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Helping State Leaders Better Prepare for the Future

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Spectrum: The Journal of State Government seeks to be an honest observer of the state government arena and a vehicle for expressing the newest ideas and latest thinking on state policies and institutions. The mission of Spectrum is to provide reliable information and insightful analysis on public-policy issues to anyone whose interest in state government stretches beyond the limited, short-term goals of the status quo.

Spectrum seeks to develop common ground among entities and individuals who are interested in improving state government and to unite practitioners, academics, businesses, the media and others in a common understanding of the problems and solutions that are unique to the governance of the American states and territories.

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Public-Private Cooperation

Governments at all levels perform certain functions and deliver many services that private firms can perform more effectively or efficiently. If such functions and services are not “inherent” or “core” governmental roles, why should we continue to support government monopoly of all management and service delivery? Proponents of privatization argue that tax money can be used more wisely to provide better services or obtain better program results through public-private cooperation. In the past two decades, contracting—sometimes called outsourcing, vouchers and public-private partnerships have become popular methods when relying on the private sector by state government as well as the federal and local governments.

On the other hand, we also know that not all private companies are better equipped to handle all the “commercial activities” now performed by governments. In fact, many for-profit firms have demonstrated their ineptitude and incapability to provide better services or better products than the public sector. In addition, constant corporate mergers and recent corporate scandals have given sufficient ammunition to opponents to criticize privatization initiatives. Moreover, there have been few empirical studies in support of huge cost savings promised by pro-privatization groups.

Thus, the debate on privatization in state government continues. The symposium in this issue of Spectrum is designed to address some pertinent questions on the future of vouchers, public-private partnerships and recent and future trends in privatization. Paul Peterson at Harvard University reports that school voucher programs thus far have been beneficial to low-income, minority students and have not had an adverse effect on students remaining in public schools. Sandra Waldstein of Vermont Public Service Board describes how the state and a non-profit private organization have resulted in energy savings through a public-private partnership project. And three editors of Spectrum report on their findings of a national survey of selected state officials on recent and future trends of privatization in state government.

Also included in this issue are an informative article on legislative participation in international affairs by Robert Hertzberg, former speaker of California Assembly; an analysis of the budget-making process involving the Legislative Analyst’s Office in California by Elizabeth Hill; articles on the effect of legislative term limits by Art English, University of Arkansas, and John Straayer, Colorado State University; and a review of The Rise of the States: Evolution of American State Government by Heather Perkins. The editor is indebted to these authors.

Keon S. Chi
Editor in Chief

We Want Your Perspective

The Council of State Governments would like to hear about your experiences with the difficult public policy issues affecting state government. Information exchange among policy-makers has always been a goal for Spectrum. We are continuing the tradition by offering “Perspectives” or “Policy Options.” This is a forum for sharing your ideas and recommendations on key policy issues with other state officials.

Submissions should be no longer than 800 words. Please include address, telephone number and photo. Send two hard copies to: Editor, Spectrum: The Journal of State Government, 2760 Research Park Drive, P.O. Box 11910, Lexington, KY 40578-1910. If you have any questions, call Kelley Arnold or Heather Perkins at CSG (859) 244-8000 or e-mail karnold@csg.org or hperkins@csg.org.
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For many years, fears that school vouchers were unconstitutional slowed their adoption by many state legislatures. But in 2002, the Supreme Court found in the case of Zelman v. Simmons-Harris that the Cleveland school voucher program was constitutional. The Court declared that the program did not violate the Establishment of Religion Clause of the U.S. Constitution, as plaintiffs had argued, because it allowed parents a choice among both religious and secular schools. There was no discrimination either in favor of or against religion. Now that school vouchers have passed this crucial constitutional test, many state legislators and other state officials are giving more thought to the voucher concept. In addition to Cleveland, experiments are underway in Milwaukee, Florida and Colorado and are under active consideration in many other states. This essay seeks to answer some of the questions that are frequently raised.

School Vouchers: The Basics

Simply defined, a voucher is a coupon for the purchase of a particular good or service. Unlike a ten dollar bill, it cannot be used for any purpose whatsoever. Its use is limited to the terms designated by the voucher. But like a ten dollar bill, vouchers typically offer recipients a choice. For this reason, distant relatives find coupons popular birthday presents for those whose tastes are unknown. The birthday child can be given a toy store coupon, without dictating the exact game or puzzle.

It is not only in the business world that vouchers or coupons are used. Food stamps, housing allowances for the poor and federal grants for needy students are all voucher-like programs that fund services while giving recipients a range of choice. Now, the idea is being advanced as a way of enhancing school choice as well. If parents are given a school voucher, the money will certainly be spent on education. But instead of requiring attendance at the neighborhood school, no matter how deficient, the family is given a choice among public and private schools in its community.

In other words, a school voucher is something like a scholarship to be used at one’s choice of school. Indeed, in the United States there are numerous privately funded scholarship programs that operate much like school voucher programs. They allow the parent to pick the private school of their choice, but they pay approximately half the tuition for more than 60,000 students in New York City, Washington, D. C., Dayton, Ohio and many other cities across the country.

Although these private programs have generated valuable information about school vouchers, as discussed later in this essay, more important are the publicly funded ones enrolling over 25,000 students in Milwaukee, Cleveland and Florida. Colorado’s newly enacted voucher program is to begin in the fall of 2004. All of the programs are restricted to low-income or otherwise disadvantaged children.

The oldest program, established in Milwaukee in 1990 at the urging of local black leaders and Gov. Tommy Thompson, was originally restricted to secular private schools and to fewer than 1,000 students. In 1998, the Wisconsin Supreme Court ruled constitutional a much larger program that allowed students to attend religious schools as well. In 2002-03, over 11,000 students, more than 15 percent of the eligible population, were receiving vouchers up to $5,783, making it the country’s largest and most firmly established voucher program.

The Cleveland program, enacted in 1996, was of lesser significance until the Supreme Court made it famous. Before the decision ruling it constitutional, vouchers amounted to no more than $2,250 and were limited to approximately 4,000 students. After the Supreme Court decision, the number of students increased to over 5,000 and the amount of the voucher in fall 2003 could go as high as $2,700.

The initial Florida program, established in 1999 after Gov. Jeb Bush had campaigned on the issue, initially had less than 100 students but is poised to become somewhat larger. In this program, vouchers are offered to low-income students attending failing public schools. (The Colorado program, scheduled to
go into effect in 2004, has a similar focus.) Initially, only two schools in Pensacola were said to be failing, but in 2002, 10 more joined their ranks. A second Florida program, which offers vouchers to students eligible for special education services, has received less attention but is perhaps more significant. In 2002-03, over 8,000 of Florida’s special education students were enrolled in nearly 500 private schools.

In other words, a variety of privately and publicly funded voucher programs are in operation. Much can be learned from taking a closer look at how they operate in practice.

A Focus on Low-Income, Minority Families

Most voucher programs are focused on low-income or otherwise disadvantaged families, because their children are the ones least well served by traditional public schools. Voucher proponents point out that middle-income whites can pick their school by moving into a desired neighborhood or using a private school, while low-income blacks cannot easily do so. As voucher proponents love to point out, school choice is already part and parcel of the American educational system. Every time parents identify a neighborhood to live in, they select a school for their child — often self-consciously. According to a recent survey, 45 percent of whites (as compared with 22 percent of African-Americans) consider “the quality of the public schools” when deciding where to live.

Since African-Americans have the least amount of choice among public schools, they benefit the most when choice is expanded. In evaluations of private voucher programs in New York City, Washington, D.C. and Dayton, Ohio, my colleagues and I found that African-American students, when given a choice of private school, scored significantly higher on standardized tests than comparable students remaining in public school. In New York, where estimates are most precise, African-American students who switched from public to private schools tested, after three years, roughly 8 percentage points higher than African-Americans in public schools — nearly a two grade level improvement. These test score gains were accomplished at religious and other private schools that had much less money than that available to New York’s public schools. Data available from the state of New York reveals that New York City’s public schools have twice as much money per pupil as Catholic schools do – even after deducting amounts spent on the food lunch program, special education, transportation-related expenditures and the cost of the city’s massive public school bureaucracy. With so little money, these schools do not have fancy buildings and playgrounds. Indeed, private school parents reported fewer facilities and programs at their child’s school than public school parents did.

Yet private school parents also reported much higher levels of school satisfaction than their public school peers.Private school parents also were more likely to report that their child had smaller schools, smaller classes and an education-friendly environment (less fighting, cheating, property destruction, truancy, tardiness and racial conflict). Their children had more homework and the schools were more likely to communicate with the family. Nor were the private schools any more segregated than the public ones. There was no evidence that vouchers improved the test scores of students from other ethnic groups, however. Vouchers did not have a significant impact, positive or negative, on the test scores of either whites in Dayton or Latinos in New York City.

These findings are all the more important, because they come from randomized field trials similar to the pill-placebo trials conducted in medical research, generally regarded as the gold standard of scientific research. Yet the results from these randomized field trials do not so much break new ground as confirm findings from other studies. In a review of the broad range of research, Jeffrey Grogger and Derek Neal, economists from the University of Wisconsin and University of Chicago, find that “urban minorities in Catholic schools fare much better than similar students in public schools,” but the effects for urban whites and suburban students generally are “at best mixed.”

It is little wonder that many African-Americans are among those most eager to find alternatives to traditional neighborhood public schools. Even though many civil rights leaders oppose school choice, a majority of their constituents think otherwise. In 2000, the Joint Center for Political and Economic Studies reported that 57 percent of African-American adults favored vouchers, as compared with 49 percent of the overall population.

No Child Left Behind

If students who attend private schools seem to benefit thereby, how about those students left behind in traditional public schools? To answer this question, one needs to consider the students in the voucher program, the academic impact on public
Do vouchers attract the best and the brightest?

My own research has looked at this question in two different ways. In one study, my colleagues and I compared a cross-section of all those who applied for a voucher offered nationwide by the Children’s Scholarship Fund with a comparable group of those eligible to apply. African-American students were twice as likely to apply as others. Specifically, 49 percent of the applicants were African-American, even though they constituted just 26 percent of the eligible population. Other results reveal little sign that the interest in vouchers is limited to only the most talented. On the contrary, voucher applicants were just as likely to have a child who had a learning disability as non-applicants. Additionally, participants were only slightly better educated than non-applicants.

In New York, Washington, D. C. and Dayton, my colleagues and I found no evidence that private schools’ admission policies discriminated on the basis of a young student’s test score performance. Only among older students (grades 6-8) in Washington, D. C., did we see some signs that private schools expected students to meet a minimum educational standard prior to admission.

Other researchers find much the same pattern. In Milwaukee, the Wisconsin Legislative Audit Bureau found that the ethnic composition of the participants in Milwaukee’s voucher program during the 1998-99 school year did not differ materially from that of students remaining in public schools. Also in Cleveland, Indiana University analysts said that voucher “students, like their families, are very similar to their public school counterparts.”

Upon reflection, these findings are not particularly surprising. Families are more likely to want to opt out of a school if their child is doing badly than if that child is doing well. A number of families, moreover, select a private school because they like the religious education it provides, or because it is safe, or because they like the discipline. When all these factors operate simultaneously, the type of student who takes a voucher usually does not look different from those who pass up the opportunity, except perhaps for the fact that those within a specific religious tradition are more likely to choose schools of their own faith.

Public School Performance

If vouchers do not simply pick off the top students within the public schools, but attract instead a broad range of students, then there is no obvious educational reason why public schools should suffer as a result of the initiative. On the contrary, public schools, confronted by the possibility that they could lose substantial numbers of students to competing schools within the community, might well pull up their socks and reach out more effectively to those they are serving. Interestingly enough, there is already some evidence that public schools do exactly that.

Harvard economist Caroline Minter Hoxby has shown, for example, that since the Milwaukee voucher program was established on a larger scale in 1998, it has had a positive impact on public school test scores. The public schools in the low-income neighborhoods most intensely impacted by the voucher program increased their performance by a larger amount than scores in areas of Milwaukee and elsewhere in Wisconsin not affected by the voucher program.

Even the threat of a voucher can have a positive effect on test scores. Research by Manhattan Institute scholar Jay Greene shows that when public schools were in danger of failing twice on the statewide Florida exam, making their students eligible for vouchers, these public schools made special efforts to avoid failure.

Fiscal Impacts on Public School Children

To see how school vouchers affect the fiscal resources available to public school children, the structure of public school financing needs to be briefly considered. Although the financial arrangements vary from one state to the next, on average, nationwide, 49 percent of the revenue for public elementary and secondary schools comes from state governments, while 44 percent is collected from local sources, the balance received in grants from the federal government. Most of the revenue school districts get from state governments is distributed on a “follow the child” principle. The more students in a district, the more money it receives from the state. If a child moves to another district, the state money follows the child. Local revenue, most of which comes from the local property tax, stays at home, no matter where the child goes. As a result, the amount of money the district has per pupil actually increases if a district suffers a net loss of students, simply because local revenues can now be spread over fewer pupils.

The voucher programs in Milwaukee, Cleveland and Florida...
have been designed along similar lines. The state money follows the child, but the local revenue stays behind in local public schools, which means that more money is available per pupil. In Milwaukee, per pupil expenditures for public school children increased by 22 percent between 1990 and 1999, rising from $7,559 to $9,036. Not all of the increase was a direct result of the voucher program, but the example shows that public schools do not necessarily suffer financially when voucher programs are put into effect.

Balkanization: Myth, not Reality

Whatever the advantages of vouchers, some may feel that they would prove divisive in a pluralist society with multiple religious traditions. In his dissent from the majority opinion in Zelman, Justice Stephen Breyer saw the decision as risking a “struggle of sect against sect.” And Justice John Stevens said he had reached his decision by reflecting on the “decisions of neighbors in the Balkans, Northern Ireland, and the Middle East to mistrust one another. . . . [With this decision] we increase the risk of religious strife and weaken the foundation of our democracy.”

