The New Legislature

By Patrick Johnston

The power blackouts of 2001 turned lights off all over California, but at the State Capitol the lights went on in the heads of new legislators. They realized that there was no point feeling insecure about lawmaking in the new era of term limits. After all, electricity deregulation was passed in 1996 by the leading state politicians from the “good old days” before term limits ousted them from office.

New legislators had to wrestle with the energy crisis knowing that all the wisdom and certainty implied in a unanimous vote by the Legislature five years earlier counted for nothing now that utility bills were rising faster than dot com companies were sinking on the stock market.

A remnant of old pros who had designed the deregulation law and a wave of legislative newcomers who inherited the mess now had to sort through causes, consequences, and remedies offered by a bewildering array of stakeholders.

The energy crisis was the great leveler. It was the issue that deflated the conventional wisdom that the old order before term limits insured better lawmaking than the new order of constant change.

To be sure, the institution of the California Legislature is markedly different in the wake of the 1990 voter-approved initiative that restricts Assembly members to 3 two-year terms and State Senators to 2 four-year terms. But it is not as easy to reach the conclusion that a term-limited Legislature functions better or worse than its predecessors that were unfettered by the ticking of the clock.

Early Days

In the context of California’s history, term limits represents only the most recent impact on the state’s law-making body. Congress admitted California as the 31st state of the Union in 1850. When elections were first held for the 16-member Senate (now 40) and 36-member Assembly (now 80), most candidates aligned themselves with either the Democratic Party or the Whig Party.

The early legislative sessions were marked by turnover and instability among the members. Some resigned to take other positions in the new state government. Many legislators had come recently to California after serving in elective office in their home states. William Gwin, for example, had been a Congressman from Mississippi. He convinced his fellow solons to select him as one of the new state’s two U.S. Senators along with the legendary John C. Fremont. Gwin argued successfully that California should have a pro-slavery Senator in Washington to balance the abolitionist views of Fremont.
The early days of the Legislature, meeting in San Jose, were characterized by contentious debate and considerable frustration as the new state emerged from the control of the U.S. Army and, before that, the rule of Spain and then Mexico. State Senate Finance Committee Chairman Thomas Jefferson Green, who had served in the legislatures of North Carolina and Florida, invited his colleagues to imbibe at the end of each day thereby earning the first session the nickname, “the legislature of a thousand drinks.”

As the state grew and the economy developed beyond the gold mining industry, the railroads were built and communities came to depend upon them as the preferred method of moving goods to market. Eventually the railroad titans manipulated both the Democratic and Republican parties to choose candidates for the Legislature that were friendly to their needs.

By 1910 a coalition of reformers and farmers, resentful of the power of the railroad, combined to nominate and then elect Republican Hiram Johnson the Governor of California. Led by Johnson, the self-styled Progressives enacted a statewide direct primary election system to skirt the power of party bosses. The individual candidate became more important than the party and its platform. Cross-filing, which permitted candidates to run on every party’s ticket, was instituted and further diminished the value of any particular party.

In 1910 California was virtually a one-party state with the political cleavage separating conservative Republicans from progressive Republicans. Despite the population growth in Los Angeles and the San Francisco Bay Area, a 1926 initiative reapportioned the State Senate based on geography—giving the “cow counties” a significant over-representation. Assembly districts were drawn based on population.

Partisanship was rare. There were no party caucuses. All members of each house selected members and chairmen of committees without regard to party affiliation.

The 1930’s Great Depression and the Presidency of Franklin Roosevelt brought a surge of popularity to Democrats in California. State Senator Culbert Olson became the first Democratic Governor in the 20th century. Partisanship staged a brief flurry in the Assembly.

By 1940 non-partisanship was back in the ascendancy with the election of moderate Republican Earl Warren. World War II muted political differences as the Legislature pursued patriotic themes including the dismissal of all Japanese-Americans from state jobs as a prelude to their internment in relocation camps. (In 1982 the Legislature officially apologized for the hysteria-driven firings and appropriated $5,000 for each victim of the racist policy.)

Insiders

After the war, California boomed as a Mecca of opportunity. Many who had passed through the ports of San Diego and San Francisco as soldiers on their way to the Pacific
theatre and others who had come to work in the war industries, including many blacks from the rural South, made the Golden State their permanent home.

