



**Written testimony before the Select Committee on the Modernization of Congress
United States House of Representatives**

**“Rules and Procedures in the U.S. House of Representatives: A Look at Reform Efforts and
State Best Practices”**

Dec. 5, 2019

Natalie Wood

**Director, Center for Legislative Strengthening,
National Conference of State Legislatures**

Mr. Chair, Mr. Vice-Chair and Members of the Select Committee:

The National Conference of State Legislatures (NCSL) is the national, bipartisan organization serving all state legislators and legislative staff. Our mission is to strengthen the institution of the legislatures, provide connections between the states and serve as the voice of state legislatures in the federal government. NCSL provides unbiased and comprehensive information to help legislators navigate complex policy issues. Thank you for inviting me to provide NCSL’s perspective on state legislative rules and procedures and their potential to result in collaboration and a spirit of bipartisanship among members.

As Director of NCSL’s Center for Legislative Strengthening, I offer expertise on how legislative institutions work, how they function as workplaces, and on the elected officials and staff who work within them. I am honored to be here speaking today about this crucial topic, because collaboration and bipartisanship are central to NCSL’s mission and the services we provide to state legislators and staff.

We like to employ an old adage at NCSL: “If you’ve seen one legislature, then you’ve seen one legislature.” While each of our country’s state lawmaking bodies have similar structures, powers, functions and responsibilities, they are diverse and distinct in their operations and traditions. Students of state legislatures can look no further than parliamentary procedure, custom and practices for proof.

Parliamentary rules and procedures govern group decision-making in legislative chambers. We often describe them as “tried and true.” Parliamentary procedure is not imposed on a legislative body. By constitution, each of the 99 state legislative chambers is granted the right to adopt its own rules. Importantly, recent NCSL research on political polarization finds state legislators believe different aspects of rules and procedures can mitigate it. Thus, this aspect of

state legislative institutions is a rich place for the Select Committee to mine for ideas as it contemplates its own rules.

My testimony will focus on four main topics related to collaboration, bipartisanship and efficiency: how legislative chambers use rules, custom and practice to:

1. Manage time.
2. Structure committee work.
3. Institute decorum.
4. Build relationships.

The information presented here is a combination of decades of NCSL research and study on the legislative process, a study we released in 2017, [State Legislative Policymaking in an Age of Political Polarization](#) and anecdotes and interpretations given to us by legislators and principal parliamentary officers.

Use of Time

Nine legislatures resemble Congress in that they can come in and out of session throughout the year, but most states have constitutionally required session adjournment dates. The average state legislative session lasts 120 calendar days. When comparing themselves to Congress, state legislators cite requirements limiting session length as an advantage that forces efficiency.

Whether meeting for only 60 days or for more than six months, all legislatures experience a crunch of activity as the session draws to a close. It is important for legislatures to make optimum use of session time and to dispose of business in a prompt, organized manner. NCSL recommends that legislatures:

- Manage the overall flow of work, so that use of early session time is maximized.
- Plan the time spent in floor debate to expedite each day's business.
- Minimize time spent on non-controversial matters.

Deadlines, calendars and schedules help legislatures achieve these goals.

Deadlines. Most state legislatures, even those that spend nearly as much time in session as Congress, use deadline systems. The deadlines are usually written into the rules, specify dates by which bills must be introduced, time requirements for committees to act and appointed times for each house to complete consideration of bills. Three-quarters of the state legislative chambers employ deadlines. These provisions typically include deadlines for bill introduction, committee action, action by the house of origin, action by the second house and conference committee actions. Examples can be found in California, Florida and Wisconsin, which establishes a working schedule for its biennium.

NCSL's research finds that while there is variation in how those deadlines are enforced, they provide a discipline and rhythm to the process and enhance inter-chamber collaboration.

According to legislators in Minnesota, deadlines are beneficial, as they “keep the process flowing.” In Tennessee, the Senate has a deadline system, but the House does not. A Senate leader commented to NCSL that this system puts pressure on the House to work toward compromise. That said, deadlines don’t exist in a vacuum. Cooperation between the chambers, direction on the part of leaders and discipline on the part of members affect their efficacy.