These dissents echo the concerns of many distressed by the worldwide rise in fundamentalist religious conviction, worries that have intensified since 9/11. But though the concerns are genuine enough, it’s hardly clear that government-controlled indoctrination of young people is the best tool for conquering intolerance. On the contrary, this strategy proved counterproductive in many parts of the former Soviet Union. Historically, the United States has achieved religious peace not by imposing a common culture but by ensuring that all creeds, even those judged as dangerous by the enlightened, have equal access to democratic processes.

Of course, religious conflict is part and parcel of American political history. In the late 19th century, many objected to the establishment of Catholic schools. Indeed, anti-immigrant sentiment was so strong that amendments to state constitutions were enacted that seemed to forbid aid to religious schools. Many of these provisions are so-called “Blaine” amendments, dating to the 19th century, when James Blaine, a senator from Maine and a Republican presidential candidate, sought to win the anti-immigrant vote by campaigning to deny public funds to Catholic schools. (Blaine is perhaps most famous for tolerating a description of Democrats as the party of “Rum, Romanism, and Rebellion.”) In its classic version, the Blaine amendment read as follows:

No money raised by taxation for the support of public schools, or derived from any public fund therefore, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations.

Blaine-like clauses in state constitutions are being invoked by those seeking to forestall voucher initiatives. In a number of cases, state courts have interpreted these clauses to mean nothing more than what the Supreme Court defines as the meaning of the establishment clause of the First Amendment. If this view prevails in state courts, then vouchers do not violate these state constitutional clauses now that they have been found constitutional by the U. S. Supreme Court. But not every state judge necessarily shares this view. Such language has proven to be a hurdle for the voucher program in Florida, for example, where a trial court has found the law in violation of the state constitution. Depending on what happens to the appeal of this trial court decision, the U. S. Supreme Court may eventually be asked to decide whether, on account of their nativist and anti-Catholic origins, the Blaine amendments – and their derivatives – are themselves unconstitutional.

The controversies over religion seem more heated in the political and legal world than in the classroom, however. While exceptional cases can always be identified; there is little evidence that religious schools typically teach intolerance. Indeed, careful studies have shown that students educated in Catholic schools are both more engaged in political and community life and more tolerant of others than public school students. After enduring harsh criticism from critics in a Protestant-dominated America, Catholic schools took special pains to teach democratic values. The more recently established Christian, Orthodox Jewish and Muslim schools can be expected to make similar attempts to prove they too, can create good citizens.

As Justice Sandra Day O’Connor pointed out in her concurring opinion, if Breyer and Stevens’ fears were real, we would know it already. She showed that taxpayer dollars flow to religious institutions in multiple ways - through Pell Grants to sectarian colleges and universities; via child care programs in which churches, synagogues and other religious institutions may participate; and through direct aid to parochial schools of computers and other instructional materials. If thriving religious institutions create a Balkanized country, she seems to say, this would already have happened.

Nor, say voucher proponents, have public schools eliminated social divisions. As Clarence Thomas argued in his concurring opinion, “The failure to provide education to poor urban children perpetuates a vicious cycle of poverty, dependence, criminality and alienation that continues for the remainder of their lives. If society cannot end racial discrimination, at least it can arm minorities with the education to defend themselves from some of discrimination’s effects.” In other words, vouchers may help heal, not intensify, the country’s most serious social division.

Paul E. Peterson is the Shattuck Professor of Government, Director of the Program on Education Policy and Governance at Harvard University and Editor-in-Chief of Education Next: A Journal of Opinion and Research. He is co-author of The Education Gap: Vouchers and Urban Schools (Brookings, 2002). Kennedy School of Government, Harvard University, 79 J. F. Kennedy Street, Taubman 308, Cambridge, MA 02138. (617) 495-7976. PEPG_Administrator@ksg.harvard.edu.
Energy Efficiency and a New Model for Public and Private Partnerships

Sandra Waldstein, Vermont Public Service Board

This new model for delivering energy efficiency programs to retail electric consumers replaces the traditional regulatory model where utility companies provided these services to customers as part of their obligation to serve. Recognizing an inherent conflict in this paradigm, Vermont built a new public-private partnership known as the Efficiency Utility.

The best-intentioned initiatives are not always easy to implement in the realm of public policy. So it is with the delivery of energy efficiency programs. The dilemma is this: traditional delivery mechanisms for energy efficiency programs—programs which save money for individual consumers—cut into the profits of the regulated utilities that historically have provided these services.

Electric service is still a regulated monopoly in most states and public utility regulators rely upon utility-directed delivery of energy efficiency to meet policy objectives. Regulated utilities provide energy efficiency as one service to customers in return for the privilege of holding a monopoly franchise. It is part of their obligation to serve and, in many states, their obligation to acquire resources at the least possible cost. But make no mistake—utilities are also obliged to maximize returns for their shareholders. Selling energy improves the bottom line—reducing energy consumption is not always seen as a profit-maximizing strategy.

Let us examine the problem more closely. The primary mission of electric utility monopolies is to sell electricity to consumers. Consumers in most states are captive customers; retail choice for electric consumers is still not widespread and is not available in Vermont. Utilities build or contract to supply sufficient amounts of electricity so that consumers will have instantaneous power at the flick of a switch. This is no mean feat. Utilities must have sufficient power on hand to meet the maximum or peak electrical load within their service territory—day in and day out. A diverse portfolio of energy sources is put together by each utility to meet these needs. Vermont, like many other states, recognizes that if a utility’s peak is reduced through energy efficiency measures then fewer power supply assets will be needed in its resource portfolio. Energy efficiency reduces power both in on-peak hours and throughout the day. Thus, Vermont requires electric utilities to offer energy efficiency services as part of a balanced portfolio of power supply options. A cost-benefit test is employed by regulators to ensure that such programs are cost-effective compared to the alternatives.

The process by which regulators determine whether a utility has an appropriate mix of power supply and energy efficiency resources is fraught with contention, largely due to the conflict noted above. Public utility commissions are quasi-judicial agencies and decisions are generally made either through a rule-making or contested case proceeding. A lengthy and litigious courtroom proceeding is all too often the forum for resolving the sufficiency and appropriateness of energy efficiency programs. Costs of litigation are passed on to consumers—and program implementation must await final decisions; perhaps even higher court appeals. Worst of all, Vermont has twenty-two electric utilities and each one had to come before the regulators for review of these programs. The result was a patchwork of energy efficiency programs throughout the state.

In Vermont, it took a thoughtful group of policy makers and utility representatives to invent a public-private partnership that now provides Vermont electric consumers with the tools they need to reduce their electric usage and thus lower their energy bills. The new model is known as the Efficiency Utility. It is a statewide entity whose sole mission is the provision of energy efficiency services. Prior to the implementation of this model, utilities provided these services and rolled the costs of the programs into retail electric rates. Now, most electric efficiency programs throughout the state are administered by a single statewide entity funded through a “system benefits” charge on ratepayer bills.

New legislation directed the Vermont Commission to oversee the implementation of energy efficiency programs delivered via this new entity. Studies are performed to determine the level of cost-effective energy efficiency potential that exists in the state. Annual budgets for the Efficiency Utility are determined by the Commission after hearing from a wide range of diverse interest groups. Then the system benefits charge is set to collect the
amount of the budget each year.

Efficiency Vermont was chosen to deliver these programs after a competitive bidding process. It operates under a performance-based contract in which specific benchmarks are set to measure the program’s success. The performance indicators included in the contract are: (1) the level of energy savings achieved; (2) the level of total resource benefits achieved; and (3) program-specific measures.

The new model of delivering energy efficiency has surpassed expectations. Since early 2000, Efficiency Vermont has achieved 99,248 megawatt-hours of energy savings. This is enough to supply approximately 2 percent of Vermont’s electricity needs. In 2002 alone, Efficiency Vermont invested $16.8 million to deliver energy efficiency to its customers and achieved 39,560 megawatt-hours of annual electric savings.

Each kilowatt-hour that a utility can avoid purchasing at this higher cost will help all consumers save money. Individual consumers save money when they implement measures that lower their usage, and more importantly, all consumers save money through electric rates that are lower than they otherwise would be. The financial benefit to Vermont, since the inception of the Efficiency Utility, is a net savings to consumers with a present value of more than $66 million. In addition, it is estimated that these efficiency investments made in the state, as opposed to purchasing power from outside the state, provide a $26 million boost to Vermont’s economic output and creation of more than 100 new full time jobs.

In 2002, this equates to a cost of 3.0 cents per kilowatt-hour over the lifetime of the measures installed. If this power had been purchased on the New England wholesale market, it would have cost an average of 6.3 cents per kilowatt-hour (delivered to Vermont). The magnitude of efficiency savings can be seen in the following chart.

Examples of savings to customers range from a $900 per year savings for the Tunbridge library, to $3,000 in annual savings for the Gilman Housing Trust in Newport, more than $89,000 in annual energy savings for 80 dairy farmers, and combined savings of $280,000 per year in energy costs for members of the Vermont Ski Areas Association. Each project usually has a short pay-back period. In one case, a large manufacturer of industrial

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*Wholesale Spot Market Price*

**Table 2 Power Costs vs. Efficiency Vermont Costs for 2002 & 2003**

*Source: The information in this chart was computed from data on the web site of ISO-NE at http://www.iso-ne.com/smd/operations_reports/da_rt_lmp.php and from Efficiency Vermont Annual Reports for 2002 and 2003.*
scales invested $30,777 in efficiency upgrades which was matched with incentives from Efficiency Vermont of $16,229. The annual electric savings is $50,000, providing a cost recovery of less than one year for the company. Overall, a business that took advantage of Efficiency Vermont services in 2002 could have realized an average return of 65 percent on its portion of that efficiency investment.

Another aspect of the Efficiency Utility’s success is the partnerships it has built with architects, builders, design professionals, trade associations, contractors and retail vendors. Development of this infrastructure is expected to pay off in long-term benefits. The goal is to transform the market for energy efficiency within the state.

Vermont is proud of its environmental stewardship. The Efficiency Utility model continues this tradition. Efficiency investments displace power purchased from energy sources with high environmental impacts. The environmental benefits from efficiency reduce negative health impacts on our residents and reduce environmental stress on our natural resources. For example, the implementation of energy efficiency measures during 2000 – 2002 reduced air pollution as much as removing 14,000 cars from Vermont’s roads for one year. The investments made by Efficiency Vermont in 2000 – 2002 have resulted in the following environmental credits:

<table>
<thead>
<tr>
<th>Year</th>
<th>CO2 (tons)</th>
<th>NOx (tons)</th>
<th>SOx (tons)</th>
<th>Propane (gallons)</th>
<th>Gas (mcf)</th>
<th>Oil (gallons)</th>
<th>Water (gallons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000 to 2002</td>
<td>1,052</td>
<td>1,343</td>
<td>4,383</td>
<td>361</td>
<td>111,507</td>
<td>29,201</td>
<td>128,949</td>
</tr>
</tbody>
</table>


Endnotes

2 This calculation assumes that the benefits of the energy savings will continue for an average of 14.5 years.

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Every year, new privatization initiatives are being implemented in the states. To cite just a few recent examples, Florida Gov. Jeb Bush in August 2002 signed a seven-year, $280 million contract with a private firm to provide selected human resource services and save the state approximately $80 million during the contract period. In early 2003, New York Gov. George E. Pataki proposed to privatize certain state assets to lower the Medicaid cost and other government programs. Nevada Gov. Kenny Guinn reported to the Legislature that privatization of the state workers compensation system resulted in a reduction of nearly 800 positions in the state government and relieved the state of a $2 billion liability. He chose the state motor pool and printing operations as candidates for privatization. Virginia Gov. Mark R. Warner said he was planning to continue with public-private partnerships for education and transportation. Maine Gov. John Baldacci proposed privatizing wholesale and retail liquor operations for greater efficiency.

Rationale for privatization is difficult to generalize. Former Michigan Gov. John Engler seemed to represent the prevailing opinion of state policymakers who initiate privatization when he said:

"It's my belief that the private sector is often better at getting the job done than government. First, the competition promotes operating cost effectively, and the greater accountability helps ensure quality products and services. The private sector also excels at using innovative technology to solve problems, while government agencies do not always have the same latitude to innovate or take risks. Finally, the private sector has vast resources in computer technology, high volume processing equipment, and specialized personnel, plus the flexibility to assign them wherever they are needed most."

Incumbent Michigan Gov. Jennifer Granholm in 2003 directed the state Department of Management and Budget to review all state contacts for cost overruns and potential cost savings. On the other hand opposition to privatization efforts has been persistent over the years. Since the early 1990s, AFL-CIO has led anti-privatization initiatives by saying, "Privatization/contracting must be stopped, the dismantling of our governments cannot be tolerated." Similarly, Gerald W. McEntee, president of the American Federation of State, County and Municipal Employees (AFSCME), warns:

"For public employees and the people we serve, the price of privatization is high—and getting higher. For workers, privatization threatens job security, pay and benefits, working conditions and career opportunities. For the public, it means less quality, less access and less accountability. For local economies, because privatization is often non-union, it means fewer good jobs and a reduced tax base."

The topic of privatization — outsourcing or contracting — seems to have re-emerged recently as a controversial management issue for state policymakers. Governors, agency directors and legislators in many states are asking for either further promotion or curtailment of such public-private partnership cooperation to deal with the faltering economy and dwindling revenues in the past two to three years. There appears to be no consensus as to the effectiveness of privatization in part due to the lack of empirical data as well as the complexity of the issue. This article reports findings of a recent national survey of selected agency directors in the 50 state governments, offers lessons learned from the previous experiences and raises key issues for future privatization activities.

**Trends in Privatization**

its State Trends and Forecasts series. In 1997, CSG’s Center for State Trends and Innovations conducted a 50-state survey on privatization in 19 state agencies; the survey findings were reported in a 1998 monograph, Private Practices: A Review of Privatization in State Government.\(^3\) CSG conducted another national survey of state officials to identify recent privatization trends between October 2002 and December 2002. The survey was sent to 450 state budget and legislative service agency directors and heads of five executive branch agencies: personnel, education, health and human services, corrections and transportation. The survey yielded an overall response rate of nearly 77 percent.