The Legislature of the 1950’s still reflected the relative anonymity of earlier editions. It was an institution of insiders. Sessions were short. Pay was for part-time work. Without staff or individual offices, members relied on lobbyists for information and amusement. In an era of relatively slow transportation, legislators lived in Sacramento hotels or bunked with fellow members in Spartan rental units. The low pay ($6,000 per year) and isolation from family bred a male social fraternity that depended upon the generosity of the lobbying corps. Moose Milk and the Derby Club were eating and drinking sessions where lobbyists footed the bill for the regular opportunity to chat with lawmakers. The king of influence peddlers was liquor lobbyist Artie Samish who was commonly referred to as the “Boss of the Legislature” until he was prosecuted for federal tax evasion.

In this clubby atmosphere veteran legislators initiated new members into the rituals of lawmaking. Committee chairmen (there were no women in the Senate and only an occasional widow of a former member in the Assembly) and key committee members from both parties would consult with lobbyists in the evening and vote on bills the next day. The voting procedure often amounted to the chairman announcing the fate of a bill without the presence or recorded vote of the committee members.

What this process lacked in democratic transparency, it made up for in a certain efficiency. Pandering to particular constituencies was minimized. Members were not put on the spot for voting against popular but expensive or unwise bills. The unspoken premise was this: it is in the public’s interest for elected leaders to thrash out complicated issues without the excessive scrutiny of the public or the press and without fear of losing the next election. These insiders were a small elite of part-time lawmakers who were relatively insulated from what Founding Father James Madison termed “the hot temper of popular opinion.”

Members of the Legislature had an odd little life that depended upon the camaraderie of fellow members, the munificence of lobbyists, and the silence of the press. Partisanship was less important than relationships with colleagues. The working press was at best tolerant of the Capitol’s culture or at worst was co-opted by a process that doled out tidbits of information and free drinks in exchange for reportorial discretion in the filing of their stories.

**Partisans**

California was changing by the end of the fifties. In 1958 Democrat Pat Brown was elected Governor. The Senate was still run by the “old bulls” on a conservative and bi-partisan basis. The Assembly, however, had started to split into partisan caucuses.

Then came Jesse Unruh. Elected Speaker in 1960, Unruh transformed the office into a policy and political power center. He raised campaign funds aggressively from
special interests and doled them out judiciously to expand Democratic control of the house and create political dependency upon him.

The Progressive era reforms that emasculated political parties allowed Unruh to establish the “caucus” party. Republicans soon followed suit. Competition at elections included challenges to incumbents. Legislative programs needed the Speaker’s blessing. Unruh allocated committee assignments and patronage staff on the basis of loyalty for Democrats and cooperation for Republicans.

Lobbyists responded to this shift of power to the Speaker’s office by showering Unruh and his successors with large doses of campaign money. Even funds directed to other caucus members and candidates were often negotiated by the Speaker. Lobbyists, in turn, aimed their advocacy primarily at the leader. Unruh—and after him, Bob Moretti, Leo McCarthy, and Willie Brown—directed the course and outcome of policy-making as well.

The cost of campaigns rose dramatically from the fifties to the eighties. In 1958 a total of $968,687 was spent on all Assembly campaigns. By 1988 that figure had grown to $57,177,745. Even in constant dollars the growth rate was 13 times greater over the 30-year period.

The State Senate did not yield as quickly or as completely to control by the President Pro Tempore. The house organizational structure conferred most authority on the 5-member Rules Committee and was less amenable to leadership fiat than the Assembly.

Two major changes in the 1960’s accelerated the development of a partisan and professional institution: “one person, one vote” and the full-time legislature.

In 1962 the United States Supreme Court in the case Baker v. Carr required states to reapportion their legislative bodies consistent with the principle that the Equal Protection Clause of the 14th Amendment does not permit a state to “weigh the vote of one county or district more heavily than it weighs the vote in another.” Suddenly the rural counties lost their dominance in the State Senate and Los Angeles with seven million residents increased its State Senate delegation from one to seventeen.

The second dramatic change in the structure of the California Legislature came as a result of a re-writing of the state’s Constitution approved by the voters as Proposition 1A in 1966. Overnight the Legislature went from part-time to full-time with the pay increasing from $6,000 to $16,000 per year.

Professional staffing increased in the sixties to provide analysis of issues independent of the Governor’s administration or lobbyists.

The trend was unmistakable. The Legislature in the seventies and eighties had become more powerful, more partisan, more caucus-driven, more election-conscious, and more dependent upon fund-raising from special interests despite the 1974 initiative that
required full disclosure of campaign finances and cramped the practice of lobbyists win-
ing and dining legislators.

The eighties saw control of both houses of the Legislature in Democratic hands led by the flamboyant Willie Brown in the Assembly and publicity-shy David Roberti in the Senate. The state’s relentless growth required more schools, roads, public transit, water systems, and prisons. After the passage of Proposition 13 in 1978, local govern-
ments were effectively barred from raising taxes to keep pace with the demand for public services. The Legislature increasingly replaced school boards as the decision maker for education policy and the source of most funds. Similarly, issues involving county pro-
grams and city services were debated and decided in hearing rooms of the State Capitol.

