

Memorandum

To: Advisory Committee on Legislative Process

From: Attorneys in the Legislative Commissioners Office

Date: October 15, 2004

Subject: Recommendations Regarding Legislative Process

This document contains the recommendations by the attorneys in the Legislative Commissioners' Office about the legislative process. It results from the request, by memorandum dated September 22, 2004, from Senator Joseph Crisco and Representative Melody Currey, chairs of the Legislative Process Advisory Committee, addressed to all legislative staff, requesting input on ways to improve the legislative process.

The attorneys in the Legislative Commissioners' Office met weekly for several months to discuss issues concerning the legislative process and develop recommendations that we believe might enhance the process.

Based on the mission of the Legislative Process Advisory Committee, this submission assumes that a key goal of the Advisory Committee is to help ensure that public policy is shaped primarily in committees, where public input and in-depth knowledge by committee members leads to extensive substantive debate and consideration of the alternatives in the public spotlight. (This has been called by some as restoring "power" to the committees.)

We believe that although the process in Connecticut is fundamentally sound, it would benefit from some refinements to achieve the goal. We have two types of recommendations, those that directly affect our office that we believe would make the process better; and those that we believe would further the cause of democratic representation.

COMMITTEE PROCESSES:

1. Possibility of Consolidating Committees -- Data To Be Considered

Discussion:

The potential benefits to the legislative process of having fewer committees are known to the Advisory Committee, and we will not repeat them here. Our recommendation relates only to the type of information that the Advisory Committee rely upon if you decide to review the comparable workloads of the various committees for the purpose of making these reductions.

Recommendation:

We recommend that for the purpose of weighing the comparable workloads of the various committees, the Advisory Committee consider primarily raised and committee bills, rather than including the number of proposed bills. Compared with raised and committee bills, the number of proposed bills is huge, which skews the total numbers and seriously distorts comparisons and trends in the actual workload of each committee. In addition, there are many duplicate proposed bills, especially on topics for which lobbyists circulate draft language to legislators.

2. Referrals Off Floor to Committees:

Discussion:

The practice of referring many bills to a succession of committees, even when the connection between the committee and the bill is negligible, creates a number of problems. It creates confusion among legislators and the public, leads to votes in the successive committees that are often not based on knowledge of the issues, removes authority from the committees of cognizance that crafted the bill, etc.

In addition, and also very important to those who believe in giving more authority to the committees, the practice of multiple floor referrals is a deterrent to moving JF deadlines later in the session. Later JF deadlines would give the committees of cognizance more opportunity to debate policy and craft proposed legislation.

Finally, if this practice of multiple floor referrals results from a desire for other committees of cognizance to review and refine the bills, that doesn't seem to happen since the succession of committees routinely JF the bills.

Recommendation: We recommend that floor referrals be limited to committees that have a substantial connection with the subject matter of the bill.

3. Committee Staffing:

Discussion: The frequent turnover of clerks and limited training for new clerks sometimes results in errors in some of the critical processes for clerks, such as their missing hearing notice deadlines, incorrectly listing bills for hearings, having bills die for failing to file them with LCO when required, and poor service for committee members, such as the inability to prepare meeting agendas or maintain a committee bill logs.

Recommendation:

- (1) Provide for the central administration of clerks so that someone is responsible for ensuring that the committees' needs are met;
- (2) Give that administrator the authority to shift personnel among committees as needed. For example, after a committee's post-JF deadline work is completed, the administrator might reassign its staff to a committee with a later JF deadline;
- (3) Expand the current training program for clerks before and during the session, which would commence sufficiently before session begins so the clerks are prepared for the session;
- (4) Establish a formal mentoring program for clerks, in which each new clerk is paired with a committee administrator or experienced clerk who would provide guidance and be available for questions; and
- (5) Add committee administrators for large committees that do not have them, such as GAE.

4. Bills in Committees -- No Action on Raised Bills

Discussion: A committee's vote to "raise a bill" entails an expectation that the bill will be drafted and will have a public hearing in that committee. If the committee changes its mind and decides not to proceed, some committees take no further action, which leaves a gap in the record that is confusing to the public, as well as to legislators and legislative staff.

Recommendation: The rules should include either a process for committees to "unraise" a bill, or a requirement that the minutes of a committee meeting reflect that the committee has decided not to hold a hearing or otherwise proceed on that bill.