Calendars. State legislatures also employ calendaring and scheduling strategies to create predictability and minimize, as much as possible, legislative conflicts for members.

Almost every legislature has a calendar system to organize its business. How the calendar is set and who controls it determines the priority of legislation for action and debate. There are different philosophies regarding the calendar. One perspective holds that the calendar must be strictly controlled by leadership so that important bills are not delayed by less critical measures. An opposite viewpoint argues that legislation should come up for debate in a fair and expeditious fashion, unimpeded by the priorities or preferences of one or two legislators. Reflecting these opinions, there are three general methods to calendar bills for floor debate.

1. An automatic calendar, where bills are listed automatically in numeric sequence, alphabetical order by committee name or the order reported from committee.
2. A specific order is set by the presiding officer or another individual leader.
3. The priority is determined by a calendar, rules or management committee.

Over the past 30 years, NCSL has observed chambers moving away from automatic calendaring to an approach where leadership or a committee sets the calendar.

Schedules. It is rare for a state legislative chamber to allow standing committees to meet while floor session is occurring. This preserves time for members to focus on the “homework” of serving on a committee while also ensuring they can be on the floor for debate and voting. Many chambers establish what they call committee schedules – for example, a structure with “a”, “b,” and “c” committees, with a member assigned to one of each. Those committees are given a specific time, day and place to meet, none of which overlap. This organization avoids conflicts in committee membership and schedules. Examples can be found in [Colorado](#), [Michigan](#), [Minnesota](#), [Oklahoma](#) and [Washington](#).

Use of Committees

According to Thomas B. Reed, noted parliamentarian and former speaker of the U.S. House of Representatives, “The committee is the eye, the ear, the hand, and very often the brain of the assembly.” Legislative committees are the central vehicles through which legislation must pass for scrutiny, debate and modification and, at the state level, serve as the major access point for direct involvement by citizens and interest groups, providing a formal opportunity for input into the legislative process.

NCSL asserts that empowered committees that deliberate effectively and make efforts to incorporate minority party ideas can mitigate the effect of polarization on policymaking in state

legislatures. Committees are particularly effective when leaders give them the freedom to negotiate and act. For examples of what this can look like, our polarization research cites legislators from Iowa, Minnesota and Virginia, who discuss a structure with empowered committee chairs and communication and coordination with leaders.

Connecticut, Maine and Massachusetts use joint Senate and House committees. Legislators in Maine praise this system, which has worked under both unified and split party control, for its ability to facilitate negotiation and bipartisan compromise. (Legislators in Connecticut report being similar satisfied, but those in Massachusetts' Senate express frustration that it gives more power to the House, as they have more votes in committee.)

Another model which historically has resulted in bipartisan cooperation are joint budget committees, examples of which are found in Arizona, Colorado and Wisconsin. In Colorado, the House and Senate each elect three members to the Joint Budget Committee. The chairmanship rotates annually between the two chambers. The committee operates under a practice that it does not recommend a budget bill, which it also develops, unless there is unanimous support among its six members. This gives minority party members considerable influence over the budget. The committee never adjourns, as it has power over funding decisions in case of emergencies between legislative sessions, and service on the committee is a full-time commitment. Members of both parties view themselves as a team and function as a built-in consensus building committee for the legislature.

Conference committees, often called "the third house" in state legislatures, seek to resolve conflicts between the two chambers on the same bill. NCSL's research finds they may provide opportunities for collaboration, although the degree to which this happens in the public eye differs from state to state.

About 20 percent of the 99 state legislative chambers have a requirement that all bills be heard in committee. Legislators in Colorado, Maine and Tennessee mention these provisions as a matter of fairness to minority party members and an opportunity for legislators to demonstrate to constituents that their concerns have been heard. In some chambers, bills must be reported out of committee (it is not a required that a positive recommendation be given). In the New Hampshire House, for example, the chamber must vote on every single bill. According to staff, this process increases transparency and accountability to the public.

In many chambers, the minority party can give formal input into committee membership. About 40 of the 99 chambers allowed the minority party to appoint, advise or approve of minority party members in committees. At least a quarter of the chambers use proportional representation, which provides equitable party balance, on their committees.