**Budget and Legislative Service Directors**

According to the 2002 CSG survey, the level or amount of privatization in the states between 1997 and 2002 has remained the same in most states or slightly increased in some states. Only five of the 38 state budget directors who responded to the survey reported privatization has decreased in their state in the recent past (Figure 1). Survey results from heads of the five line agencies in the states showed very much the same trend, confirming that privatization has become a routine management tool in state government in the past decade (Figures 2 and 3). As in the 1997 survey, most state agency directors indicated in the 2002 survey that the extent of privatized services and programs has remained relatively moderate, mostly less than 10 percent.

When asked about the amount of privatization that has occurred within the state, 12 budget directors replied that their state has privatized on average at least 6 percent of the their services (Arizona, Connecticut, Indiana, Massachusetts, Minnesota, Missouri, North Carolina, Oklahoma, Virginia, Washington, Wisconsin, Wyoming).

State budget and legislative service agency directors offered slightly different reasons for and cost savings estimates from privatization when compared with responses from line agency directors. For example, the primary reason for privatization given by a majority of the budget directors was cost savings, while the lack of personnel or expertise was the number one reason for contracting out according to a majority of state agency heads (Figure 4). In the 1997 survey, support of political leadership was cited as the second major reason, followed by cost savings, for privatization, but in the 2002 survey, support or pressures from political leadership was not mentioned as a main reason for privatization in most state agencies (Figure 5).

Contracting has been the most widely used method used by state governments to privatize, followed, to a much less extent, by public-private partnerships (Figure 6). For example, Michigan Governor’s Education Technology Fund is a public-private partnership between the state and the Intel Corporation.

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**Figure 1** Trends in Privatization Activity in the Past Five Years (1998-2002)

Source: Survey of state budget directors and legislative service agency directors, December 2002. Question: “Which of the following best describes the amount of privatization activity in the past five years?”

**Figure 2** Trends in Agency Privatization Activity in the Past Five Years (1998-2002)

Source: Survey of directors from five executive agencies, December 2002. Question: “Which of the following best describes your agency’s level of privatization activity in the past five years?”

**Figure 3** Trends in State Privatization Activity in the Past Five Years (1993-97)

Source: Survey of auditors, budget directors, comptrollers and legislative service agencies, 1997. Question: “Which of the following best describes your state’s level of privatization activity in the past five years?”
(along with several other businesses) and the purpose is to provide educators with online professional development opportunities through Michigan Virtual University. Several other states also have examples of using one of the three major methods of privatization. The Alaska Office of Management and Budget reported that the state recently implemented the largest privatization in the history of the state involving a telecommunication partnership. A Virginia respondent reported the recently enacted Public-Private Education Infrastructure Act was expected to increase the number of public-private partnerships throughout the Commonwealth. In addition, 15 states have reported passing legislation in past five years relating to privatization (Alaska, Arizona, Connecticut, Illinois, Kentucky, Massachusetts, Nevada, New Jersey, North Carolina, Oklahoma, Oregon, Vermont, Virginia, Washington, Wisconsin). Washington passed a law in 2002 authorizing state agencies and institutions of higher education to contract out for services that were historically provided by classified civil service employees. It also allows those employees whose positions would be displaced by these contracts to form employee business units and these units will be able to compete for and bid on the contracts along with private companies.

Most budget and legislative service agency directors reported on savings from privatization to be 5 percent or less. But many of them could not answer whether privatization saved their state agency money or not, while 18 percent said it has resulted in no savings (Figure 7). Budget and legislative service agency directors in Arizona, Connecticut and Virginia reported much higher savings rates—more than 15 percent. It is interesting to note that these officials, based on their information on privatization on a statewide basis, showed different estimates on cost savings from privatization. For example, 29 percent of agency heads reported cost savings to be more than 15 percent, and 33 percent of the agency heads reported no savings from privatization (Figure 8).

**Selected State Agencies**

**Personnel**

The level of privatization activities in state personnel agencies between 1997 and 2002 has remained the same as in the previous five years. The primary reasons for privatizing services among state personnel departments were a lack of state personnel and expertise, cost savings and high quality private services. The services that were privatized frequently by personnel divisions include workers’ compensation claim processing, flexible spending benefits, training consultants and information technology services (Table 1). Kansas’s personnel agency director reported that they outsource benefits services due “to the complexity of these services. There are also more employee self-service options with regards to benefits.” Arizona utilized outside consultants to provide training services in order to supplement in house resources. South Dakota’s claims administration for health and worker’s compensation was contracted to a third party since 1998.

States that have privatized more than 10 percent of their personnel services include Connecticut and Florida. On the other hand, 10 agencies replied that their state agency did not privatize more than 1 percent of personnel services (Arizona, California, Idaho, Illinois, New Hampshire, South Dakota, North Dakota, Oregon, South Carolina and Washington). Contracting was the most widely used method in personnel privatization, but public-private partner-
ships also were used frequently. Cost savings from personnel contracts were largely unknown or undocumented, according to the survey results, although a small number of the respondents reported some savings, ranging from less than 1 percent to more than 15 percent (Figure 9). Connecticut and Michigan reported a savings of more than 15 percent from personnel privatization.

**Education**

In the past five years, the extent of privatization in state education agencies, responsible for K-12 education, has stayed the same in most states or increased somewhat in some states. Services privatized by education departments include information technology, statewide assessment testing, special education, and facilities services. Montana signed two contracts within the past five years for statewide student assessment tests with private testing companies. Alabama’s head of the education department said that the use of professional services contracts increased to secure expertise not available in the department.

Michigan and Nebraska’s education agencies privatized more than 15 percent of their programs and services, while most education agencies have privatized between 1 percent and 5 percent. The Michigan respondent said that contractual services increased in the past five years due to the department’s inability to fill staff vacancies. Ohio hired more information technology contractors due to the lack of staff expertise; 25 education directors reported that the primary reason for privatizing education services was a lack of personnel and expertise. The percentage of education services privatized has been less than 15 percent in half the education agencies surveyed. Along with contracting, grants and subsidies and public-private partnerships also were used to implement education privatization. Nearly one half the education agency heads surveyed said the savings from privatized services was less than 1 percent. Maryland and Montana reported cost savings from privatization to be between 11 percent and 15 percent (Figure 10).

**Health and Human Services**

As in the education agencies, the percentage of human services privatization has also

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**Figure 6 Methods Used to Privatize State Programs and Services (2002)**

Source: Survey of state budget directors and legislative service agency directors, December 2002.
Question: “Which of the following methods of privatization are used in your state?”

**Figure 7 Cost Savings from State Privatization (2002)**

Source: Survey of state budget directors and legislative service agency directors, December 2002.
Question: “What is your state’s current cost saving percent due to privatization?”

**Figure 8 Cost Savings from Agency Privatization (2002)**

Source: Survey of directors from five executive agencies, December 2002.
Question: “What is your agency’s cost saving percent due to privatization?”
remained the same in the past five years. Only Ohio reported a decrease. Ohio made a decision to shift its management information system staffing from contract staff to state employees in order to save money. The lack of personnel or expertise in the agencies, along with flexibility and less red tape, was the primary reason for privatization; only one out of four cited cost savings as the primary reason for privatized services. Thirteen directors of health and human services agencies reported that more than 10 percent of their services were privatized. Among privatized services in these agencies, case management, child support enforcement services and community-based services, mental health and drug treatment programs, have been the most popular areas.

Oklahoma reported that future cost savings and cost avoidance was projected in a recent outsourcing of a state school for the developmentally disabled. Ten additional states also reported that cost savings was a primary reason for privatizing services offered by the health and human services agencies. Maryland was downsizing facilities for developmental disabilities and transferring the clients to private sector community programs. The state was also closing many county-run mental health clinics and contracting with private sector organizations to provide the care. Like in the other agencies, contracting has been most widely used. But slightly more than one-third of the respondents reported cost savings from privatization as less than 1 percent. Nearly half the agency directors could not give the amount of cost savings (Figure 11).

**Corrections**

Nineteen states, or 44 percent of the state corrections agency directors who responded to the survey, reported an increase in privatization between 1997 and 2002. About 40 percent of the survey respondents put percentage of privatized corrections services between 1 percent and 10 percent, while 14 state corrections department directors reported that more than 10 percent of their services were privatized; these states include Alaska, Colorado, Hawaii, Kansas, Louisiana, Massachusetts, New Mexico, Oklahoma, New Mexico, Oklahoma, Tennessee and Wyoming. Medical care for inmates was reported as a service privatized by at least 23 states. The Nevada Department of Corrections requested a proposal to privatize pharmacy services. A lack of state beds and prison overcrowding prompted several states to seek arrangements with private prison facilities. Connecticut contracted out with the Virginia Department of Corrections to house 500 inmates due to lack of facilities. Alaska and Hawaii reported having contracts with out-of-state jails and prisons. According to the Alaska Department of Corrections, “it costs approximately $114 per day in-state and out-of-state it only costs $62.”

The main reasons for privatizing correctional services include cost savings, lack of state personnel or expertise and flexibility. Alabama reported that inmate medical services were contracted out because it offered a higher quality of service and the state had a lack of personnel to staff the services. Connecticut placed individuals in privately contracted non-profit halfway houses because it cost less than incarceration. Thirty-one additional states, besides Alabama and Connecticut, also reported that privatization was used mainly as a cost-savings tool. Contracting is the most often used method in privatizing corrections services. Alaska and Mississippi reported

### Table 1 Most Popular Privatized Services

<table>
<thead>
<tr>
<th>Program or service</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training program staff/</td>
<td>CA, CT, IA, LA, MI, ND, OK, TN, WA, WY</td>
</tr>
<tr>
<td>development</td>
<td></td>
</tr>
<tr>
<td>Information technology</td>
<td>CT, FL, ID, IL, MN, MT</td>
</tr>
<tr>
<td>Workers' compensation claims processing</td>
<td>CT, IA, SD</td>
</tr>
<tr>
<td>Health insurance claims processing</td>
<td>MT, SD</td>
</tr>
<tr>
<td>General program administration/</td>
<td>IL, IA</td>
</tr>
<tr>
<td>support</td>
<td></td>
</tr>
<tr>
<td>Consultants</td>
<td>ID, IA</td>
</tr>
<tr>
<td>Collective bargaining negotiations</td>
<td>FL, IA</td>
</tr>
<tr>
<td>Privatized Transportation Programs and</td>
<td></td>
</tr>
<tr>
<td>Services</td>
<td></td>
</tr>
<tr>
<td>General project design/engineering</td>
<td>CO, CT, DE, HI, KS, LA, MI, MS, MT, NE, NC, OK, OR, PA, TN, TX, VT, WI, WY</td>
</tr>
<tr>
<td>General construction/ maintenance</td>
<td>CT, HI, IA, KS, MI, MS, MT, NE, NJ, NC, OK, OR, PA, TN, WA, WI</td>
</tr>
<tr>
<td>Information technology</td>
<td>IA, KS, MN, MT, OR, PA, TN, TX, WI</td>
</tr>
<tr>
<td>Inspections</td>
<td>AR, CT, DE, KS, MN, MS, OK, RI</td>
</tr>
<tr>
<td>Grass mowing</td>
<td>AR, DE, LA, MS, MT, SC, WI</td>
</tr>
<tr>
<td>Rest area operation/ maintenance</td>
<td>IN, LA, MN, MT, SC, WI, WI</td>
</tr>
<tr>
<td>Highway construction/ maintenance</td>
<td>AZ, AR, CT, IA, KY, LA, TX</td>
</tr>
</tbody>
</table>
their cost savings from privatization to be more than 15 percent. But most respondents said cost savings has been less than 5 percent (Figure 12).

**Transportation**

Directors of 24 state departments of transportation, or 59 percent of the transportation survey respondents, reported an increase in privatization over the past five years, while 17 directors said the level of privatization has remained the same in the past five years. Respondents from 20 state transportation departments, or 40 percent of the respondents, reported that more than 15 percent of their services and programs had been privatized. On the other hand, five states (Colorado, Florida, Georgia, Michigan, and Montana) reported a drastic decrease in transportation privatization.

Privatized services included highway construction and maintenance, design and engineering, information technology and inspections. Wyoming’s transportation agency head stated that it was easier to hire temporary consultants and contractors rather than to put permanent employees on payroll; this practice created less concern for layoffs. California contracted out for special engineering services due to a lack of staff with specialized skills. A California’s respondent said, “The department contracts out for special engineering services for which it does not have the expertise on staff.” In addition, 29 state departments of transportation cited a lack of state personnel and expertise as one of the primary reasons for privatizing services. North Carolina’s director said his department must use outside sources due to the difficulty in hiring qualified people. Most privatization projects took the form of contracting, but public-private joint projects were used by at least 10 states. Nearly 39 percent of the transportation agency directors who responded to the survey said their cost savings from privatization was less than 1 percent (Figure 13). Connecticut and Kansas’s reported cost savings exceeded 10 percent.

**Next Five Years**

Privatization as a management approach is likely to continue in state agencies. Nearly half the state officials who responded to the 2002 CSG survey said privatization in their state or agency was likely to increase, and the other half said the extent of privatization was likely to remain the same in their state (Figures 14-20). This forecast seems quite plausible in view of the lingering fiscal crisis in the states, dwindling federal aid to state and local governments, governors’ management improvement efforts and the most recent

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**Source:** Survey of state personnel directors, December 2002.
Question: “What is your agency’s cost saving percent due to privatization?”

**Source:** Survey of state education directors, December 2002.
Question: “What is your agency’s cost saving percent due to privatization?”

**Source:** Survey of state health & human services directors, December 2002.
Question: “What is your agency’s cost saving percent due to privatization?”
Survey of state transportation directors, December 2002.
Question: “What is your agency’s cost saving percent due to privatization?”

Question: “In regards to your agency, do you see privatization: increasing in the next five years, decreasing in the next five years or remaining the same?”

Question: “What is your agency’s cost saving percent due to privatization?”

Survey of state budget directors and legislative service agency directors, December 2002.
Question: “In your state, do you see privatization increasing, decreasing or remaining the same in the next five years?”

