NECESSARY REFORMS OF LEGISLATIVE PROCEDURE

In 2019, after the political paralysis of the past decade and longer, the legislature must tackle with great vigor the issues of public policy that have been accumulating during those years.

The legislature will have more work to do in the 2019 session, than can be handled using the inefficient procedures of the past several sessions. Legislative procedural reform is therefore essential.

Some reforms that should be adopted are these:

1. Have committee chairs routinely refer bills to three or five member subcommittees to get bill defects fixed by amendments, to promote solid input from more legislators, to put minority (and majority) members to work in a nonpolitical milieu, and to give lobbyists practice in presenting and refining their bills.

2. End the practice of having committees prepare multi-issue ‘‘committee bills.’’ Reward bill authors and public witnesses with affirmative committee action immediately after the committee has heard their presentations. This rewards legislators (and lobbyists) for effective legislative service and makes sense to the public.

If a bill is to be sent to the floor immediately, rather then held for inclusion in a ‘‘committee bill,’’ committee members are motivated to give the bill the vigorous examination that leads to perfecting amendments.

Committee bills also violate the single-subject mandate of our state constitution.

3. Attack all versions of single-subject violations.

4. Move the deadlines for committee action closer to session adjournment to increase the time for constructive work in committee and to reduce the time for partisan shenanigans on the floor of Senate and House.

5. Have the legislature reconvene, as the Constitution intends, in early January of even numbered years. That allows essential and useful work to be done by legislators and staff before a winter recess.

6. Process bills through Committee of the Whole one day and give them final passage on a ‘‘final passage calendar’’ a couple days later. Keep to a minimum the use of special orders that require all floor action on the bill — amendment and final passage — on a single day.

7. Return to the practice of putting simple, noncontroversial bills on a Consent Calendar. Labeling some bills as not needing serious attention, other than the attention of the standing committee that approved the placement of the bill on the Consent Calendar, saves valuable legislator time and energy.

8. Limit to two or three the number of standing committees to which a bill is referred. Two or

three standing committees are more than sufficient to prepare a bill for floor action. That is especially true if the bill has been examined and polished initially by a subcommittee.

9. Encourage entities outside the legislature to create legislative proposals. Doing so will provide more grist for the legislative mill.

10. Use subcommittees to create legislative proposals.

DISCUSSION OF SUGGESTIONS

1. USE OF SUBCOMMITTEES

Legislative productivity benefits more from a sound division of labor than from any other practice. And labor is divided most effectively by using small subcommittees. The institutional efficiencies from subcommittees arise in multiple ways.

Most obvious is the reality that some defects in bills are easily identified. There is no need to have 15 or 21 representatives or a dozen senators, sitting in full committees, to have the defect spotted. Even with only three subcommittee members, the defect is likely to be revealed. And, with the help of lobbyists, colleagues, and staff, a fix will be found and made. Then, when the bill is presented to the full committee, no time will be expended by anyone dealing with that previously discovered and eliminated problem.

Often a subcommittee will spot a problem of complexity or controversy. Then the bill can be kept off the full committee schedule until the problem or controversy has been worked out, saving everyone significant time.

Occasionally, hearing a bill in subcommittee will reveal fundamental defects in the bill or serious controversy on its merits. The conclusion of the subcommittee may be that they cannot ready the bill for passage. Then the recommendation of the subcommittee to the committee chair will be that scheduling in the full committee should be deferred until a later time, often until the next legislative session. That gives proponents of the bill time to work out solutions. The recommendation to delay full committee hearings should not be binding on the committee chair. But, if it is accepted, much legislator energy is saved and proponents will have been educated as to what compromises and other amendments the bill requires.

But more than anything else of value gained through the use of subcommittees is the sense of responsibility a legislator feels when sitting with only two or four colleagues, rather then with more than a dozen in a full standing committee. In the smaller group, legislators listen, think, speak up, and become less shy or fearful of wasting time. It is surprising how much wisdom comes from shy and insecure legislators when they are only a third or fifth of the members responsible for evaluating a bill.