Use of Decorum in Debate

Rules that ensure decorum in debate exist to safeguard the rights, privileges and obligations of all members; to provide them with equal opportunities to be heard; to ensure fairness and good faith among them; and to promote full and free discussion of issues. Within the legislative environment, [decorum](#) relates to “the proper order, etiquette and conduct of members during a floor session.” Parliamentarians generally agree that debate should not be overly personal. As a result, most legislative assemblies have adopted rules of decorum that place focus on the issue being discussed, not the person speaking. NCSL recently published a [brief](#) on the importance of decorum in debate, the major points of which are outlined below.

Controlling debate. It is essential that deliberative assemblies conduct debate in a manner that protects the rights of individual members to be heard yet is efficient. Legislative chambers may control debate through:

- Recognition—which member may speak.
- Frequency—how often a member may speak.
- Length—how long a member may speak.
- Location—from where a member may speak.
- Language—what a member may say.

Decorum in debate. Rules addressing decorum can take several forms. Legislatures commonly use the following strategies:

- Members should not refer to each other by proper name. Instead, legislators may be required to address each other by district number, geographic area, county, city or other respectful title. For example, 2017-2018 Missouri House Rule 85 requires a member to refer, as appropriate, to other members as “Lady,” “Gentleman” or “Representative.” According to parliamentarian Alice Sturgis, this practice serves as a reminder that a legislator is speaking not as an individual but as a representative of a constituency.
- References to the other chamber, executive branch, judicial branch or their actions are not permitted. According to Mason’s Manual of Legislative Procedure, such references are “inconsistent with the independence of a legislative body.”
- Indecent language and disorderly words are prohibited. For example, 2017-2018 Alabama House Rule 50 directs members to “be mindful that children are often present when the House is in session” and to “never use language that is profane, tasteless, vulgar or morally crude.”

South Dakota Joint Rule 1B-1 offers another example of why decorum is important:

“The people of South Dakota require that their legislators maintain the highest of moral and ethical standards as such standards are essential to assure the trust, respect and confidence of our citizens. Legislators have a solemn responsibility to avoid improper

behavior and refrain from conduct that is unbecoming to the Legislature or that is inconsistent with the Legislature's ability to maintain the respect and trust of the people it serves. While it is not possible to write rules to cover every circumstance, each legislator must do everything in his or her power to deal honorably with the public and with his or her colleagues and must promote an atmosphere in which ethical behavior is readily recognized as a priority and is practiced continually, without fail."

Rules Which Can Encourage Bipartisanship

Anecdotes and observations shared with NCSL suggest the following rules may encourage member collaboration and legislative effectiveness:

- Single subject rules for bills and strict interpretations of germaneness. Forty state constitutions contain provisions that require a bill to address or contain a single subject. Three-quarters of them have rules about the germaneness of amendments and motions.
- Balanced budget requirements, which are [required](#) by constitution or law in all states, save Vermont, which in practice operates as if it has a requirement.
- Requirements, either in constitution or rule, that a bill be printed and/or available to all members.

Chamber Custom and Practice

Customs, practices and traditions also offer examples of how members seek to strengthen relationships through the legislative process.

Cross chamber collaboration. Colorado's rules allow "joint co-prime sponsors" of bills rather than requiring only a single prime sponsor. In the Colorado General Assembly, a majority party leader and his minority counterpart made a pact early in their careers to cosponsor at least one bill each year. They continued this tradition when majority party control flipped. Often, members from the opposite chamber agree to co-lead on a bill and shepherd it through their respective processes.

Rules of "no surprises." When faced with a tied chamber several years ago, the Washington House implemented a "no surprises" rule. It required transparency with the members regarding rules of procedure and that leaders be open about their plans. Members regarded the rule as so successful that they have continued the practice, mentioning the assurance it provides to the minority party that they will be treated fairly.

The Maine Senate operates in a similar fashion: the majority caucus usually communicates with the minority caucus to give them information and expectations about the day's floor procedure (e.g., what items will be taken up, what report will be moved, if something will be tabled, and if a roll call will be requested). Conversely, the minority party usually shares information about their expected strategies (e.g., if they will request a roll call vote, if they would like to table an

item, or if they would like to take something up out of order). While anything can change during session, the practice provides a baseline understanding of what to expect when members enter the chamber.