Question: “In regards to your agency, do you see privatization: increasing in the next five years, decreasing in the next five years or remaining the same?”

Survey of directors from five executive agencies, December 2002.
Question: “In regards to your agency, do you see privatization: increasing in the next five years, decreasing in the next five years or remaining the same?”
federal privatization initiatives. In November 2002, the Bush Administration announced that it would place 850,000 federal jobs—nearly half the federal civilian employees—up for competition from private contractors in the next few years. While its impact on state governments is unknown, it is safe to conclude that privatization will continue to be a public option in most state agencies at least in the next several years.

**Issues in Privatization**

There are a number of key issues for state policymakers to consider when contemplating privatization either on a statewide or agency-wide basis. Such issues and questions include legal restrictions, lessons learned from previous privatization experiments, productivity, employee displacement, the role of government and accountability due to the blurring line between the public and private sectors.

**Restrictions**

In many states, privatization initiatives have encountered various challenges. To implement privatization initiatives, constitutional provisions had to be clarified in some states, while, in other states, legal restrictions had to be lifted by legislative measures. In several cases, state civil service systems were blamed as a barrier to privatization. In addition, in certain cases, federal laws and regulations posed some obstacles to privatization efforts. For example, the major federal barriers that inhibit privatization of state and local enterprises include grant requirements, regulatory requirements and tax policy. According to a Joint Economic Committee staff report released in 1996: “Grant requirements dictate that state and local governments return any undepreciated portions of their federal grants to the federal government. This makes privatization more expensive and encourages continued government control. Regulatory requirements inhibit private investment. For example, tolls are prohibited on most interstate highways. Without tolls, private investors have no way to raise revenues and investment will not occur. Tax policy subsidizes government-owned enterprises but not privately-owned businesses. As a result, competition does not take place on a level playing field, which makes state-owned enterprises appear more efficient than they are and discourages private competitors.”

In 1996, the National Governors Association adopted a policy asking Congress to remove such federal barriers to allow greater opportunities for privatization, particularly in asset sales, in state and local government.

**Lessons**

Until recently, as one observer put it, the subject of privatization has been discussed by scholars, politicians and practitioners in an exaggerated and dogmatic manner. It seems that now is the time to engage in more serious discussions since we now have more information and some empirical data on privatization, albeit still insufficient, than we had in the past. Any meaningful debate on the merits and demerits of privatization should be based on practical lessons policy-makers and public administrators have learned over the years; some of the lessons from privatization experiences in state government may be highlighted in four areas.

First, thus far privatization has proven to be neither a cure-all panacea for ineffective government nor a dangerous concept harmful to government operations. As the CSG survey findings...
would indicate, state policymakers now tend to consider privatization as a cost saving device or as a way to manage their agencies and deliver public services without hiring new staff or experts in certain areas. It appears that privatization has now become a less ideological, less partisan, pragmatic approach for policymakers to consider.

Second, state policymakers should not treat all privatization initiatives equally. For example, contracting out facilities maintenance by a state agency has less serious implications as privatizing management of state prisons or running a mental health facility. Selling off state assets is different from contracting out janitorial services in state agencies. Privatization in state agencies is not the same as it is in city governments either. Privatization has different implications and consequences depending on the nature and forms of privatization.

Third, there is no question that government can be more effective than businesses in certain program areas, especially when it comes to customer services. There is no reason to oppose privatization when citizens and service clients are satisfied with ongoing government programs and services. Privatization may be considered when policymakers decide that they can deliver more or better services with less taxpayer money by using the private sector.

Fourth, it should be noted, one of the purposes of privatization, according to its supporters, is to dismantle government monopoly in service delivery in favor of private competition. If there is no real competition among able and willing private providers, a privatization initiative is unlikely to realize its stated goals and objectives because such a situation is likely to replace government monopoly with private monopoly. This lesson is particularly pertinent in an era of business restructuring and mergers.

Lastly, it is important to assess practical lessons learned from state and local experiences for successful privatization projects. Two useful sources of such information are available: one by the U.S. General Accounting Office and another by The Council of State Governments. Based on its study of selected states and cities, the GAO identified the following six components of a successful privatization initiative: a committed political leader to champion it; a government organizational structure to implement it; legislation to reduce resources to government agencies as an incentive to privatize, reliable cost data, plans for government employee transition to the private sector and monitoring results of privatization. One previous report by The Council of State Governments also offered specific suggestions for successful implementation of privatization projects. These include: political leadership and support, clear and measurable goals, data collection, monitoring, evaluation, safe guards, team efforts and employee participation in the privatization-planning phase.

Productivity

One key issue is on contracting or outsourcing. Is contracting out a better tool to improve government productivity — effectiveness and efficiency — compared to traditional, in-house productivity techniques? With some exceptions, a majority of state officials who responded to the 1997 and 2002 CSG surveys estimated the savings from their privatization activities to be less than 5 percent. But a more interesting finding from the surveys is that many agency directors could not provide estimates of cost savings from privatization. Nonetheless, state officials have continued to privatize due to the perceived efficiency the private sector might have demonstrated. Some critics and opponents of privatization have focused on the way government is calculating cost-savings from privatization. One review of the literature on early privatization activities concluded that privatization may well result in economy but the achievement of productivity is problematic. It is important to follow up with case studies of reliable empirical data.

In addition, there are a number of questions to address the efficiency issue at operational levels when contemplating contracting out government services. For example: Which government office should conduct a cost analysis — a central agency or the agency seeking to privatize? Should an employee group, a potential contractor and private consultant be designated to perform a cost comparison? When should cost analysis be conducted — before or after a contractor is chosen? What should be included in contractor costs — contract price, contract administration and oversight costs, transition costs, conversion costs? What costs should be included in total government costs — direct costs, cost of benefits, indirect costs, avoidable costs? Should there be a minimum threshold of cost savings to privatize a service or function? And, what performance period should be used to determine projected cost savings — one year or several years?

Employee Displacement

One of the most difficult issues faced by state policymakers when implementing privatization is its impact on government employees. Not surprisingly, the strongest resistance to privatization usually comes from employee unions and state employees, including those whose jobs may be affected. In fact state employees in several states filed lawsuits against their government to oppose privatization. In some cases, agency directors have addressed such employee concerns by reassigning personnel within government, allowing them to compete with private vendors or consulting with employee organizations. They also have adopted measures to deal with employees affected by privatization by requiring private contractors to give preferential treatment in hiring, offering enhanced severance packages or allowing an early retirement option. Some have expressed concerns about the impact of privatization on minorities in the public services. Little research has been done to determine whether racial minorities and women have been negatively affected by privatization initiatives.

The Role of Government

As many researchers on privatization contend, the privatization movement was initiated in part to reduce the role of government by handing over, or eliminating, some of its functions or services to the private sector. David Osborne, the co-author of Reinventing Government, disagreed with this widely held
assumption by saying, “Privatization is simply the wrong starting point for a discussion of the role of government. Services can be contracted to the private sector, but governance cannot.”12 Under privatization, policymakers should not delegate its authority or responsibility to oversee private contractor performance. As long as privatized services are financed by taxpayers, policymakers are accountable for private providers’ performance, including their mismanagement, and must pay attention to the dangers of corruption, service interruption and unfair labor practices by the private sector.

When addressing the role of government under privatization, state policymakers should also identify core functions and services government must perform by itself for public interest. But there is no consensus on such activities called “inherently governmental activities.” In general terms, inherently governmental activities include those that “require either the exercise of discretion in applying government authority or the making of value judgments in making decisions for the government. Government functions normally fall into two categories: the act of government and monetary transactions and entitlements.”13 In the privatization debate, the concept of “governmental” received little attention from public administration researchers.14 Whether any inherently governmental activities should be privatized is an important question to consider.

Sector Blurring

The recent privatization trend has further intensified the blurring of the lines between the public and private sectors. In addition to sale of assets, contracting out and traditional public-private partnership projects, for example, many states have recently replicated private management practices, notably strategic planning and benchmarking, quality management, and performance measurement. Some states reformed their civil service system to incorporate private sector practices such as broadbanding, performance-based pay and hiring of at-will employees under a radically reformed personnel policy.

How should we react to the further blurring of private and public sectors? Alarmists have argued that privatization might contribute to the “disintegration of government” because they view the public and private sectors as adversaries, competing against each other. One observer said, “sector blurring violates sound constitutional principles and ultimately threatens the ability of elected and appointed officials to maintain an orderly and responsible democratic government.”15 Others have countered the alarmist view by saying that “sector blurring does not mean that public law is any less important or that the Constitution is any less the centerpiece of American government.”16 However, many privatization advocates would agree that the two sectors should be regarded as partners and collaborators. As one observer put it, “They are not opposing alternatives. Business and government are not engaged in a zero-sum game.... The public management skills needed for sustained, successful public-private partnerships require leadership and clarity of executive responsibility.”17 Nonetheless, the question of whether sector blurring should be considered a blessing or a curse needs to be debated continuously by policymakers and researchers from the perspective of future public administration and management.

Endnotes

Bios

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Global California: Greater Legislative Participation in International Affairs

Robert M. Hertzberg, Former Speaker, California Assembly

“Global California” argues that some of the hallmarks of globalization – new demographics, expanding international market opportunities and competition and the accelerating flow of capital and information – are doing much more than transforming local California communities. They are changing the day-to-day agenda of the California Legislature toward greater participation in international affairs.

On March 21, 2001, President Vicente Fox Quesada of the United Mexican States stood before a joint session of the California Legislature and delivered a speech heralding the unique bond between a country and state joined by demography, culture, history and economics. As Speaker of the Assembly, I was honored to preside over this historic occasion, only the second visit by a sitting Mexican president to our state capitol. President Fox’s target audience, Mexicans back home and the eight million Mexican nationals and Americans of Mexican descent residing in California, make it unmistakably clear that leaders in California and Mexico must govern in a radically different environment; one in which the traditional boundaries between our states, our nation and nations abroad are rapidly transforming.

Visits by presidents and other foreign dignitaries to California touch upon the emerging role of states in international affairs. California and its institutions of democratic representation are not immune to the forces of globalization. New demographics, expanding international market opportunities and competition and the accelerating flow of capital and information are changing the issues faced by state legislators across the United States. The emerging international role of the state legislator is dual – at the same time that she responds to the shifting demographic and economic sands beneath her feet, she must also recognize that her decisions in traditional policy areas may have effects that resonate far beyond state boundaries.

Local Level Effects

The political necessities of local communities adjusting to global change are pushing state legislators into the international arena. Increasingly, there are fewer communities in the state whose prosperity is not linked to international markets or whose population has not been transformed by the influx of immigrants during the past thirty years. In no other era in the history of California have local interests been more directly tied to international concerns. Representing local interests in a state like California means that state legislators will increasingly make forays into international relations because the local has become international.

This realization, however, is far from suggesting that California and other states are likely to develop their own foreign policy. Our founding fathers and a long line of U.S. federal court decisions explicitly establish the primacy of the federal government in foreign policy. There is a “forbidden line” that states must not cross in foreign affairs by enacting legislation that disrupts, impedes or intrudes upon diplomatic relationships between foreign countries and the U.S. federal government.

The effects of globalization at the local level, however, will increasingly lead state legislatures to test the legal and constitutional parameters of state action on international matters. In California, for example, it is incumbent upon state legislators to be stewards of a state economy that ranks among the fifth largest in the world and includes internationally leading companies in entertainment, technology, agriculture, tourism and aerospace industries. California legislators must tend to the health of the state’s institutions of higher education that have long been the envy of the world, continuing to attract eminent scholars and Nobel-prize laureates in the sciences and the humanities. It is also incumbent upon California state legislators to represent the interests of changing populations and new communities of interest that emanate from domestic and international migratory patterns. Through electoral redistricting and term limits, demographic change continues to transform the face of the Legislature, reflecting the multi-ethnic society that is California. During my tenure as Speaker, I counted as my colleagues immigrants and the children of immigrants from Mexico, Japan, El Salvador, China, Armenia, Norway, Portugal, and Greece.

I have witnessed the evolution of the day-to-day agenda of the Assembly,
from one dominated by parochial interests void of international considerations, toward recognition of California’s impact abroad. This comes not just in response to the challenges and opportunities posed by globalization in local communities, but also with recognition of the ability of our Legislature to make decisions whose effects transcend both the borders of California and the United States. The traditional policy domains of education, health, consumer protection, privacy and public safety are being discussed with a growing recognition of their international significance.

This means that a legislator from the San Joaquin Valley must see far beyond the mountain ranges which encompass the Valley. To the traditional concerns of water and labor issues, the Valley legislator must add, for example, an awareness of the ability of the European Union to provide freely competitive access to European markets for pistachio farmers in her district. It means that a legislator from the Salinas Central Coast Valley must be concerned with the importation of garlic grown abroad and its impact on local garlic farmers. I represented a section of Los Angeles that contains a portion of the entertainment industry, and I am increasingly concerned with the intellectual protection of entertainment products abroad. Likewise, Silicon Valley and San Diego legislators have a stake in access to international markets by the information technology, telecommunications and biotechnology firms in their districts.

Demographics and Immigration

State legislators recognize the impact of immigration and demographic change in their local population. Schools across California face the challenge of educating a multi-cultural and multi-lingual population, which currently constitutes one quarter of the state’s school enrollment. In the aftermath of a vehement debate over bilingual education, the Legislature has renewed its support for English as a Second Language program funding to facilitate educational and employment opportunities. The future prosperity of California will be in part determined by the state’s ability to educate and train a skilled and productive workforce for its leading industries from this diverse population.

The increasing movement of people across California’s borders is also leading state legislators into the international realm of public health. The San Diego-Tijuana border region has a binational population of roughly three million people who frequently cross the border for purposes of commerce, tourism and family visits. According to the U.S. Immigration and Naturalization Service (INS), over 300,000 individuals cross that border daily. Three years ago, while representing a part of this district, Assembly Member, now Senator Denise Ducheny founded the Office of Border Health to coordinate health services along the border with Mexico in an effort to address the spread of infectious disease. Disease knows no boundaries, and it would be self-defeating to approach issues of local public health in the border region without an international perspective.