The Legislature’s willingness to pre-empt local government in spending priorities, employee relations, and infrastructure did not extend to land use policy. California continued to sprawl as the pattern of urbanization spread beyond Los Angeles and the San Francisco Bay Area into the agricultural regions of the state. Conflicts with environ-
mental and agricultural interests were seldom mediated by the state. Low-density housing developments with long commutes to work became the pattern of growth in Califor-
nia. The state tried to cope by boosting transportation funding through the gas tax and passing school bonds. Regional regulatory agencies invented by Democratic legislators and acquiesced to by Republican governors, combated worsening air and water pollution problems.

As the decade drew to a close, the excesses of fundraising mounted. The press, increasingly skeptical and adversarial since the days of Watergate, aggressively pursued the possible tie-ins between making law and soliciting campaign money. The F.B.I. apparently read the newspapers. The U.S. Attorney in Sacramento authorized a sting op-
eration that resulted in five former and sitting lawmakers, four staff members, and two lobbyists going to prison.

The Legislature’s last hurrah of the halcyon days of Capitol hubris was June of 1990 when it sponsored Proposition 112 that traded the oft-criticized practice of hono-
raria (lobbyist arranged speaking fees paid to lawmakers) for a commission that decides compensation for state officials. Voters approved the change and the new commission promptly boosted legislators’ pay from $40,816 to $52,500 (now $99,000).

Newcomers

The end, however, was at hand. Capitalizing on the cumulative bad publicity af-
flicting the image of the Legislature and a national movement to rein in politicians at all levels, supporters of term limits passed Proposition 140 in November 1990. Assembly members are restricted to three terms of two years each. Senators are permitted two four-
year terms. The limits were prospective and lifetime.

As soon as the new law passed, ambitious members began looking at other offices to run for. Nested Assembly members, sometimes of the same party, began competing
for the right to succeed the Senator. Deference paid to colleagues was a nicety of a by-
gone era.

As legislators left to run for other offices as soon as the opportunity arose or as a result of term limits, the complexion and the culture of the Legislature began to change. Turnover gave rise to more minorities, particularly Latinos, where the percentage increased from 6% in 1987 to 21% in 2001. Women have also experienced a gain from 15% to 25% over the same period, but this appears to be a continuation of a longer-term trend.

Assembly leadership was affected dramatically by term limits. After nearly 15 years of Willie Brown as Speaker, the post was briefly held in 1995 by two renegade Republicans (Brian Setencich of Fresno and Doris Allen of Orange County) supported by Democrats, then for a year and a half by a partisan Republican (Curt Pringle of Orange County). After the 1996 elections returned Democrats to power in the Assembly, the Speakership went to two Latinos in succession (Cruz Bustamonte of Fresno and Antonio Viaragossa of Los Angeles).

Term limits dictated a schedule in which the incumbent Speaker steps down in the spring of each election year to be succeeded by a new leader who raises the money and carries the flag for the caucus into the fall elections. Meanwhile the outgoing leader tries to parlay his two-year brush with power into another office. In 1998 Pringle was defeated for State Treasurer and Bustamonte was elected Lieutenant Governor. Viaragossa was defeated for Mayor of Los Angeles in 2001. In retaliation for their 15 minutes of fame, the traitorous Republicans, Setencich and Allen, lost their seats in recall elections orchestrated by their own party. Willie Brown, who was the lightening rod for the term limit movement in California, left the Legislature in 1995 to become Mayor of San Francisco.

The Senate’s leadership has been more stable. After 13 years Roberti was succeeded in the spring of 1994 by Bill Lockyer who served for 4 years before stepping down in 1998 to run successfully for Attorney General. He was followed by John Burton whose own career included an Assembly stint in the sixties, service in the Congress in the seventies and eighties, a return to the Assembly in 1992, and election to the State Senate in 1996. Burton’s long political career and quick ascent to become President Pro Tempore gave him the potential to lead the house for a full six years, a record not likely to be broken during this era of strict term limits.

Robert Hertzberg (D. - Los Angeles) was chosen as Speaker in the Spring of 2000 and will be replaced in early 2002. A skilled negotiator with savvy political instincts, Hertzberg will depart the Legislature after a tumultuous term consumed by the energy crisis that erupted in the wake of the deregulation movement enacted by lawmakers in 1996, the year before he was elected to the Assembly. Despite his prodigious efforts to help fashion solutions to the skyrocketing prices to consumers, the blackouts caused by shortages, the bankruptcy threats of utilities, and the devastating effects on the state’s own budget, Hertzberg’s grade as problem-solver can only be an “incomplete” to go with
his “A” for effort. Two years on the job and one during the height of the crisis are insufficient to tame the multi-faceted problem.