Memorandums of understanding (MOU). In 2013, following a contentious and volatile biennium, Wisconsin's Assembly majority leaders negotiated a memorandum of agreement with the minority, rather than attempting to change the rules, regarding allocation of time on the floor. According to the terms of the agreement, the top leaders from both parties meet privately before every legislative session day to agree on time limits for debate. Another MOU was adopted in 2015 with new provisions covering consideration of legislation and committee work. [Analysis](#) from Wisconsin staff and feedback from members indicates the agreements have accomplished important goals: The Assembly works on a more predictable, efficient schedule, sessions end earlier, members get to go home at a reasonable hour and citizens have an increased opportunity to follow legislative work. The Assembly's practice is to continue operating off the MOU system.

Seating arrangements. Several chambers use [seating arrangements](#) that intermix members, regardless of political party. Alabama, Connecticut, Iowa, Maine, Massachusetts and Tennessee are among the states that use variations of this strategy. In the Connecticut and Massachusetts Senates, seating is [in the round](#), so all members can see each other. According to the Speaker of the Maine House, the mixed seating changes debate, in that it encourages "more respect and more civility in how (members) talk and when arguing for their position...they feel accountable to the people they're arguing against."

Presentation and passage of a first bill. The Illinois Senate reports a tradition of using humor to acclimate new members to the body when they present and pass their first bill. When a new member presents their first bill on the floor, he or she is asked lots of tough questions – most of which are meant to be creative and silly. When the vote is finally taken every member votes "no." Slowly everyone goes back to "yes" and all get a good chuckle. When a member passes his or her first bill, the floor vote roll call sheet is circulated among all the members to sign and is presented to the new member.

Other committee-related strategies. In Connecticut, the minority-lead member in some committees may preside over a committee meeting as a gesture to encourage a positive working relationship. California, Pennsylvania and Texas are among several other states with a practice or rule of allowing a minority member to serve as a committee chair or vice chair. For over 40 years, Nebraska's unicameral chamber has held the vote for committee chairs by secret ballot on the chamber floor – one hoped-for consequence being that it encourages members to think critically about who is most qualified to be chair. A committee chair from Washington holds weekly meetings with the ranking minority member and makes sure that every member of the committee, Republican or Democrat, has a bill favorably reported out of committee.

Indications Rules May Need to Change

NCSL advises state legislatures that a rule is as good as it is helpful to the organization or its members and as bad as it impedes the accomplishments of the organization or its members. Chamber rules should reflect actual legislative practices. Indications that rules may need changing are:

- Frequent suspensions of a rule or rules.
- Frequent points of order because a rule is confusing.
- Multiple interpretations of a single rule.
- Frequent references to precedents or custom and usage.
- Frequent use of a chamber's parliamentary authority.

Revisions also may be triggered by:

- Changes in legislative structure.
- Switches in party control or changes in leadership.
- A desire to streamline or open the process.
- Using technology to increase efficiency.
- Public dissatisfaction.

NCSL's polarization analysis highlights that legislators believe the fair and consistent application of rules builds trust. In congressional lingo, this is the equivalent of the "regular order"—an assurance, especially as a matter of fairness toward the minority, that rules and procedures will be followed consistently. And, as with Congress, in the few instances NCSL observed it in its field work, the practice of legislative leaders taking advantage of the power of the majority to change or ignore rules engenders distrust between majority and minority parties and exacerbates the effects of polarization.

Parliamentary procedure is not an exact science. It is based on decisions or judgments made by human beings. As a result, parliamentary practices vary greatly from state to state and even from chamber to chamber. Each legislative assembly illustrates the unique character that is created by blending numerous individuals within different political environments. So, what may be right for one legislature, may not be right for another.

In the words of Edward Burdick, former long-time Chief Clerk of the Minnesota House:

"The vitality of government flourishes when public officials continually seek to better the institutions they serve. What's essential, however, is a willingness to look for weaknesses or to identify processes to be revamped. Otherwise, policymakers end up trying to operate modern legislatures with old rules and procedures."

Thank you for the opportunity to appear before you today. I am happy to answer any follow-up questions you have.