5. Committees Raising Bills Outside Their Cognizance

Description: When a committee raises a bill outside its cognizance, there are several ramifications. One is that potential public policy may be crafted by members who do not necessarily have expertise in the subject of the bill, contrary to the design of the committee system. Another is that this practice tends to lead to multiple bills on the same topic in various committees, which is very confusing for the public, causes them to have to come to the LOB more than once on the same topic, and therefore impedes the public's participation in the process.

Recommendation: We recommend that committees raise bills only within their cognizance and that a method to enforce this restriction be imposed.

6. Order of Testimony -- First Hour of Hearing

Discussion: The Advisory Committee has already raised this issue, and there has been a great deal of testimony on it before the Advisory Committee. In addition to the factors already considered by the Advisory Committee, we want to point out that some committees apparently believe that they may continue having public officials testify after the first hour despite the prohibition in joint rule 6(c)(ii), because joint rule 6(c)(i) gives leeway to the chairs to determine the order of testimony.

Recommendation: We recommend that it be made clear to the committees that the leeway in joint rule 6(c)(1) does not override specific restrictions concerning hearings in the joint rules.

7. Notice of Public Hearings - One Particular Issue

Discussion: There is one particular problem that we believe needs to be addressed. For a hearing on a Tuesday following a Monday holiday, a notice now needs to be in only two Bulletins: the Friday before and the day of the hearing. We question whether this provides sufficient notice to the public.

Recommendation: We recommend that the rule requiring five days' notice be qualified by requiring the notice to be in at least three published Bulletins.

8. Hearings on Days With Inclement Weather

Discussion: The joint rules are silent on what happens to a scheduled hearing in inclement weather. Joint rule 6(c)(v) governs the recessing of hearings that have been convened. The joint rules do not permit a committee to cancel a meeting before it is convened unless the State Capitol is "officially closed". Also, the absence of specific reference to inclement weather in the joint rules leaves most committee chairs and legislators confused about how to proceed or what to expect on snow days on which hearings are scheduled, and the public may be similarly confused.

Recommendation: We recommend that a joint rule be added that specifically addresses situations of inclement weather. We also recommend that the Legislative Bulletin include a method for the public to find out whether a public hearing has been cancelled -- perhaps a call-in number that has a recorded message.

9. Resources for Bill Review in Committees

Discussion: Because of the large volume of bills, it is nearly impossible for every legislator to read every bill that is referred to his or her committee and understand all its implications. On the House and Senate floor, a bill analysis and fiscal note is required for every bill. Some committees have adopted this approach and have arranged for bill summaries and fiscal notes. Legislators appear to find these resources extremely valuable. Also, these processes mean that more staff members do critical evaluations of bills earlier in the process, while public policy is being crafted in committee.

Recommendation: We recommend that a preliminary bill analysis and preliminary fiscal note be prepared for committee members for at least each bill that is scheduled for a JF vote.

10. Committee Meetings - Keeping the Vote Open

Discussion: Keeping the vote open is a relatively new phenomenon and is not generally permitted under parliamentary law, since the idea is that voting on proposed public policy should be limited to those who are present for the debate on that proposed policy. Keeping the vote open only for those votes that do not change the result is a particular concern since it could give effect to the votes of some members but not others. Because the rules do not contemplate that votes would be held open, there is much confusion about the extent to which this practice is permissible.

Recommendations: We recommend that (1) votes not be kept open, but (2) if the practice of keeping votes open does continue that guidelines for its usage, including appropriate restrictions, be added to the joint rules.

11. Notice of Hearings:

Discussion:

Under the current process, the committee clerk, after getting signatures on a raised bill, files it with the House or Senate Clerk. The bill is then held for one day while the offsets are being printed, and, on the next day, it is submitted to the Bulletin Clerk for inclusion in the Bulletin. With the public seeking more notice of public hearings, we believe that this "lost day" could be put to use.

Recommendation:

We recommend that when a bill is filed with the House or Senate Clerk, it be available for filing with the Bulletin Clerk that same day. The bill would then be printed over night on the same night that the Bulletin is printed and be available in offset to the public at the time the Bulletin is available to the public.

CHAMBER PROCESSES:

12. Late Night Sessions

Discussion:

Members of the Advisory Committee and others have commented on the late night sessions, and there has been discussion about the impact on legislators and the public. We would like the Advisory Committee to be aware of the challenges this situation imposes on staff.