Yet Hertzberg leaves with a legacy that may be the most enduring contribution a legislative leader can make during the era of term limits. He created an institute to train new legislators and new staff in the skills needed to serve in the State Capitol. Now all newly elected members go to class to learn about procedures and policies that they will encounter on the job. Since professional staff turnover is as rapid as their bosses’, the institute conducts mandatory classes for them as well. The program is run on a bipartisan basis with respected Republican and Democratic staff co-directors. The informally dubbed “Hertzberg U.” has a formal conference across the street from the Capitol named after Republican Bill Leonard who helped to create the center. Leonard served in the Assembly from 1978 through 1988, then in the Senate until termed out in 1996, and again in the Assembly through 2002 when the clock strikes midnight for a second and final time.

Although the Assembly training institute is the most dramatic contribution to the institution of the Legislature (the Senate mostly relies on the Assembly to train members and staff who often matriculate to the “upper” house), Hertzberg himself suggests the theme of his experience as Speaker is summed up in the word “next.” The members are preoccupied with what they can do next—the next committee to serve on, the next committee to chair, and the next office to run for. It is a natural reflection of a short horizon.

While turnover effects the Assembly more dramatically, both houses reflect the new reality. Since 1990 the Legislature has begun a permanent and profound process of change. The newcomers are just as bright and perhaps more motivated to serve the public than the old, more sedentary cohort of members. But the knowledge base in the Senate and Assembly cannot possibly compete with the expertise in the executive branch and the lobbying corps. The power of individual members is so temporal, any bureaucratic or special interest can out wait a legislative adversary.

A legislative body relies on the committee chairs to provide leadership on the issues under their jurisdiction. They have the staff and time commitment to become familiar with the context in which bills should be viewed. The committee staff and members retain the institutional memory to apply to discrete legislative proposals. And the chairs tend to wield authority by virtue of the prerogatives of the gavel and the greater knowledge of the subject matter.

In a term-limited environment chairs are appointed after a few weeks or a couple of years in office. They have virtually no time or role model to understudy for. In the Senate, experienced policy consultants still dominate the committee staff ranks; the exodus of veteran staffers in the Assembly leaves the chairs with fewer resources than in the past.

Even in the partisan era of the past, committee chairs were stabilizing forces that influenced major policy outcomes. In the new era, committees behave like discussion
groups. Bills pass readily through committees, but policy decision-making shifts more to extraordinary legislative arrangements that render the traditional committee process increasingly irrelevant. These arrangements are the informal institutions of the contemporary Legislature:

**The Big 5**

The Big 5 refers to the Governor, the Senate President Pro Tem, the Speaker of the Assembly, and the minority leaders in both houses. In 1991 Governor Wilson called the leaders together to resolve a budget impasse. The closed-door meetings took place after the legislative committees had completed nearly six month of budget writing including the “final” conference committee. They negotiated $7 billion in tax increases and $7 billion in program cuts. The resulting compromise was sold to the members of each caucus as the necessary medicine to cure a $14 billion deficit.

Wilson found the device, dubbed the “Big Five,” an effective way to negotiate his policy and budget agenda without the public nitpicking of members or the skepticism of the Legislative Analyst.

Leaders blamed the governor for usurping the budget writing process, but they were co-conspirators who moved their policy and personal priorities ahead of the members. In a term-limited world, the members had less time and expertise to fight the budget wars themselves, so they deferred to their leaders to negotiate both large and small matters with Wilson. By the time Gray Davis took office in 1999, the state coffers were flush with cash. Leaders were the chief lobbyists to the Governor for their members’ budget requests. In 2001 tax revenues were drying up due to the energy crisis and the slowing economy. Even with strong Democratic majorities and a Democratic governor, the budget was not passed until four weeks into the new fiscal year beginning July 1.

**Budget Trailer Bills**

The annual budget bill contains thousands of individual line items that together fund the operations of the state for the coming fiscal year. Beginning in 1982 Governor Jerry Brown and the Democratic Legislature created a parasite called the “trailer bill” that enacted technical changes to statutes in order to implement the state budget. The trailer bill was authored by the budget chair and passed without debate and without legislative hearings. This device grew in importance as the method of balancing the budget. During the Deukmejian administration the law requiring an automatic increase in welfare grants was routinely suspended as part of a Big 5 “budget deal.”