In recent years, several legislators have been increasingly concerned with disproportionate access to doctors that possess the linguistic and cultural competency to serve California’s diverse population. In parts of southeast Los Angeles, the ratio of doctors to population is one to 27,000 residents, as compared to the statewide ratio of one to 335 residents. These legislators have proposed recruiting doctors with the appropriate skills from Caribbean Basin and Latin American countries to provide medical services in local community clinics.

Korean rice cakes provide a simple yet indicative example of state legislation responding to the state’s demography in the area of food safety. In California’s Korean communities, rice cakes are customarily baked and sold warm to customers. Local food inspectors, abiding by state code and regulations, require baked goods to be sold immediately or to be refrigerated before sale. Last year, legislation authored by Assemblywoman Carol Liu allowed local food inspectors to permit the sale of warm Korean rice cakes under the condition that they are sold within 24 hours of baking. State law increasingly must fit the reasonable demands of diversifying constituencies.

California’s Armenian constituency provides another example of state legislation responding to demography. Many Armenians in the state’s urban centers and rural communities have maintained steadfast advocacy for the opening of a California trade office in Armenia. In response, several Los Angeles and Central Valley legislators have introduced legislation over the past six years to establish a California trade office in Armenia.

Shifts in demography have also changed the Assembly’s approach to issues of public safety. California is home to scores of immigrants, international students and executives who have made significant contributions to many of the states’ leading industries. State law, however, prohibits the Department of Motor Vehicles (DMV) from issuing these immigrants, international students and businesspeople a driver’s license without presentation of a social security number or federal verification of legal status in the United States. As a result, these individuals often drive unlicensed and uninsured to their workplaces and homes at the expense of public safety. In the case of Japanese nationals assigned to work in subsidiaries located in California, temporary licenses often expire before their visas are certified as authentic by the DMV. State law requires the DMV to verify these visas with the INS prior to issuing a license for the period of the visa or renewing a license.

Few pieces of legislation in our past two legislative sessions have been as publicized as bills to rectify this problem by allowing non-citizens living in California without a social security number to legally obtain drivers licenses. The most recent initiatives led by Assembly Member, now Senator Gilbert Cedillo and Senator Richard Polanco
authorize our DMV, under certain conditions, to accept a tax identification number issued by federal tax authorities and a sworn affidavit in lieu of a social security number. These bills expand the pool of Californians who could apply for driver’s licenses, provide for their proper testing and make possible liability insurance coverage to thousands of currently unlicensed motorists. Legislation in previous sessions specifically sought to help businesspeople who are registered with the INS, are legally in the country, but who experience difficulties in obtaining and renewing licenses due to the social security number requirement.

Similarly, the DMV is prohibited from issuing an official form of identification to these individuals. Consequently, the lack of reliable identification prevents local law enforcement agencies from establishing the identity of witnesses and suspects that they encounter daily. Immigrants are reluctant to report crimes or provide eyewitness accounts because they lack an official identity. Likewise, California banks are pre-empted from providing checking accounts and other basic services to a population willing to deposit earnings but lacking proper identification.

With support from law enforcement and banking communities, the Legislature moved to approve the use of identification cards issued by Mexican consulates located in California as a partial solution to provide undocumented individuals with a basic official identity. Some local jurisdictions in Southern California have already moved to accept the *matricula consular* as an official form of identification. As a result, banks in California have reported over $100 million in new deposits, specifically using the *matricula consular* identification since November of 2001.

The management of foreign nationals incarcerated in the California penal system has also become a matter of international concern for state legislators. California has the eighth largest prison system in the world, with an overcrowded prison population that greatly exceeds overcrowding in the federal system. There are currently over 1100 foreign-born inmates in California facilities that, under the Strasbourg Treaty signed by the United States in 1983, are eligible to serve the remainder of their terms in their country of origin. Since 1983, however, California has transferred only 10 foreign-born prisoners to their home countries. Proposed legislation would require the automatic transfer of inmates by state corrections authorities under specified criteria. This legislation would allow California and its penal institutions to participate in the protocols established by international treaty.

California legislators have authored statutes to bring local law enforcement practices into conformity with the Vienna Convention on Consular Relations. The Treaty requires that a foreign national be informed of his or her right to communicate with an official from his or her consulate upon arrest, booking, or detention by a law enforcement officer. California legislation signed into law in 1999 requires all law enforcement personnel to be trained in the requirements of the Vienna Convention.

The Legislature has also approved Holocaust legislation responding to California’s population of at least 20,000 Holocaust survivors. In 1999, Assembly Member Wally Knox authored a measure requiring insurance companies operating in the state to provide detailed information on policies that were never paid but sold in Europe between 1920 and 1945. Another 1999 measure extended the state’s statute of limitations on redressing crimes of forced labor without compensation by “the Nazi regime, its allies and sympathizers, or enterprises transacting businesses in any of the areas occupied by or under the control of the [same regimes].”3 The Ninth District Court for the Northern District of California ruled this statute unconstitutional in September of 2001 because the California law created a separate state avenue for reparations and directly impacted the foreign relations of the United States with Japan. In July of 2003, the U.S. Supreme Court ruled the Holocaust Victim Insurance Relief Act of 1999 to be unconstitutional stating that it interfered with the president’s conduct of the nation’s foreign policy.

Immigration has added an international dimension to the treatment of consumer protection issues by the State Assembly. Regulation of traditional money wire transmission from immigrant communities in California to friends and family in countries of origin has been an important issue for legislators representing those communities. Companies engaged in money transmission services have been sued in federal and state court for allegedly misleading advertising, charging exorbitant and hidden fees and other unfair business practices. Several legislators have proposed laws tightening existing regulations and requiring greater transparency in the price of their services to consumers. These initiatives are of interest beyond the immigrant communities they seek to protect. The importance of these initiatives is not lost on the governments of countries that are highly dependent upon...
remittances from California’s immigrant communities – Mexico, El Salvador, Guatemala – to sustain local communities abroad.

The California Legislature has been involved in matters affecting major investment partners abroad. In the 1970s and 1980s, several bills focused on California’s unitary tax laws which were viewed by foreign investors as imposing double taxation on foreign multinational corporations operating in California and requiring extensive disclosure of accounting information for those firm’s affiliated companies, even if they were not conducting business in California. State tax authorities essentially applied the state franchise tax to the activities of subsidiaries in California as well as to their overseas parent companies and other affiliated businesses. The state Legislature successfully approved a compromise allowing for a “water’s edge” election that allows for exclusion of foreign entities but includes affiliated subsidiaries located in the United States among the unitary group required to file a combined disclosure with California taxing authorities.

The Role of States

Well beneath the “forbidden line” between state and federal governments, state legislators often author resolutions that comment directly on international issues. The State Assembly has entertained resolutions on the Israeli-Palestinian conflict, genocide in Armenia, U.S. aid to Colombia, the Rape of Nanking, religious freedoms in China and Sudan, U.S. Presidential trade promotion authority, U.S. support for the United Nations Population Program, deaths of immigrants along the California-Mexican border and Tibetan independence.

At the same time that members of the Assembly are pioneering initiatives linked to demography, legislators are pursuing other matters which are commanding international attention. Responding to local concerns for global warming, Assembly Member Fran Pavley authored, and Governor Gray Davis signed into law, a measure requiring that 2009 model year automobiles sold in California meet greenhouse gas emission standards. This law specifically requires auto makers to install clean and affordable technology in cars sold in California. Given international concern for global warming and the size of the automobile market in a state of 35 million Californians, the passage of this law is nothing less than an environmental ‘shot heard round the world.’

California is not alone in responding to globalization. As other states’ populations begin to mirror California’s diversity, and as trade liberalization continues to emphasize the importance of exports and foreign investment, state legislatures are likely to delve further into the international arena. Legislatures in Alabama and South Carolina, for instance, approved many of the incentives to recruit Mercedes Benz and BMW manufacturing plants. California is also finding common ground with prominent state and provincial governments abroad. On October 10, 2002, the California Legislature and the National Assembly of Quebec signed a cooperative agreement to meet every two years on issues of common interest, such as their respective positions as states in international free trade agreements.

States cannot be expected to stay in their shells in a globalizing world. They will necessarily become more active on international issues. In cases where states may drift in the direction of their own foreign policy, the federal courts will very likely continue to be the guardians of federal authority. The federal courts have repeatedly demonstrated their ability to correct missteps where states have run afoul of federal prerogative in foreign affairs.

States, therefore, should enter this territory astutely. Abiding by appropriate protocols and the latitude afforded to states under our federalist system requires specialization not commonly found in state legislatures. International relations at the state level require new legislative institutions that understand the groundswell of interests pushing state legislators into the international arena and that are sensitive to the rightful role of a state vis-à-vis the federal government. In some cases, these institutions must create an institutional memory to safely guide many state legislators who will inevitably be inexperienced on international matters in term-limited legislatures. As example, during my tenure as Speaker of the Assembly I helped establish the Speaker’s Office of International Relations and Protocol to serve as liaison between the elected leaders of California and dignitaries of foreign nations. This Office recognizes the emerging need to build and sustain long-term international relationships that advance the cultural, economic and social interests of California constituents.

But states need not go it alone. In much the same way that the U.S. Department of Commerce assigns officers across the country to promote U.S. exports, the U.S. State Department might engage state legislative bodies to better inform and align their actions on international issues. In California, I have petitioned the State Department to assign an officer to the

(Continued on page 37)

Endnotes


4 Letter from Thomas Jefferson to Mr. Wyeth in 2 Correspondence and Miscellanies from the Papers of Thomas Jefferson, at 230 (1829).

Bio

Robert M. Hertzberg was elected to the California State Assembly in 1996, representing Van Nuys, California. He was elected Speaker of the Assembly in 2000 and served in that capacity until 2002. Due to term limits, Hertzberg returned to the private sector, where he continues to pursue issues of public policy as a partner in the law firm of Mayer, Brown, Roe & Maw, 350 S. Grand Ave., 25th Floor, Los Angeles, CA 90071-1503. (213) 229-9500. rhertzberg@mayerbrownrowe.com.
California Legislative Analyst’s Office: An Isle of Independence

By Elizabeth G. Hill, Legislative Analyst

The Legislative Analyst’s Office serves as a nonpartisan fiscal and policy advisor to the California Legislature charged with recommending ways state government can operate more efficiently and economically. It has earned a national reputation for high quality analysis and served as a model for establishment of similar offices throughout the country.

The three branches of government often experience tension in carrying out their constitutional responsibilities. The California Legislature became concerned about the balance of power over the state budget in the early 1930s. The Legislature wanted an independent source of information and analysis, directly responsible to it, to serve as a fiscal watchdog and ensure cost effective implementation of programs it established. After several failed attempts, a bill was passed in 1941 to establish such an office, only to be vetoed by Gov. Culbert Olsen on the recommendation of his fiscal office, the Department of Finance. The Legislature was not to be deterred, however, and established the office by a Joint Rule of the Senate and Assembly—giving the office the mission to “ascertain facts and make recommendations concerning the state budget . . . with a view to reducing the cost of the state government and securing greater efficiency and economy.” The Legislative Analyst’s Office in California was the first office of its kind in the nation. Throughout its 62-year history, the office has served as a nonpartisan fiscal and policy advisor to the 120 Members of the California Legislature earning the title of “an isle of independence” from a longtime capitol observer.

As an advice giver, the office is charged “to call it as we see it” or, as my academic mentor Aaron Wildavsky might have put it, the office has a mandate to “speak truth to power.” By serving as the Legislature’s eyes and ears to ensure that the money it appropriates is spent efficiently and economically, one of my colleagues has referred to us as a “cross between academics and espionage.” We use analytical tools to study how the state economy, tax system, and governmental programs work, combined with a lot of field work and listening to others to evaluate the real world implications of policy initiatives.

Office Structure

The office is overseen by a joint committee (the Joint Legislative Budget Committee), which consists of 16 Members—eight from each house. Traditionally, a Senator chairs the committee with an Assembly Member serving as the vice chair. Both the committee and the office have statutory authority in the Government Code (statutory authority was enacted in 1951—a decade after adoption of the joint rule establishing the office and the committee). This provides continuity when there is a change in either the executive or legislative leadership. Funding for the office comes equally from the Senate and the Assembly. In order to protect the office from elimination by a line item veto, the budget bill contains an appropriation of zero for the office but references the transfer of funding from each house to support our operations. Employees of the office are legislative staff, with the Legislative Analyst serving at the pleasure of the committee and the balance of the staff appointed by the Analyst. The committee does most of its work by correspondence—largely reviews of changes in the adopted budget plan proposed by the administration after budget enactment.

The success of the office is reflective of the collective talents of the staff we employ. The office recruits nationally in order to attract the best candidates. Analytical staff members are expected to have a master’s degree or equivalent experience. Most analysts have degrees in economics, business, public policy, public administration, or a related field, and have strong analytical and quantitative backgrounds. We also place a premium on strong written and oral communication skills. Each analyst is responsible for a portion of the state budget. Analysts present and defend their recommendations in public hearings held by legislative committees. In order to develop in-depth program expertise, analysts are expected to travel out in the field to see how programs work, talk with clients receiving services as well as employees delivering services, and gather first-hand knowledge of program operations in different areas of California. Given the geographical diversity of California, it is important for our staff to visit both rural and urban areas.

The office is divided into subject area sections headed by front-line managers who not only mentor and train staff, but
also provide the first level of editorial review for analytical content. Traditionally, our managers have risen through the ranks and typically are some of the office’s strongest analysts. To take advantage of their strengths, many of our managers have program responsibilities of their own in addition to their management responsibilities.

Our office has benefited from a confidential relationship with each Member of the Legislature. This has functioned much like an attorney/client relationship. This enables each Member of the Legislature to ask us to do research for him or her and respond back on a confidential basis. These “assignments” (as we call them) only become public if the requestor releases the analysis. In this way, Members have confidence that they are in charge of the information. We also have a long-standing policy regarding our analysis of legislation to ensure a level playing field. If a Member, other than the author, asks us to analyze a bill, we provide the bill’s author the analysis as well, without divulging the requesting Member’s name.