In the case of the Legislative Commissioners' Office, we have had situations in which the House took up major legislation one night, through the night until morning, and the Senate took up that same legislation the next night, through the night until morning. On one such occasion, for example, the LCO attorney who had prepared the bill arrived at work on Thursday at 8:30 AM and was not able to get any sleep until Saturday after the Senate adjourned at about 6:30 AM.

That situation is not tenable, is unhealthy, and could lead to car accidents on the way home. It also leads to legislation that is poorly thought out and contains errors.

Even in less extreme circumstances, often, after a chamber adjourns, staff is expected to stay through the night to prepare for the next day and then still be at work the next day. In the heat of the session, the essential health needs and safety of staff may be forgotten or put on the back burner.

Recommendation: Staff expect to work long hours during the session, but we believe there needs to be a greater awareness of the dividing line between long hours and an unhealthy and unsafe working environment.

13. Amendments That Raise New Issues

Discussion: Based on what we believe the Advisory Committee's goal to be regarding the shaping of proposed policy by committees, as described on the first page of this memorandum, the process of having an entirely new concept raised as an amendment to a bill does not satisfy that goal.

Recommendation: We recommend that a process be developed to encourage a public hearing for all concepts. Some alternatives are:

- ◆ Prohibit amendments on topics that have not had a public hearing;
- ◆ Refer any bill that has been amended on a topic that has not had a public hearing to the committee of cognizance for a public hearing and vote before further action on the floor;
- ◆ Prohibit amendments that (1) create new crimes, (2) increase or decrease penalties of existing crimes, (3) create a new tax, or (4) increase or decrease the rate of an existing tax, if the concept has not had a public hearing; or
- ◆ Refer any bills that has been amended to create a new crime, change a penalty, create a new tax, etc, if the concept has not had a public hearing, to the committee of cognizance for a public hearing and vote before further action on floor

14. New Amendments Only to Add Sponsors

Discussion: Many amendments are called in for the sole purpose of adding sponsors. This bogs down the amendment-creation process. Sponsors may be added at the Clerk's Office, but although doing so adds the sponsor's name to the amendment on the computer system, the name doesn't appear

on the face of the amendment and therefore is viewed as less desirable than a new amendment.

Recommendation:

We recommend that (1) the introducer and all other sponsors of an amendment appear on a new last page of the amendment, instead of the first page, (2) additional sponsors be added by the Clerks' offices and (3) after such addition, a print-out of the amendment on-line by any person include the updated list of sponsors. This would entail changes in the documents, changes in the processes, and changes in ITS programming.

This recommendation would need a staff work group to (1) consider the ramifications, including the fact that two copies of the same amendment with the same LCO number could have different sponsors and therefore not be identical documents, which is a significant change in the way amendments are viewed by legislators and staff, and (2) develop the processes to accomplish this recommendation. This work group would need to include LCO, caucus personnel, the House and Senate Clerks' Offices, and ITS. The group would complete its work during the 2005 interim in time to have the new process available for the 2006 session.

15. Exceptions to the Time Restrictions on Filing Amendments

Discussion: The joint rules provide a deadline for amendments to be filed on any session day, but allows an exception if approved by leadership. These exceptions are routinely granted, which has resulted in numerous amendments being called in at the last minute, sometimes even while the bill is being considered. This may not be a concern for minor technical amendments, but when key concepts are involved, it can lead to legislation that has not been thought out.

Recommendation: We recommend that the deadline for filing amendments be adhered to and that any exceptions to permit last-minute filing be granted sparingly.

INTERIM

16. Use of Interim for Legislation

Discussion: Complicated and time consuming legislation that addresses controversial issues is drafted under the tight time constraints of the session.

The interim is often not used. Although legislators are part-time and have other responsibilities, the interim could be used for some legislation.

Recommendation: We recommend that the Advisory Committee consider ways to encourage the use of odd-numbered year interims effectively for the development of legislation while not impeding upon legislators' carrying out their other responsibilities. Possibilities include:

- (1) At the end of each odd-numbered year session, encourage each committee to meet to identify any complex significant issues in its cognizance that would benefit from interim work by the committee in preparation for the next session, and then do such work;
- (2) Return to the system of creating interim task forces to study key issues and possible legislation;
- (3) The rules could be changed to improve the hearing process during the interim and then not require new public hearings during the session on such bills; or
- (4) The rules could provide for specified types of committee activity at specific times during the interim, such as one week each month.

CONCLUSION:

We thank the Advisory Committee for inviting input by the staff of the Connecticut General Assembly. We hope this memorandum is helpful to you.