In 1987 the State Supreme Court invalidated the multi-subject trailer bill on the grounds that the State Constitution provides that “a statute shall embrace but one subject.” The response was to add so-called trailer bills to the budget process often without referral to policy committees. Both the Governor and legislative leaders used the bypass for expediency.
Faced with serious budget shortfalls in the early nineties, they adopted multiple trailer bills: 16 in 1991; 9 in 1992; 21 in 1993; 19 in 1994; 11 in 1995; and 12 in 1996. Even after the recession ended, trailer bills were used for a wide variety of policy purposes such as class size reduction and toxic waste clean up. The Republican Governor could avoid the gauntlet of a Democratic dominated committee process because he had the leverage of the line-item veto in the state budget. In 1997 there were 20 trailer bills and 32 in 1998.

The election of Democrat Gray Davis didn’t change the pattern. Even with healthy surpluses 28 trailer bills were approved in 1999. Members have begun to self-designate their bills as “trailers” in hopes of leaping ahead in the process and attaching their policy ideas to passage of the annual budget.

**Member Requests**

All legislators want to deliver for their districts. Historically the federal budget has been replete with district spending items that are collectively referred to as “pork barrel.” Presidents tolerated most of this ad hoc budgeting because until recently he did not have the power of the line-item veto. In California, however, the governor’s authority to “blue pencil” items from the budget restrained lawmakers.

In his final year Wilson found that dangling the promise of approving pet projects like money for local parks and museums would persuade reluctant members to vote for his budget. Davis himself engaged in micro-budgeting to add specific pork projects like the Billy Crystal exhibit at the Wiestenthal Museum of Tolerance in Los Angeles and construction of Boys and Girls Clubs (a favorite of one-time ally turned opponent Los Angeles Mayor Richard Riordan). Member requests mushroomed at the urging of local governments and non-profit organizations. With the ticking of the term limit clock, the immediate political gratification of cutting a ribbon for a new Little League field trumped the tedium of rewriting the tax code.

**Suspense File**

The legislative process relies on the two Appropriations Committees to prioritize the many spending bills that are approved by the various policy committees such as education, health, and transportation. During the 80’s Speaker Willie Brown considered it better internal politics to pass many expensive bills and let the Republican Governor take the heat for vetoing them. Passing the buck kept the members happy with the Speaker. Eventually this easy virtue infected the Senate. No member wanted to kill bills of their colleagues just because they cost too much money.

So the Suspense file was created by Senate Appropriations Chairman Dan Boatwright in -- to hold bills and evaluate them after the budget reveals how much money is available for new programs. Now the Chairs of the two Appropriations Committees consult with the leadership of both caucuses in secret and parcel out bills based on the policy.
need to prioritize spending and the political need to reward or punish members without a public vote.

In a term-limited era the Suspense File slows down the avalanche of costly measures that cascade from policy committees where neither chairs nor members have much perspective on which bills are most important. In 1999, for example, the total cost of bills sent to Senate suspense was $6.8 billion. After the trimming behind the closed door of Room 211, the price tag was cut to $353 million. The members complain about losing their funding, but the pain is lessened by the practice of passing 2/3rds of the bills even though the funding is typically 10% of the original request.

**Conference Committees**

Conference Committees historically were created to resolve differences between conflicting Senate and Assembly versions of a bill. Three members from each house (two from the majority party, one from the minority) would be assigned to meet publicly and fashion a compromise to be taken to the floor of the Senate and the Assembly.

Over the years legislative leaders have used the conference committee process as a way to bypass the regular committees and handpick members to address complex problems. After the passage of Proposition 13 in 1978 that dramatically cut property taxes, a Conference Committee sorted out the options and devised a new financing scheme for local government. Since then the device has been employed to cut taxes, raise taxes, reform the workers compensation system, rewrite health care statutes, and cope with the energy crisis.

All five of these arrangements have the effect of shifting power from members and committee chairs to legislative leaders and the governor.

**Mortality**

The force of term limits is centrifugal. New members are not joining the cozy club of the fifties where they are likely to settle in and help to run the state in relative anonymity. Nor are they teaming up with a partisan cult bent on maximizing political power. Instead new members are arriving with a hyperactive sense of their own legislative mortality: learn fast, make laws fast, move up the rungs fast, and look for another office fast.

The California Legislature has evolved. It no longer operates like a private club. It is no longer run mainly for the benefit of partisan caucuses. It is more transparent. It is more individualistic. It also is less potent than the Governor and the Courts. It is a deliberative body than reflects the diversity of opinion in California. It is likely a more honest institution than many of its predecessors. But constant change dictated by term limits has sapped its institutional power. And it isn’t coming back.