This ‘‘sense of responsibility’’ is also relevant to the relationship of majority and minority legislators. In a three or five person subcommittee, minority members are isolated from their caucus. Their partisanship receives little reenforcement. The milieu becomes one of focus on the merits of the bill and of amendments proposed. That focus becomes significantly independent of ideology.

And the proposals of the minority member regularly win the concurrence of one or more of the majority members. The subcommittee becomes a team, working together.

But that is not the end of it. When the bill comes to the full committee, the nonpartisan attitudes toward the bill continue and cooperation is promoted in constructive ways. The minority develops the habit of thinking constructively, rather than as partisans. This is a priceless reward for the legislative institution and for every member of both majority and minority caucuses.

2. LIMIT COMMITTEE BILLS

Few current practices offend legislative observers more immediately then having a bill explained and then — without a vote — hearing the committee chair announce that "The bill will lie over for possible inclusion in the committee bill."

What makes the practice offensive to followers of the legislature is that advocates of the bill, and its opponents, are left uncertain as to what the future holds. And the media are left without an ability to tell the public a meaningful story of legislative action.

But there are two other objections that are even more meaningful.

First, one of the rewards for good legislative work is the sense of accomplishment a legislator feels when a bill the legislator has sponsored moves forward toward enactment. But, when the committee chair takes possession of the bill, that reward is lost.

Second, and even more relevant, is the responsibility legislators should feel — and deserve to feel — that they are making decisions on what is to become the law of the state. That sense of responsibility is lost when a committee chair takes control away from committee members.

Third, the "committee bill" practice is offensive because it is undemocratic. The legislature belongs to the public, to the members, and to the advocates. It does not belong to the committee chairs and their staffs.

Fourth, the committee bill practice has been the route to gross violation of the single-subject mandate of the Minnesota Constitution.

3. ADDRESS THE SINGLE-SUBJECT ISSUE

With the disappointing decision in the Otto case on April 18, 2018, the Minnesota Supreme Court has made clear, yet again, that that court will not provide a solution to the multiple-subject-bill problem. It is now obvious that the remedy must come from the legislature itself.

Currently, the problem of multi-subject bills has two aspects.

First is the appropriation-bill rider. That was the offense in the Otto case.

The legislature should respond to that problem by amending the statute that limits the duration of

appropriations to the fiscal biennium (Minn. Statutes 16A.28). The legislature can amend that provision to put the same duration limitation on all provisions of the major appropriation bills. That will allow riders that are in the nature of spending directives and relevant to the appropriations in the bill. But it will block riders that seek to amend the permanent, substantive law of the state.

The State of Washington Supreme Court has ruled that the single subject of all major appropriation bills is appropriations and that any riders unrelated to appropriations violate the single subject rule of that state's constitution. That ruling has ended the appropriation rider problem in that state.

The second current single-subject violation is the omnibus committee bill. A legislative rule or a statute should be adopted to approve legislative undertakings to tackle a defined body of law (like the criminal, commercial. or probate codes), but to bar omnibus bills that simply combine a number of bills introduced by different legislators. The first ratifies the wholly legitimate legislative practice of giving serious study to a body of law and constructing a bill to reform that body of law. But the second, the merger of independently initiated bills, is offensive to good legislative process and should be prohibited.

The recent practice of combining appropriation and policy responsibilities in the same committees may have had the unintended consequence of leading those committees into the practice of combining policy riders and appropriations in the same bills. That combined-committee function should be stopped.

The new governor elected in 2018 can be asked to help end multi-subject violations. Every governor should feel an obligation to protect the veto power. And they can do so by demanding that the legislature only enact bills that meet the single-subject requirement. All governors should pledge that all multi-subject bills will be vetoed, even when the substance of the bills is wholly acceptable. In short, the governor should be asked to commit his or her office to be an enforcer of the constitution's single-subject rule.

4. MOVE COMMITTEE DEADLINES CLOSER TO SESSION ADJOURNMENT.

Committee deadlines were initially adopted in 1971. It was common at the time for committees to meet and send bills to House and Senate floors even when only two or three days remained before adjournment.

