political institutions. He is concerned about the willingness of legislators in some states to make difficult decisions on budget and fiscal matters caused by their disposition to please constituents, the norm of reciprocity that leads lawmakers not to vote against someone else's bill for fear that that person will vote against their own, and a growing tendency for committees not to take responsibility for screening out bills that lack support or merit.
- The erosive effects of public cynicism. Today's excessive levels of public distrust toward democratic institutions may lead to negative consequences such as discouraging qualified people to run for office, a lack of willingness by members to address unpopular but necessary issues, simplistic institutional reforms such as term limits, and public unwillingness to comply with legislative decisions.
- Lack of institutional commitment. "Legislators are not inclined to pay much attention to their institution," says Rosenthal. "If they do not devote themselves to their institution's well-being, who can they expect to do the job for them? ...The responsibility is primarily theirs—and it is not being adequately shouldered."

Two of these issues—legislative integrity and study and deliberation—were on the agenda of *The Sometime Governments* 40 years ago, although in substantially different form. The other four were not even on the horizon a generation or two ago.

We generally agree with Rosenthal's list of ailments and believe that it's vital to the health of state legislatures that they be addressed and remedied. But it's important to emphasize that not all states have experienced all of the problems. The needs for legislative improvement are different from state to state. The only problem on the Rosenthal list that is common to all 50 states is that of public cynicism, and even then there are a few states in which the legislature has relatively high public opinion ratings. As the Citizens Conference recognized 40 years ago, an agenda for legislative strengthening needs to be a state-specific one.

How, then, to go about creating a state-specific agenda? We believe that there is a basic set of questions that legislators, legislative staff, political scientists and interested citizens should ask and answer about the performance of their state's legislature. These questions are standards of a sort—expectations of what a good legislature should be like. For the most part, they do not deal with rules, procedures and structures. Instead, they focus on outcomes. They are highly qualitative and often difficult to measure, but they should be asked nonetheless.

Twelve Questions Legislators, Legislative Staff, Political Scientists and Interested Citizens should Ask About their State's Legislature (not in any order of priority):

1. Does the legislature effectively share power with the governor? Does the legislature initiate and enact its own legislation and make independent decisions about the state budget? Does the legislature provide effective oversight of executive actions?
2. Does the redistricting process for the legislature result in reasonably compact, contiguous and competitive legislative districts that do not overly advantage one party and incumbent legislators?
3. Do the members of your legislature provide effective constituent service including responses to requests for information, casework, local projects and public expenditures? Is the proportion of women and racial and ethnic minorities in the legislature reasonably reflective of the population of the state?
4. Does the legislature take into account interests of the state as a whole instead of the cumulative interests of districts and constituencies?
5. Is there a reasonable balance in the legislature between the need to have strong, effective leaders who are able to guide members on procedural and policy choices and the need for internal democracy that disperses power and protects and respects the rights of individual members?
6. Does the majority party have enough clout to get things done? Are the rights of the minority party protected?
7. Is the degree of partisanship in the legislature reasonable? Does the legislature engage in consensus-building? Are opposing sides willing to negotiate differences and find compromises to difficult problems?
8. Does the legislature have integrity? Do the members of the legislature and the capitol community behave in ethical ways?
9. Do individual citizens and organized groups that have an interest in an issue have the opportunity to participate in the lawmaking process? On most issues are all viewpoints heard and treated fairly by the legislature? In the lawmaking process is the influence of moneyed interests that contribute to political campaigns appropriate relative to their role in the state's economy and well-being?
10. Does the legislature study and deliberate on issues effectively? Does it allow for give and take and the open exchange of ideas at all stages of the formal and informal legislative process, especially the committee stage? Are legislative committees strong, attentive and involved in critical decision making?
11. Do the members of the legislature care about and protect the well-being of the institution? Is there adequate continuity in the membership of the legislature to promote institutional values, build up expertise, and pass on knowledge and skills? Are the leaders and members committed to educating the public about the legislative institution and defending its values?
12. Does the legislature have adequate resources (staff, time, facilities, technology) to do its job and are those resources managed effectively? Is there an appropriate balance between partisan

staff who provide strategic advice and guidance to members and nonpartisan staff who provide unbiased analysis and manage the institution?

Each state, depending on its history, tradition and culture, will have different answers to these questions, and people within the same state will disagree. A consensus on an answer of “no” to any set of questions suggests an area in which the legislature should be strengthened.

Once we define the needs in each state, finding solutions becomes the challenge. Unlike the 1970s agenda for reform, most of the 21st century problems of legislatures that are implicit in our questions cannot be addressed by throwing more resources at legislatures or by structural and procedural changes. The remedies for these ailments are more likely to come through things like education, training and cultural changes in the institution—all things that are very difficult to bring about.

But we’re not ready to reach conclusions about prescriptions for change. Those need to arise from a dialogue among legislators, staff, academics and committed citizens about a new agenda for legislative strengthening.

We do know, though, that the reformers of the 1970s had a difficult task of transforming state legislatures into something more than “sometime governments.” But in retrospect their tasks seem easy compared to today’s work of building integrity, will, commitment and trust. The challenges facing the more robust legislatures of today are even more daunting. We need to find the mechanisms and a spirit similar to those of a previous generation of dedicated people who sought to improve our state legislatures.