Impact On Policy Making

California’s budget process is quite accessible to the public. Executive branch budget documents are accompanied by detailed schedules. The legislative process is open to the public from initial hearings through conference committee and debate on the Assembly and Senate floors. Budget analyses prepared by our office are publicly available as well. As an institutional fiscal and policy advisor, we want not only to produce high quality, objective products, but we want them to be used to frame and influence policy discussions and to help legislators make better decisions. There are a number of ways this can occur as discussed below.

- **Critiquing.** Perhaps the most important way the office contributes to policy making is through the critical review of budget proposals and program operations. We annually produce an *Analysis of the Budget Bill* critiquing the Governor’s proposed spending plan for the coming fiscal year and making recommendations regarding spending cuts, legislative oversight, and program changes. This document becomes the agenda for legislative deliberation of the proposal. This is a “negative” type of influence in that it focuses on what does not work and forces the administration to do a better job in making its case.

- **Setting Budget Agendas.** Our annual budget analysis helps to set the legislative agenda for deliberation on the annual Governor’s budget. In order to assist the Legislature with its long-term fiscal planning, the office publishes a fiscal forecast each November analyzing the state’s current fiscal condition and projecting, on a current law basis, what the fiscal condition will be for the next five years. This independent assessment of the outlook for California’s economy, demographics, revenues, and expenditures gives the Legislature an early evaluation of where the enacted budget stands in the first half of the fiscal year. It also helps to set the budget agenda before release of the administration’s budget proposal for the next fiscal year on January 10. Given the Legislature’s appropriations role, such information is critical in assisting the Legislature with the establishment of its fiscal and programmatic priorities.

- **Neutral Third Party.** As a nonpartisan institution, the office is in a unique position to assist the Legislature in resolving various issues. For instance, the office has often been asked to perform an evaluation of a program or agency in cases where the Legislature does not trust the administration to perform the job adequately. Similarly, the office has been asked to be the Legislature’s contracting agent for major independent program evaluations which have gone out to bid to private contractors. Recently, for example, RAND conducted an evaluation of charter school operations and performance in California under a contract administered by our office. Another example of this role is the function typically played by the office during the conference committee on the budget. The office makes a recommendation to the six-member committee on virtually every item of difference between the Senate and the Assembly. Members are often looking for a “neutral” voice that can frame the issue before them, provide factual information about program operations, and offer ways to resolve differences between the two houses and/or two parties. In performing this function, it is critical that Members have confidence in our ability to “get the numbers right” and our knowledge about the state’s revenue structure and expenditure programs.

- **Statewide Ballot Measures.** The initia-
tive process is well established in California. Our office plays a key role in assisting the public with its decisions on pending ballot measures. State law requires the Department of Finance (the executive branch budget office) and our shop to prepare jointly the fiscal estimates of all initiatives before they are circulated among the voters for signature. Our estimates assist voters in evaluating whether to sign a proposed initiative petition by helping them understand its fiscal impact on state and local governments were it to be adopted.

When the Legislature places a measure on the ballot or an initiative qualifies for voter consideration, our office has the sole responsibility to prepare an analysis of the measure for the state voter’s pamphlet. Typically, our analyses explain the proposal, provide some background information to put the proposal in context, and describe the fiscal effect on the state and local governments. This document, containing both candidate and proposition-related information to assist the voters, is distributed to approximately 11 million households in California. Our office also is charged with the responsibility of advising voters what a yes or no vote means on each proposition. This has to be a neutral description in about two sentences or less. Our office was given this ballot-related responsibility nearly 30 years ago because of our nonpartisan fiscal advice function. In many respects, it is the ultimate “third party” role played by the office.

• Crosscutting Issues. Given the committee structure of the Legislature, it is often difficult for Members to deal with problems that cross different program areas. For example, alcohol-related issues may be in the jurisdiction of the budget, taxation, social services, and criminal justice/public safety committees. While the office’s organizational structure also is divided by program areas, we have been able to assemble staff teams using offi cewide resources in order to provide the Legislature with some perspective on crosscutting issues. One of the largest areas on which we have focused is the state/local relationship. This involves not only California’s tax structure but also the expenditure of state and local revenues for education, health, social services, and criminal justice programs.

• Institutional “Watchdog.” Tension will always exist between the legislative and executive branches regarding the operation of government. We try, however, to guard jealously certain legislative functions and responsibilities. For example, the Legislature uses various budgetary control mechanisms so that funds appropriated in the budget bill are spent in particular ways. An important part of our budgetary review is ensuring that the administration has complied—in both letter and spirit—with legislative intent. As a long-standing legislative organization, we have the institutional memory and history to identify issues that challenge the powers of the legislative branch.

• Policy Alternatives. Finally, the office is able to affect decisions by offering various policy and program options. For example, when states were required to revamp their cash grant programs in response to federal welfare reform in 1996, our office offered a comprehensive approach to the Legislature, which highlighted not only a recommended course of action but an assessment of program impacts and long-term fiscal effects. Similarly, the office has offered a comprehensive approach to restructuring the governance structure for K-12 education, reform of the state/local fiscal relationship, and an alternative approach to providing health care coverage for uninsured Californians. Identification of such alternatives provides the Legislature a starting point for its deliberations, as well as a framework for evaluating the range of policy alternatives to address complex policy and fiscal choices.

Achievements

The Legislative Analyst’s Office plays a unique role in a legislative environment. Unlike our federal counterpart, the Congressional Budget Office, or its sister agency the Congressional Research Service, our office is directed in statute to make recommendations. The office has been a trusted source for information and analysis throughout its 60-plus years. Even though making recommendations poses challenges for the office in a partisan environment, it provides Members of the Legislature with our best action-oriented advice. Because our recommendations come from data and analysis, we believe that they assist Members in making decisions that are more informed.

We are often asked how many of our recommendations are adopted by the Legislature. We do not track such data out of the belief that we are doing our job by getting the best information and advice we have to offer on the table and available to inform decisions. However, recommendations have a long “shelf-life” in the public domain. Even when the Legislature initially rejects our suggested action, the executive branch or other “players” in the budgetary process often embrace and push our recommendations. While we do not always “get the credit,” we take satisfaction in influencing the debate from a variety of vantage points. We also have often found that the political climate was not right to make a change in the year that the recommendation was first offered. However, as times and conditions change, our advice was taken at a future point in time. A long-range view is important in this business.

Finally, we are aware that organizations have to adapt and change with the times. Our office has reinvented itself over the years as the Legislature moved from a part-time, to full-time, to a term-limited body. We have been able to adapt, attract top-flight staff, and keep our eye on our statutory mission.

Lessons Learned

• Culture and History Matter. There are many legislative offices similar to our own across the country. A number are organized as we are, serving both houses of the Legislature. This is the case in Texas, Arizona, Utah, Wisconsin, and Iowa to name but a few. Other states employ a similar concept, but have an office serving each house of the Legislature. Michigan, Washington, and Oklahoma, for example, use the two-house model. For those states that do not have such a function and are thinking
about establishing one, however, it is critical to recognize that culture and history matter. What is the problem that an office would be trying to address? Is there a broad enough range of support that the office can effectively carry out its mission? In our own case, the office benefited greatly during our first two decades from strong leadership, access to Members, few competitors, and the time to develop extensive program expertise.

The office established strong working relationships and a reputation for quality analysis with legislative leaders, committee chairs, and Members (particularly those serving on the fiscal committees) in the early days. This history served the office well in later years as the Legislature moved from a part time to a full time body. Over time, an extensive alumni network of former employees working in the legislative and executive branches in Sacramento has facilitated information exchange and resolution of problems.

• Presentation is Important. While our office has always produced professional products, we have found in the last 15 years that it is critical to pay attention not only to the quality of our analysis but the “look” and “marketing” of our products. We cannot take for granted that our publications will be brought to the legislator’s attention when they are delivered to Member offices. Due to the limited time Members have to digest large volumes of materials across a broad range of program issues, we have found that executive summaries and graphics that tell the story with a descriptive title and straightforward message assist Members in getting to the “bottom line.”

One innovation that we initiated a number of years ago to assist the Legislature during committee hearings was the committee “handout.” The handout—a compilation of graphics and bulleted text—has assisted the Legislature’s consideration of issues and made it easier for the public to follow legislative debate.

Communicating with the press corps regarding our analyses is an important part of the marketing efforts of the office. On major budget-related publications, we hold a press availability in order to answer questions directly. Unlike many agencies in Sacramento, we have no communications officer or press contact. We operate on the philosophy to talk on the record, speak to the facts, and leave opinions to decision-makers. We want members of the press to talk to the most knowledgeable person on our staff in order to get the most unvarnished information and perspective on individual programs and budgets. We have learned to accept the notion that the world is not going to beat a path to our analytical door. As a result, we make it a priority to market our products through our Web site and contacts with the capital press corps.

• Nonpartisan Approach in a Partisan World. Many California legislators come to Sacramento with a strong perspective reflective of their district’s constituency. As such, they tend to associate closely with definable interests and groups and rely on them for guidance in dealing with policy proposals. It is understandable that Members, whose schedules are incredibly overburdened, come to rely on partisan “shortcuts” to help them make a myriad of decisions. Anything that challenges these shortcuts, as nonpartisan analysis often does, can be viewed by Members as being unhelpful or even counterproductive. Recognizing this tension is important to understanding the environment in which we operate.

Similarly, it is important to recognize the difference between policy analysts and policymakers. Analysts by training (and perhaps also by disposition) tend to be quantitatively oriented, rely on written products, and devise comprehensive solutions. Members, on the other hand, tend to be qualitatively oriented, rely on personal communication, and focus on solutions that can fix the immediate problem. Some fundamental differences exist in the way the two groups address issues and approach problem solving.

• Longer-Term Time Horizon Needed. As an institutional office, we are in a unique position to assist the Legislature in broadening its time horizon. The need for a longer-term perspective is particularly important when dealing with such capital investment issues as transportation and water. However, taxation and spending decisions have long-term implications as well. For that reason we prepare a long-term fiscal forecast that also examines demographic trends that have a direct bearing on the state budget, such as the number of Californians in their peak earning years and the number of children who will be attending school. Our job is to assist the Legislature in lengthening its planning and budgeting horizons.

Conclusion

The California Legislature launched a successful experiment in 1941 when it established the Legislative Analyst’s Office. This vision of a legislative fiscal office led to the creation of similar state offices across the country as well as the Congressional Budget Office in our nation’s capital. By focusing on our mission, we have served both the Legislature and the public.

Elizabeth G. Hill, California Legislative Analyst, serves as a nonpartisan fiscal advisor to both houses of the state Legislature. She was a CSG Toll Fellow in 1996 and named a
Term Limits in Arkansas:
Opportunities and Consequences
Art English, University of Arkansas at Little Rock

Term limits in Arkansas, as intended, have provided the opportunity for a large number of new citizens to participate in legislative life, especially those with local government experience. It has helped the minority party increase its representation. Still the consequences of term limits are a tremendous loss of legislative experience and institutional memory. Extending term limits an additional term in the state may provide a better balance between opportunity and experience.

In April 2003, the 84th Arkansas General Assembly, following one of its most hectic and disorderly sessions in the last 25 years, submitted a constitutional amendment that would extend the potential for House and Senate service from 6 to 12 years and from 8 to 12 years respectively. While the vote on the new term limits amendment will not take place until the November 2004 general election, the Assembly’s action has added more fuel to the ongoing debate over the merits of term limits in Arkansas.

It is fair to say that the Arkansas General Assembly was not a likely candidate for term limits in the first place. Arkansas has a citizens’ legislature that is required to meet only 60 days every odd numbered year. Arkansas legislators are not professional legislators. They are part-time, have other full-time vocations, and are not the beneficiaries of full time salary or extensive staff support. However, Arkansas during the last half of the 20th century has had a very senior legislature. Compared to most state legislatures its turnover rate has been low, seldom averaging over 15 percent from session to session. Senior legislators were especially dominant in the senate where power coalesced around the floor leader, the pro tempore, and those senators who controlled the rules, budget and efficiency committees. In the House, power was somewhat more decentralized around the long serving senior committee chairs and the speaker of the house as the institutional symbol and leader of that chamber.1

During the 1980’s power became more fractured in the Senate as a new breed of legislator challenged the old bulls for control. In part, the large number of senior legislators in the Arkansas General Assembly during this period may have provided fodder for the term limits movement that was aimed at professional-congressional types of legislators who were re-elected year after year. With 59.9 percent of the voters supporting a term limits amendment in 1992, which also limited constitutional executive officers to no more than eight years in office, it could hardly be doubted how the electorate felt over a decade ago. Certainly the expectation among term limit supporters was to even out the playing field for challengers, stimulate more balanced party competition, generate new blood and ideas, eliminate complacent and unresponsive legislators, and produce a more efficient and effective legislative process. Opponents of term limits responded that there would be a loss of leadership and institutional memory, members would become less rather than more responsive, and the legislative process would become more subordinate to interest groups and the executive branch. Based on 23 interviews with legislators, legislative leaders, and prominent staff members,2 coupled with observations of some fundamental legislative trends over the last two decades, this analysis is aimed at assessing some of the recent effects of term limits on the Arkansas General Assembly.

Sessions
One of the apparent effects since the introduction of term limits has been longer legislative sessions. Legislative sessions in Arkansas are constitutionally mandated for 60 days but they can be extended by a two-thirds vote of the legislature. Longer sessions have occurred prior to term limits however. In the 19th and early 20th centuries legislative sessions were commonly 90 days or more and that was certainly the case with the 84th Arkansas General Assembly, which had to confront not only severe revenue shortfalls but also the seemingly intractable problem of school consolidation. Nonetheless, the prior pattern before term limits was not characterized by long sessions. From 1953 to 1991—a total of 20 legislative sessions—only one exceeded 90 days—with the average length of session 70.1 days. However, since term limits were implemented in 1992, four out of the six and three out of the last four sessions have lasted 90 days or over with an average session length of 88.3 days, 18 legislative days longer than the average over the previous 20 sessions. One of the common themes of our interview data was that under term limits, members accelerated the introduction of legislation in the expectation that they would have less time to achieve its passage. Several of our respondents noted
that you had to hit the ground running when your entire legislative life was limited to just 180 regular session days in the House and 240 in the Senate. Among the various impacts of term limits, this was one of its most unexpected consequences.