The initial purpose of the deadlines was to assure that there would be sufficient time between a committee's affirmative report on a bill and floor action on the bill. That meant time for defects to be found, appropriate amendments to be drawn, and lobbying forces pro and con to be marshaled. When committees were sending bills to the floor just hours before adjournment, as they were when the deadlines were first adopted, the House and Senate and lobbyists and government subdivisions and government agencies lacked time to do their essential legislative work of examining the work of House and Senate committees.

One to three weeks was initially deemed sufficient to provide time for bills from committees to receive the necessary review.

The legislature soon lost its focus on that sensible goal and it began to move the committee deadlines earlier and earlier in the session. The legislature was motivated to move the deadlines earlier by an unrealistic hope that the frantic work of a session's last days could be avoided by earlier and earlier deadlines.

Forgotten was the reality that controversial legislative decisions are, like all difficult decisions people make, inevitably put off until the decision must be made. For legislators, that is when adjournment looms. It will never be otherwise.

Moving the deadlines to a time earlier in the session has not worked to end the very human end of session logjam — and it never will.

But moving the deadliness has done great harm to the legislative process.

The legislative process is much different before and after the committee deadline. Before the deadline, work is done in committees (and subcommittees). After the deadline, work is done on the floor, thus giving up the rewards of division of labor that committees provide.

Partisan game-playing multiplies when time is available for dozens of amendments to be considered by the entire House or Senate, with a request for a journal record of the vote on most of those amendments.

When the legislature first adopted the practice of setting deadlines on committees, the final deadline was set one or two weeks into May — just days before the constitutionally mandated adjournment. Yet the legislature finished its work on time.

As the deadlines have drifted earlier and earlier in the year, the legislature has become less productive. More and more of each session has been expended in game playing on the House and Senate floors and less and less time has been devoted to the constructive committee work that brings bills to high quality and makes them deserving of final passage.

A best-working legislative body devotes its floor time to approving — ratifying — the quality work of its committees, not waging battles or putting on partisan shows on the floor. But committee deadlines have moved to a date so early in the session that the work that should be done by committees is turned off before it can be fully completed. The deadlines are so early that there is excessive time available for showboating on the floor of House and Senate.

5. BEGIN EVEN-YEAR SESSIONS IN EARLY JANUARY

The legislature has drifted into a schedule for even-year sessions that has had a negative effect on the work and power of the institution.

Rather than continuing its practice of delaying its return in the second year of each biennium, the legislature should return in early January, as the constitution allows — as the constitution, in fact, contemplates.

If the legislature reconvenes in early January, it can do any essential work that has arisen over the summer and fall. And it can enact a few bills that have been readied for passage by interim

work.

After completing the work it chooses to do in January, the legislature can recess for whatever period it then determines to be appropriate. The length of the winter recess should be set in January, when the state's legislative needs are known, rather that months earlier, in May, when the odd year session adjourned.

Convening as early as the Constitution allows permits the legislature to deal with emergencies and makes the point to members and the public that the institution is back at work. Subcommittees and staff can go to work.

The bill introductions and subcommittee work will alert legislators and the public as to what will be dealt with that legislative session. This will help the community work out constructive amendments and compromises that will be available to the legislature when it reconvenes after the winter recess.

The best way to describe this schedule is that it allows the legislature to do what it chooses to do in January, in the early days of the second-year session, while also giving it the ability to then shorten, by recessing, the days of meeting to the number deemed necessary to handle the work to be done.

6. USE OF COMMITTEE OF THE WHOLE

Mason's Manual of Legislative Procedure gives the Committee of the Whole prominent, but brief, treatment. The brevity comes because this classic legislative procedure is not complex.

But it is a huge time-saver. And that is not its only utility.

One Saturday in the late 1970s or early 1980s provides a dramatic illustration of the utility of Committee of the Whole. The Senate, on that productive day, processed an astounding 78 bills in Committee of the Whole.

On that day the Senate heard explanations of those 78 bills, amended many in constructive ways, and gave them all a vote of preliminary approval. All this was done with voice or standing votes, except when three or more members asked for a recorded vote.

There were no delays resulting from calls for absent members.

The following Tuesday, the Senate, because of that productive Saturday, took up a huge Senate Calendar of bills for final passage. The Senate voted, without debate or interruption, on the final passage of bill after bill. All senators sat in their seats and pressed green or red buttons, relying on the previous Saturday's Committee of the Whole proceedings for guidance.

Now and then, a senator would ask for recognition and say something like "I would like to remind the Senate that the next bill is that dumb [whatever] bill and some of you might want to vote no."

A Call of the Senate, with its wasted time, was never needed because all senators stayed in their

seat as vote after vote was recorded. Of course, if a bill was controversial, the Senate was put under call so that all senators could be forced to vote on the bill. Or, more likely, the Senate was put under call for "all proceedings on the calendar."

Because the bills had been processed through Committee of the Whole the previous Saturday, they were not special ordered and could not be amended. So the issue was final passage and nothing more.

But there were several bills that had been amended that Saturday with amendments that were found to be defective. Or there had been a failure to fix a bill with a necessary amendment. Those bills were, by motion, returned to general orders to have the amendment added or repaired when the bill was again taken up in Committee of the Whole.

That is a great additional value of the Committee of the Whole procedure. Everyone — members, staff, lobbyists, public — have a day or two to examine and think about floor amendments before the final vote on the bill. That is a much better process than to amend special order bills and then, minutes later, vote on final passage, thus denying everyone a chance to think about floor amendments and to correct mistakes.

If it becomes the custom that most bills in Committee of the Whole are explained and amended without recorded votes being taken, each bill can be disposed of quickly with voice votes and without the delay that comes from calling for absentees. Not only is this a faster process; it also takes much of the partisanship edge off the work of the legislature. That gives legislators a deeper focus on the task of determining the public policy merits of the bills and of the amendments offered.

Finally, if something happens to a bill in Committee of the Whole that is unacceptable to a majority of the members, the remedy is neat and simple. When the Committee of the Whole rises and the motion is made to accept the report of the Committee of the Whole, the report on the bill containing the objectionable action can be divided out of the motion and the majority that believes that the Committee of the Whole action was inappropriate can reject the report as to that bill. Then the bill remains on the General Register unamended and available for more appropriate action the next time it is taken up.

7. CONSENT CALENDAR

Some decades ago, House and Senate made significant use of a Consent (or Ordinary Matters) Calendar. Although this calendar was primarily used for local bills (then a common part of legislative work), they were also used for other simple and noncontroversial legislation. The legislature largely eliminated the need for local bills by passing sensible authority for local government to address community issues. Soon thereafter, the legislature stopped using the Consent Calendar procedure.

But there are still simple, uncontroversial bills and the Consent Calendar practice should be reinstated for them, It can be a great legislative timesaver.

This is how it works.

When a standing committee judges that a bill is simple and wholly without controversy, it votes to put the bill on the Consent Calendar. The bills on that calendar cannot be amended. And they are bumped to the General Register (or General Orders) when three or more hands are raised in objection.

What actually happens is that most members decide they have better things to do than monitor the Consent Calendar bills, saving their effort for more important work. But there are always a handful of senators and a handful of representatives who take it upon themselves to give the Consent Calendar bills a quick read, looking for defects and potential overreaching. If one of those conscientious legislators finds something of concern, friends will join in making objection and the bill will be bumped to the General Register.

If there is no objection, the bills on the Consent Calendar each receive a quick explanation and the recorded vote for final passage.

Restoring use of the Consent Calendar will not only save time; it may also reduce the temptation to create omnibus committee bills.

In a nutshell, the Consent Calendar is a way for a standing committee to tell the House or Senate that a bill is, in the standing committee's judgment, not worth serious examination. This saves members significant time.

8. LIMIT REREFERRALS

It is absurd to have a bill rereferred to more than three standing committees before it is reported to the floor. The members of three committees are more then enough to determine whether a bill is meritorious and ready for enactment. More referrals are likely made only to appease the ego of yet another committee chair (or committee staff).