**Bills**

Bill and act totals reflected the more frenetic and heavier “lawmaking” pace the Arkansas General Assembly has worked under since the invocation of term limits. The first session under term limits produced an increase of over 100 bills from the 78th Assembly, which suggested that perhaps some legislators were getting the quick start message and that less powerful committee chairpersons could not stop as many bills emerging from their committees. But it was not until the term limited members from 1993 began to get close to completing their terms and new members began to enter the House and Senate in 1999 and 2001 respectively that bill introductions began to increase at their most rapid rate. Two hundred more bills were introduced in the Senate in 1999 than the previous session, and there were steady increases of almost 300 bills in each of the last two House sessions from the preceding sessions.3 The increase in bill passage should also be noted, although the Arkansas General Assembly has long had a high batting average passing bills. This characteristic of the state’s political culture in combination with the more equitable distribution of power in the House because of term limits—as several of our respondents noted—is likely responsible for the increase in bill introductions and passage in the Arkansas General Assembly.

<table>
<thead>
<tr>
<th>Year</th>
<th>Session</th>
<th>Senate Bills</th>
<th>House Bills</th>
<th>Total</th>
<th>Acts</th>
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<td>629</td>
<td>1018</td>
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<td>572</td>
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<tr>
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<td>705</td>
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<td>681</td>
<td>1079</td>
<td>1760</td>
<td>1072</td>
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<tr>
<td>1989</td>
<td>77th</td>
<td>618</td>
<td>958</td>
<td>1576</td>
<td>995</td>
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<tr>
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<td>78th</td>
<td>743</td>
<td>1125</td>
<td>1868</td>
<td>1246</td>
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<tr>
<td>1993</td>
<td>79th</td>
<td>837</td>
<td>1144</td>
<td>1981</td>
<td>1319</td>
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<tr>
<td>1995</td>
<td>80th</td>
<td>855</td>
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<td>2258</td>
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<td>83rd</td>
<td>988</td>
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<td>84th</td>
<td>979</td>
<td>1906</td>
<td>2885</td>
<td>1816</td>
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Demographic and Party Change

Proponents of term limits also anticipated fundamental changes in the demographic and partisan characteristics of the Arkansas General Assembly, a legislature that for virtually all of its history was overwhelmingly white, male and Democratic. Some of these effects have taken place but not all of them can be attributed to term limits. The South has seen a rise of Republicans in state legislatures overall because of party realignment although it has proceeded at a slower pace in Arkansas. And legislative reapportionment, which has resulted in the drawing of more black majority districts, has had an effect on the larger number of minority legislators in the Arkansas General Assembly. The increased number of African-Americans, women, and Republicans in the Assembly is evident nonetheless and it appears that at least some of these increases can be attributed to the effects of term limits.

In analyzing Table 2, the big jump in the number of females in the 135-member body actually started to take place in the early 1990’s when the number more than doubled those from the 1980’s sessions culminating with the election of 22 women in 1997 and 20 in 1999 as term limits began to take effect for the 1993 members. Term limits do not seem to have had a dramatic effect on the overall number of women in the legislature since, however, as other women elected in 1995 and 1997 have been term limited and in some cases have been replaced by male legislators. However, this analysis is a bit misleading in respect to the impact of term limits on women in the Assembly. The number of women in the Senate has increased dramatically from one, for most of the last 20 years, to four women in 2001 and seven in 2003. What is interesting about the larger number of women in the 2003 Senate is that five of them have served in the House, so the effect of term limits may be more subtle than direct. Now that there are open seats in the Senate because of term limits, more women with House experience are running for them. The number of African-Americans in the Assembly however has remained flat since a doubling in their numbers took place in 1991. Term limits do not seem to have had an appreciable effect on the number of blacks in the Arkansas General Assembly and as term limited African-Americans leave the legislature, there is no guarantee black legislators will replace them.4

Where term limits in Arkansas have had a significant effect—indeed the desired impact by many who supported it—is the much larger contingent of the minority party in the Arkansas legislature and the dramatic increase of new members—turnover in other words—from previous legislative sessions. While Republicans were gaining seats in the
legislature before term limits. Table 3 documents that in 1999, when term limits first took effect, the number of Republicans increased in the Assembly by 50 percent from the previous legislature. If term limits were intended to help balance out the partisan playing field in one-party dominated legislatures, then it has helped move towards that goal in Arkansas. And while new, fresh ideas cannot be correlated with raw numbers, the increase in the number of new legislators in the Arkansas General Assembly has been extraordinary. In 1999, 61 new legislators were elected, forever transforming a senior dominated body. Consider, for example, that as recent as 1993 (the first Assembly to live under term limits) turnover was only about 9 percent. Since 1999, however, when turnover approached a remarkable 50 percent of the membership, better than a third of the Arkansas General Assembly has been new members.

**Leadership Changes**

Since the introduction of term limits, the changes that have taken place in the Arkansas General Assembly have been stunning. Once the territory of legislators in their sixties with 20 and even 40 years of service, the Arkansas General Assembly has seen an influx of young legislative leaders with few legislative sessions under their belt. Since term limits legislators with only four years of experience have chaired standing committees in the House. The 2003 pro tem of the senate is only in his second term, when the usual number of years experience for assuming that office has been 16 to 20 years. The real and symbolic effects of term limits have been even more dramatic in the house. In 2001, the speaker of the house assumed the office with just two completed terms and at the tender age of 28 years, --just half the average age of speakers of the last 30 years, almost all of whom have been in their fifties or sixties when they took office. The 1999 session speaker was only 33 when he was elected speaker. Interestingly both of these youthful leaders took early steps to combat the perceived problems of term limits. They instituted training sessions for new legislators well before the session started. They met frequently with new and veteran members to smooth the socialization process, and they worked closely with legislative staff to enhance communications, technology and procedures so that new members could adapt to legislative life as quickly as possible. The trade-off then in Arkansas has been experience versus new members. Term limit supporters have argued that new members translate into new ideas and a more responsive legislature. Those opposed to term limits point out that it is experience that is the stuff of effective lawmaking and representation.

**Recruitment and Departure**

Where have the new legislators been coming from? Where have the former legislators gone? These are important questions to ask because they help us assess whether the fundamental goals of term limits are being met. While this question cannot be fully answered because this is still an experiment in progress, the preliminary findings are nonetheless interesting and instructive.

Table 4 indicates that more new legislators seem to be coming at least with county legislative experience. County legislative districts in Arkansas are single member and county legislators serve part-time like their state legislative counterparts. The transition then to the state legislature these numbers suggest would seem to be a relatively natural one. A glance at the overall experience levels in the state legislature however, especially since term limits, would show that a large number of new legislators come with local and county government experience. They are not just county legislators but also county judges, mayors, city directors, alderman and school board members. What the term-limited legislatures do not lack is prior governmental experience. Indeed, one recent study found that 40 legislators in the 1981 session had local government experience while 66 did in the 2001 session. If anything, term limits have opened up the Arkansas General Assembly to a host of local government officials who want to be legislators.

And what of the legislators who leave?

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**Table 2 African-Americans and Women in the Arkansas General Assembly: 1981-2003**

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**Table 3 Republican and New Member Representation: 1981-2003**

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Where do they go? As Table 4 indicates, many of them run successfully for the upper house. Twenty-nine of the 2003 members of the Senate have served in the House including the 1999 and 2001 speakers, while the average number of state senators with House experience from 1985 to 1997 was a mere eight.7 Other legislators find it hard to give up public life and seek jobs in state government. Several resigned before their term was over—since they cannot come back—to take positions as lobbyists and in state government. Others give up their House term before it ends to run for the Senate. Two long-term members of the Senate have actually come back to the house when their Senate terms ended. Three recent legislators (Tim Hutchinson, Vic Snyder, Mike Ross) ran successfully for Congress while several others have tried the waters of federal elected service without success. Many state legislators who otherwise would have run for their legislative seats again have sought other public opportunities. Other legislators, however, without the right connections and timing, have seen their legislative and political careers end while they still believed they have much to contribute.

Discussion: Opportunities & Consequences

The 84th (2003-2004) regular legislative session was a frayed one. It was long and acrimonious for the most part. Some in and out of the legislature blamed term limits for its foibles. They argued that the new legislators did not know how to get along in the legislature and use its information sources. Some of our respondents added that the new legislators were not experienced enough to ask penetrating questions of the staff and executive agency heads. The press (while not supporting the extension of term limits) printed articles criticizing the more individualistic styles of the legislators who they said were more interested in pork for their districts and advancing their own electoral careers than the good of the state. In truth, much of the debate over the worth of term limits was obscured by the difficult issues the assembly was facing: consolidation, revenue shortfalls and executive branch reorganization. Supporters of the legislature cited the large number of bills as an indication of the hard work that the new legislators were doing. Interestingly, some of our respondents suggested that the legislature was a kinder and gentler one for staff, that the new legislators were more respectful and courteous than the senior legislators of the past—and more reliant on them. Other respondents pointed to the deficit of lawyers left in the Senate after term limits—the Senate known for its legal eagles that could rewrite or stop bad legislation before it became law. Overall more research will need to be done to assess whether term limits have produced positive benefits. More state analyses with more precise public policy linkages need to be looked at. For the present though it appears that the Arkansas General Assembly has accepted term limits as a part of its political system for many more years. The current constitutional amendment if approved by the people would not abolish term limits; it would only extend them to 12 years of possible service. In part the legislators that adopted this amendment seem to be saying that they can and will have to live with term limits. It has brought more people into legislative life that hopefully will have the energy and ideas to produce good public policy. While that important part of the term limits enigma remains to be more fully evaluated, it also seems fair to say that greater flexibility in term limits may be the best way to tandem experience and opportunity in Arkansas and the other state legislatures.

Endnotes

2 Interviews with members and staff of the Arkansas General Assembly were conducted by Brian Webarg of the National Conference of State Legislatures, and Art English of the University of Arkansas at Little Rock, between November of 2001 and May of 2002. The data collected are part of the National Conference of State Legislatures’ Joint Term Limits Project.
3 Bill introductions and adoptions from data compiled by the Bureau of Legislative Research of the Arkansas General Assembly.
4 Data collected from Southwestern Bell Legislative Directories and Legislative Digests from the Secretary of the Senate.
7 Data collected from Southwestern Bell Legislative Directories.

Bio

Art English is Professor of Political Science at the University of Arkansas at Little Rock where he has won excellence awards in college and university public service. Among the journals he has contributed to are the Arkansas Political Science Journal, Legislative Politics Quarterly, American Review of Politics, Comparative State Politics and State and Local Government Review, Department of Political Science, University of Arkansas at Little Rock. 2801 South University Ave., Little Rock, AR
Colorado’s Term Limits: Consequences, Yes. But Were They Intended?

John A. Straayer, Colorado State University

Colorado adopted term limits in 1990. The impacts include higher turnover and less experience in the membership, leadership, committee chairs and on the all-important Joint Budget Committee. The governor is stronger; the legislature is weaker. The lobby is a bit more influential and staff is more involved in providing procedural help. Gender and ethnic demographics have not changed. Long-term veterans who previously provided behavioral and substantive policy cues are no longer present. Political careerism is alive and well, with members seeking other elective offices or executive branch appointments.

Colorado’s legislative term limits of eight years per chamber were adopted in 1990 and thus have impacted three election cycles and every member who was in place at the time of the 1990 adoption. And the result? There are numerous observable consequences, but they are not always what term limits proponents said they wanted.

Along with Oklahoma and California, Colorado was one of the first states to adopt term limits. The measure was an initiated constitutional amendment. It passed with 71 percent approval and majorities in every county in the state. In 1994, voters followed up by imposing similar term limits on every Colorado local government as well.

Colorado now limits legislators to eight years per chamber, and members are free to move from House to Senate or vice versa and serve another eight. They may also sit out for four years after being limited, and then return.

Among the arguments advanced by term limit proponents were these: turnover would be increased, there’d be more opportunities for minorities and women, political careerism would be curtailed and legislatures would take on more of a “citizen” quality, and candidate dependence on special interest money and support would decrease. We would, in short, replace professional politicians with regular folk.

Opponents warned of dire consequences. Legislating would become amateur hour and power would flow to lobbyists and staffers. The legislatures would lose institutional memory and expertise. They would also lose independence, as the power of the executive would grow.

So, what has happened in Colorado? Many of the promises of proponents are yet unrealized, but some of the fears of opponents are too. What follows is an early assessment of the impact of term limits, based upon roughly 50 interviews conducted in 2000, two dozen more in 2002, continuous personal observation of Colorado’s General Assembly and examination of some available documentary materials.

Membership Turnover and Experience

Turnover has increased since term limits, but not dramatically. The overall level of membership experience has dropped some, more in the House than in the Senate. But perhaps most significantly, the number of members with lengthy tenure has plummeted.

In the years preceding term limits, legislative turnover hovered in the 20-30 percent range. It rose to 36 percent in 1998, 36 percent in 2000 and 26 percent in 2002 - increases to be sure, but not dramatic. The average number of years of legislative experience at the start of sessions declined from 3.85 in the House in 1967 to 2.4 in 2003, and 8.51 in the 1967 Senate to 7.0 in the 2003 Senate. Again, meaningful declines, but not dramatic. The number in the House of 65 members with six or more years of experience fell from 18 in 1997 to 8 in 2003 and in the 35 member Senate the numbers went from 18 in 1997 to 9 in 2003. The conclusion? Historic turnover patterns are such that term limits have had some, but not dramatic, impacts on the overall level of member experience.
institutional memory, transmit norms, provide role models, lead the defense of the institution, share stories of policy history and act as “policy champions” in long-term pursuit of solutions to tough policy problems – they are gone and both the institution and public suffer as a result. Further, the new and limited members rush to make their policy mark, sometimes with trivial and/or poorly thought-out measures.

Leadership

The impacts on leadership follow from the impacts on turnover and experience. The two Speakers before term limits served eight and ten years respectively. For the three pre-limits Senate Presidents the numbers were six, 10 and seven years. Just as importantly, their pre-leader tenure was generally quite lengthy, ranging from six to 14 years. Since the limits hit in 1998, the House has had three Speakers, each serving just two years and with an experience base of six years each. The first post-limits Senate President served two years after 20 years in the two chambers, the second served two years following six in the Senate and the third begins his 2003 presidency after four years of legislative experience.

The consequences? There is broad consensus that leaders, lame ducks from the get-go, are weaker. As soon as they are selected, the contest to succeed them begins, and thus the campaigns for leader slots are continuous. Contestants seek to build coalitions early and strengthen them further by wooing candidates during campaigns. Formal leaders are less important as commitments and votes are cued by the dynamics of the ongoing leadership contests. Predictability declines.

Committees

While committee membership has turned over at a rate apace to overall institutional membership change, chairmanship turnover jumped dramatically at first, then settled back. From 1993 to 1995, before term limits, five of the 10 House chairmanships and three Senate chairmanships changed hands. From 1997 to 1999, as the limits first hit, nine of ten House chairs and seven of ten Senate chairs were new. But as of 2003, eight of the eleven House chairs returned. Party control changed hands in the Senate in both 2000 and 2002, bringing in all new committee chairs. But of the 10 2003 Senate chairmen, seven have have done little to shrink experience. Some observers report weakened bill screening and some procedural disorder, mostly in the House. But that view is not universal. Questions and answers during hearings reveal less familiarity with existing statutory law and constitutional bounds, a condition linked more to overall experiential decline than to chairmanship turnover.

The Lobby

The lobby has been impacted, but not in the manner anticipated by term limit opponents. The general consensus among members, lobbyists and others is that the overall influence of the lobby corps may have grown, but not a lot. The internal dynamics of the lobby have changed, however, with a “leveling” of the proverbial “playing field.” Many long-term veteran lobbyists have seen their influence depart along with the legislative veterans with whom they had developed close ties. For newer and often younger lobbyists it has become a more open game.

Some observers argue that ethics have taken a hit. Departing legislators may be treated with less respect, there is some revisionist history with respect to decision understandings and policy, commitments are sometimes broken, candor as to both the pros and cons of bills has suffered. It appears, thus, that the impact of limits is more on the dynamics of the lobby operation than on the lobby’s clout.

Staff

Here too, the worst nightmares of term limited opponents have not been realized. Colorado’s legislators do not have individual staffers, save for scant hourly aids and office help for leaders. There is a session-only pool of clerical help and two major centralized nonpartisan staffing units. One does research and provides clerical help to committees and the other drafts the bills and amendments, reviews the statutes and advises the legislature on questions of law and constitutionality.
Before and after term limits these units were nonpartisan in both theory and fact. Their influence has grown slightly on matters of process, as they are asked more often to answer procedural questions. However, they have self-consciously backed away from the business of offering policy advice. With the vastly reduced reservoir of experience and policy history among members, the potential for more staff clout is clearly present. But so far that has not occurred.

Legislative Demographics

The predictions and hope by some term limit advocates that the departure of many long-term incumbents would pave the way to a higher proportion of women and minorities has proven illusory in Colorado. In the 1997-98 sessions, 36 percent of the membership was female and there were seven Hispanics and three African-Americans. During the immediate post-limits sessions in 1999-2000, the female percentage declined to 34. There were nine Hispanics and, again, three African-Americans. As the 2003 session began, 33 percent are women, eight are Hispanics and the African-American contingent has grown to five. So while the numbers have changed a bit, term limits have triggered nothing dramatic.

Budgeting

Term limits have had a clear impact on budgeting. Colorado has a six-member Joint Budget Committee (JBC) with its own staff of 15 analysts. Colorado has traditionally been a strong legislature state and the JBC has been its power center.

This is changing. In the two sessions before term limits hit, the six members had collectively logged 57 years of legislative experience and 28 years on the JBC itself. By the 2003 session those numbers had fallen to 27 in the legislature and just eight on the JBC. This has increased the influence of the JBC staff. Further, many of the new legislators come with scant understanding of the complex budget process and are unhap-py with their own lack of influence.

Collectively then, term limits seem to have increased the staff influence on the JBC, and the JBC’s influence within the legislature, and heightened members’ discontent with their own lack of influence. It is a stretch to attribute these shifting dynamics to term limits completely, however, as recently adopted constitutional and statutory revenue and spending limitations are additional and important factors.

“In Colorado neither term limit advocates nor opponents were entirely correct with their predictions. Turnover has increased, but not dramatically. The overall experience level has dropped a good deal in the House, but not much in the Senate.”

Institutional Power

The Colorado Legislature’s policy making latitude has been significantly constrained in recent years, primarily by constitutional revenue limitations and expenditure earmarking. But term limits, too, have contributed. The impacts which are at least partially attributable to term limits include a power shift away from the legislature and toward the governor.

Other than the central staffing units, legislators have very little help while the governor has sizeable policy and budget staffs. The diminished levels of experienced legislative staffing and informational disadvantages and the current governor has showed an unambiguous inclination to tilt the power balance in his direction.

Further, members facing term limits look for opportunities in other elective positions, or in the executive branch. In their search, the governor can help or hurt them and thus inclinations to defend the institution against the executive in circumstances of conflict sometimes diminish. Members in the governor’s party face temptations to become party loyalists first, legislators second, and this can be especially the case for newer members who have yet to internalize the need to defend the legislature within the separation of powers context.

In summary, the general consensus is that term limits are one of several factors which have tilted the power balance away from the legislature and toward the executive. This is manifest in the budget process and in the establishment of the legislative agenda.

A Citizen Legislature?

Term limit proponents may have hoped for more of a “citizen legislature,” but that’s not what they got. Political ambition and careerism thrive. Virtually none of the limited members are returning to private life. Since the limits hit in 1998, members have run for the state senate, congressional seats, local offices, become lobbyists or moved to the executive branch. In 1998, and for the first time in 24 years, Colorado elected a Republican governor, Bill Owens, and Owens has filled much of his administration with former legislators. One count shows that of the 58 members ousted by the limits in the past three election cycles, just seven have not yet sought and/or acquired another office, appointment or political position.
The Summary Picture

In Colorado neither term limit advocates nor opponents were entirely correct with their predictions. Turnover has increased, but not dramatically. The overall experience level has dropped a good deal in the House, but not much in the Senate. There is some indication that committee work is less orderly and bill screening less effective, but not all observers agree. The lobby core is changed some, but neither the lobby nor the staff has experienced the predicted major jump in power. Anyone hoping that term limits would eradicate political ambition and careerism should be badly disappointed.

The major impacts which should be of concern to lovers of legislatures are the loss of institutional memory and the power tilt toward the executive. No longer can a lawmaker work an important issue over the course of a decade, slowly but surely refining policy, educating colleagues and the relevant public, and building a winning coalition. These “policy champions” are now booted by term limits and the search for effective remedial public policy is left to the less experienced. Inexperience also leaves members vulnerable to revised and revised versions of policy history.

And as to the separation of powers, a legislature with rapidly rotating leadership and continuous leadership campaigns, which meets just 120 days each year, whose members lack the individual staff which the governor possesses, and with many members who have little legislative experience and many more looking at the executive branch as one way to extend a political career, is vulnerable to executive dominance. Colorado’s governor is not yet king, but the General Assembly is wise to guard its flank.

Bio


Robert M. Hertzberg

(Continued from page 25)

Assembly. The benefits would be reciprocal. The State Department might be better informed of actions at the state level that may have international effects or consequences. A State Department liaison to key state legislatures might also aid adherence to federally negotiated treaties. In the case of the Vienna Convention, for example, little had been done on the part of federal authorities to ensure that California law enforcement authorities were trained, informed and observing the requirements of the Treaty prior to the state’s 1999 law.

Conclusion

The lessons of my experience as Speaker in California point to five general principles that should guide state legislators contemplating action in the international arena. First, state legislators must understand the legal parameters of state action with full respect to the federal government. The separation of powers on international matters that in many cases limit state action has proven to serve the best interests of the nation and states. Second, my colleagues in other states should not shrink from the fact that the prosperity of their local districts is inextricably linked to world markets. Rather, they should be as prepared to act appropriately on international issues of local importance as on traditional matters of education, work force preparedness and health care. Third, local districts are first and foremost interconnected to the world by people. These constituents are more likely to care about state legislators’ attention to international interests, especially in the “post-9/11 era” where the world seems smaller than ever. Fourth, legislators should realize that their everyday decisions might not be limited in their consequences to the boundaries of their state. State decisions often command international attention and have global implications. Finally, for many legislators this is new and uncertain terrain. Legislatures desperately need to develop professional institutions capable of responding appropriately to international interests rooted in local communities.

“My own general idea was that the States should severally preserve their sovereignty in whatsoever concerns themselves alone, and that whatever may concern another State, or any foreign nation, should be made part of the federal sovereignty.”4 Thomas Jefferson’s wisdom on the role of states in foreign affairs endures. State and nations, however, must operate in a very different world than that of our founding fathers. Ours is a world where isolation on international matters is an increasingly difficult option for states because the local is more international than it has ever been. It is with unqualified respect and deference for the ideals of the founding fathers - ideals that have aligned the interests of state with nation for over 200 years - that states will move into foreign affairs in a manner that meets the challenges of globalization but does not undermine or attempt to undo
The Rise of the States:
Evolution of American State Government


In every decade throughout the 20th century, state government continued to meet new challenges and evolve into an institution with expanded roles and modernized structures. Jon C. Teaford challenges observers who believed that states were dead or would die during the 20th century in his book, The Rise of the States: Evolution of American State Government. Teaford identifies the evolutionary trends in state government and argues that the so-called "resurrection" of state government in the last few decades of the century was exaggerated. Teaford outlines the century-long rise of state government – a development that was often overshadowed by other events such as war, economic depression and foreign policy. This book follows the ever-changing nature of state government as it responded to the challenges of centralization, efficiency and professionalism throughout the century.

Readers will find a thorough description of the “new era” in state government that arose during the late 19th and early 20th centuries. In this period, state governments responded to the need for more centralized control in many areas. The idea of localism was declining, as municipalities found it hard to handle issues such as utilities, workers compensation, roads and schools with any efficiency. Therefore, state governments moved toward the creation of state administrative agencies to oversee such programs. In order to finance these increasing state programs, states were forced to find new methods of raising revenue instead of relying solely on property taxes. They responded with efforts to reform their tax structures. Tax commissions were born and states were looking into what Teaford calls, “the greatest contribution of the state tax reform” – the income tax.

The cries for efficiency and professionalism led to state government restructuring during the first few decades of the century, according to Teaford. He discusses efforts to eliminate duplicate boards and commissions, the institution of the initiative and referendum process and the creation of legislative reference services, a movement led by Charles McCarthy of Wisconsin. These services, which offered expert staff to aid state lawmakers, were born out of the need to instill professionalism into the state legislatures. Teaford also touches on state government and its adaptation to the automobile age. While states were given federal aid for highways, they were very much in control of all aspects of construction and maintenance. States responded to the increasing demands of motorists with more roads. To finance these endeavors, states began experimenting with license and registration fees along with taxes on gasoline.

The book next discusses how the 1930s have long been known as the period in which the federal government succeeded, while the states failed. However, contrary to this belief, Teaford shows that state governments responded creatively to the tough economic times with policy changes, reforms, a rapid increase of centralization and an emphasis on expertise. Centralization was key during this time in history of state government. States took control of such things as relief for the unemployed and schools, as many localities were unable to handle them. Interstate cooperation was perhaps the creative highlight of state government during this time. States were willing to work together to gain expertise and keep their place in the federal system. A key figure in this movement was Henry Toll, a senator from Colorado who founded The Council of State Governments. Various interstate conferences took place during this decade as well, promoting the importance of interstate cooperation. The book concedes that the federal government’s role was also expanding at this time; however
states did not passively sit back and watch as some observers have suggested.

The reader will find interesting commentary about state government in the 1950s and 1960s. The author argues that during this period, state government was overshadowed by America’s obsession with foreign policy and national defense. States quietly continued their long-term expansion and reform in all three branches during these decades. The executive branch continued to centralize functions, especially in the area of education (due to the influx of school-aged baby boomers), while the legislative branch experienced a movement toward more frequent legislative sessions, better pay and more staff. Teaford also mentions the judicial branch and its movement toward a more modern and unified court system.

The book presents the argument that while states emerged as prominent players during the 1970s and the closing decades of the century, the reforms that were taking place were not new. The difference in this period was the perception of state government. Because of events such as the Vietnam War and Watergate, the federal government was perceived as weak. Teaford makes the point that the “quiet revolution” of state government, which had been taking place since the 1890s, was finally being recognized. All three branches of government continued to see reform and states continued to create new means of financing the reforms, mostly through taxes.

In the 1980s and 1990s state government enjoyed its continuing popularity. An increase in two-term governors was a trend, along with a new found confidence in state legislatures. Teaford argues that Americans were frustrated with the ineffectiveness of the federal government and were more willing to rely on states. However, state governments still had their critics. A rise in the direct legislation through initiatives showed that some still lacked faith in their elected officials. It also was a movement in contrast to the idea of professionalism in state legislatures, an idea embraced by political observers, yet seeming shunned by the public. States were not really affected by this movement as they continued to put more money into education, highways and other areas important to their citizens.

In the end, Teaford’s argument that states and their leaders were never really irrelevant in American government, no matter what history tries to portray, is presented well. He does a fine job of showing the successful progression of the states throughout the 20th century. The detailed evolution of the rise of state government presented in this book makes a strong effort to prove that those who predicted the death of state government were indeed mistaken.

Reviewed by Heather Perkins, Associate Editor, Spectrum: The Journal of State Government.

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