Much more efficient in improving a bill's quality and in making good use of legislator, citizen, and lobbyist time is to have subcommittee work done early in the processing of a bill and to eliminate a fourth standing committee hearing.

Actually, three committees are likely to have as members an adequate number of members of the fourth committee to count as a review by that committee.

9. INVITE AND PURSUE PROPOSALS FOR LEGISLATION

In 1969, the legislature enacted 1,159 session laws, the historic record for session-law chapters. The causes of this astounding productivity were: strict compliance with the constitutional rule that laws are to address a single subject, open-mindedness on petitions for legislation, and the presence in the community of a number of institutions dedicated to the task of shaping legislative proposals and bringing those proposals to the attention of the legislature.

Among those institutions were the Citizens League, the LWV, and, most prominently, the executive branch agencies.

Department Bills

In past years, nearly every agency had at least one proposal for a ‘‘department bill.’’ Often agencies divided their department bills into a ‘‘housekeeping bill’’ and a ‘‘policy bill.’’ Both types of bills were viewed by legislators as nonpartisan proposals that grew out of the day-to-day work of the agencies. The agencies were, in effect, viewed as creative, trustworthy staff for the legislature.

The label ’’department bill’’ became a clue to legislators that the bill could be viewed without suspicion as to the motive or partisanship of the state employees who were bringing the bill to the legislature, even though the bills had to be given vigorous examination to determine whether the agencies’ judgments were sound.

For an unknown reason, the ‘‘department bill’’ practice has, in the last decade and a half, largely disappeared from executive branch practice. The loss to the legislature and community has been profound.

As a ‘‘procedural’’ reform, the legislative leadership should ask executive branch agencies to bring to the legislature each year ‘‘department bills.’’ The legislature then should give those bills evaluations that are based on trust, rather than suspicion.

What those bills will provide is invaluable grist for the legislative mill.

Citizen Task Force Bills

The legislature can also, by establishing study commissions, promote community thought and community struggle with problems that call for legislative responses. Such studies can take many forms and a wide variety of formality.

Several decades ago, the Citizens League did such studies on its own initiative. It now appears that some legislative encouragement may be necessary to stimulate the kind of work the Citizens League used to do on its own initiative.

It is not difficult to think of public policy challenges that could be addressed by legislatively stimulated citizen task forces. How to address the problems of mental illness, a variety of problems with our criminal justice system, environmental challenges, and several issues relating to education come immediately to mind.

10. Use subcommittees to create bills.

A subtle, but significant, benefit of the use of subcommittees is the role a subcommittee can play in the creation of legislative proposals.

The Revisor of Statutes office has, though many decades, been a superb agency. But it does not have the resources to turn all first draft requests into bills that are ready for enactment. The resources of the community must be marshaled, first, to identify whether the bill responds to a problem that should be addressed legislatively; second, to fix problems presented in the initial revisor’s drafting effort; and, third, to find workable solutions to those drafting problems.

The work of the Uniform Laws Commission illustrates the difficulty faced in turning initial proposals into bills ready for passage. Uniform acts take, from start to finish, two to four or five years, even using the assistance of many observers from the institutions affected by the legislation being designed. Subcommittees can provide something similar to the ULC work.

A subcommittee can hear from groups with interests pro and con on the bill. It can embrace suggested amendments to the bill or embrace modifications to those amendments, using the aid of all in attendance at the subcommittee meetings.

Even when a subcommittee is unable to bring the bill to a quality worthy of passage, its work may have focused sufficient attention on the proposal to cause concerned interests to keep working on the problem in a way that eventually provides a workable bill.

No full committee can give sufficient time to bill creation. Nor should the legislature expend the resources incurred by full committee meetings when a subcommittee of just a few members can effectively marshal community resources for the task of creating legislation to address the state's problems.

This bill-shaping function can also become a rewarding and educational experience for legislators.

CONCLUSION

These ten suggestions, if adopted, would enlarge the capacity of the legislature to deal with the public policy challenges that confront the state of Minnesota.