SJR

5

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM January 15, 1993

SUBJECT: Legislative Action (SJR 5)

TO: Senator Loren Leman

FROM: Tamara Brandt Cook
Director TBC

Here is the sectional summary you requested for SJR 5.

Sec. 1. Adds to the enactment requirements for bills that they be referred to at least one committee and be reported back from that committee. Requires every bill or resolution referred to a committee to be considered by that committee at a public hearing. A motion to report out the measure is always in order. Each measure reported out by the last committee is required to be calendared and considered by the house. Measures are to be calendared in the order they are reported out. A measure that is adopted in violation of these requirement is void.

No legislator may be committed to vote in favor of or against any matter coming before the body, except that a legislator may vote in caucus on matters relating to selection of caucus officers or organization of the legislature. Action taken in violation of this requirement is void.

Sec. 2. These constitutional amendments will be presented to the voters in 1994 and if approved, will apply to the Nineteenth Legislature.

TBC:gc
93-032.glc

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SJR 5

Revision Date:
Title: Amendment to the Constitution RE: legislative action on bills and resolutions and legislative caucusos
Sponsor: Senator Leman
Requestor:

Department Affected: Office of the Governor
BRU: Division of Elections
Component: General and Primary Elections

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0
FUNDING:						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
100G GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0
POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.) *This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing and additional ballot card, the fiscal impact would be 53.4.

Prepared by: Charlot E. Thickstun, Director Charlot E. Thickstun Phone: 465-4611
Division: Division of Elections Date: 1/15/93

Approved by Commissioner: Lt. Governor John B. Coghill
Agency: Office of the Lt. Governor Date: 1/15/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SJR 5

Revision Date: January 15, 1993
Title: "Proposing amendments to the Constitution...relating to legislative action on bills..."
Sponsor: Senator Leman
Requestor: Senate State Affairs

Department Affected: Department of Law
BRU: Legal Services
Component: Operations

COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						
FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: January 15, 1993

Richard L. Pegues /FOR/

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: January 15, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SJR 5

ANALYSIS (Continued):

Senate Joint Resolution No. 5 would place a proposal before the voters at the next general election to amend the Constitution of the State of Alaska, which would provide constitutional limits on the legislative process for the referral and action on bills and resolutions, and limiting the powers of legislative caucuses. This is a matter involving the operations of a separate co-equal branch of government, and it will not have a fiscal impact on the Department of Law.

SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

MEMORANDUM

TO: Senate State Affairs Committee

FROM Senator Loren Leman

DATE: January 20, 1993

SUBJECT: LAA Fiscal Note for SJR 5 -- Legislative Action on Bills and Resolutions and Legislative Caucuses

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I disagree with the costs proposed by LAA's attached fiscal note.

Colorado s electorate passed a similar amendment on its 1988 ballot. Before this amendment, Colorado's Legislative Council assigned one non-partisan staff to each of nine committees in the House and Senate -- no additional staff were required.

After the amendment became law, staffing numbers *did not change.* Colorado's Legislative Council continues to assign one staff person to each committee. David Hite, director of Colorado's Legislative Council personnel office reports the net effect of the amendment is that legislators spend more time in committees. Mr Hite stated that this additional work is not considered odious by the Legislators.

Alaska's unique geographic challenges necessitate use of teleconferenced hearings. SJR 5 may require additional hearings, but the LAA estimate is high.

Every bill will be heard, but bills with little public support will not be heard extensively. Under the proposed amendment, bills of merit, even though introduced by minority members, will have an opportunity for exposure and advancement.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: SJR 5

Revision Date:
Title: Proposing amendments to the Constitution...legislative action on bills and resolutions...
Sponsor: Senator Leman
Requestor: Senate State Affairs

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Session Expenses and Public Services
COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES		65.9	65.9	65.9	65.9	65.9
TRAVEL						
CONTRACTUAL		25.0	25.0	25.0	25.0	25.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	90.9	90.9	90.9	90.9	90.9
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	90.9	90.9	90.9	90.9	90.9
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0	90.9	90.9	90.9	90.9	90.9

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	4	4	4	4	4
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary) SJR 5 proposes amendments to the Constitution relating to legislative action on bills, resolutions & legislative caucuses. Every bill or resolution referred to a committee shall be considered by the committee at a public hearing held within appropriate deadlines established by the Legislature. It is estimated there would be additional committee staff needed to prepare the bills or resolutions for a public hearing. This could also include an increase in the number of teleconferences held each session. Estimated increase in staff are 4 session secretarial positions for the committees of 1st referral. Additional contractual funds are requested for the increase in communication costs for teleconferenced public hearings.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 1/19/93

Approved By: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 1/19/93

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).

SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

SPONSOR STATEMENT

BY: Senator Loren Leman

SUBJECT: SJR 5 -- Committee Action on Bills and Restriction on Binding Caucus Votes

DATE: January 20, 1993

SJR 5 contains proposals for constitutional amendments that will help make the Legislature a more responsive, representative and open institution.

The resolution will result in:

* a hearing and recorded vote for every bill introduced to the Legislature;

* calendaring of bills by the Rules Committee in the order received from committee; and

* outlaw of binding caucus votes, except for organizational votes.

The benefit of this resolution are several. Confusing and unnecessary "wheeling and dealing" will be removed from the process. The power of committees chairs will be reduced, providing committee members more control over legislation. A single legislator would no longer be able to thwart the will of the majority.

Colorado adopted a similar bill in 1988. In December 1989, I spoke with the Colorado Senate President, who said that the new system was working very well.

Former Governor Hammond acknowledges the excessive power held by committee chairs. He recommends a secret ballot discharge of bills from committee.

We should conduct ourselves in a manner that fosters high regard from Alaskans for our institution and its policies. I believe this resolution is a step in the right direction.

Committee system subverts majority will idea

jay hammond
bushrat'lings

Confused by legislative logistics? Frustrated by political patty cake? Outraged by special interest influence? Distraught over closed door "caucuses?" Welcome aboard.

So you thought that a one-man, one-vote democratic process determined the fate of the state? Forget it. Under rules and protocols now prevailing, one legislator can completely frustrate the will of 59 others and the governor.

Over the years I've witnessed innumerable occasions where a committee chairman singlehandedly killed a bill or held it hostage until some special legislation of his own was passed by protesting colleagues who, at long last, caved in. This practice has cost Alaska untold millions and added weeks to legislative sessions.

This year a host of bills, rather than falling through the cracks, fell into the clutches of committee chairmen who opposed their passage.

Examples: Though a rough assessment shows that almost 80 percent of all Alaskans favor retention of mandatory car insurance, a committee chairman killed it.

Though a majority of legislators at least gave lip service to retention of the Women's Commission, a committee chairman refused to turn loose the bill which would have eclipsed its "sunsetting." Another committee chairman refused to permit colleagues to even vote on whether you should get to vote on legislative proposals which would raid the permanent fund.

Because of this most undemocratic process, which not only completely frustrates majority will but permits politicians to cut and weave in such a way as to deny you knowledge of where they really stand, legislators are likely to once more find themselves back in special sessions to deal with such matters as municipal assistance and how to pay for it.

When is the press and public going to learn that their crusading for open meetings and full disclosure will accomplish almost nothing until legislative rules permit majority will to dominate?

The problem lies with the sacrosanct committee system. Currently it is almost unthinkable for a member of the majority to vote to extract bills from committee. As a consequence, minority motions to do so are mere ploys designed to establish a phony voting "record" proving that members who fail to vote for extraction oppose motherhood and favor sin.

The fact that the bill in question might have been sponsored by the "no" voting member provides additional evidence that said member is conniving or insincere. It's unfair. It's deceptive. Unfortunately, it's also most effective.

The reason majority members will not vote openly for extraction is, of course, that they are well aware of retribution an affronted committee chairman will inflict on their bills should they fall into his clutches. Moreover, in order to retain one's own arbitrary powers (which of course, would never be abused) it's necessary to indulge them in others who might entertain far less noble motives.

To my knowledge, I am the only member of the majority who successfully moved to extract a bill from committee. The results were wondrously cataclysmic and cathartic.

It was occasioned by the broken promise of a finance chairman to bring a bill to the floor by a time certain. When this occurred, as majority leader I told him to have it out by 5 the next afternoon or I would make the discharge motion.

Assuming I was bluffing, he did not comply. I made my motion. The finance chairman immediately called a caucus. We filed out to await his explanation. When it became apparent he had fled the building and was hiding out along with some committee members, I called the House and troopers forcibly hauled them back.

My discharge motion passed and a new finance committee was appointed. The session shortly thereafter came to a merciful conclusion. One other time simply the threat to repeat the process moved the legislature off dead center.

There is a far simpler process which all who support legislative reform should demand their candidates commit to: Permit votes to discharge legislation from committee to be taken by secret ballot. Currently, by a show of three hands open votes are taken. Similarly, a secret ballot voting should be permitted.

Years ago, as Rules chairman, I came within one vote of having a secret ballot adopted. Since then I have proposed it repeatedly. While many freshman legislators express interest, that interest wanes as they climb the ladder of seniority.

After all, it's pretty heady to singlehandedly dictate the fate of legislation which offends you (or your campaign contributors.)

If you really want to frustrate special interest dominance, if you really fear some legislators may be "bought," if you really suspect unsavory deals are cut behind close doors, if you'd really like to know where your legislators stand, if you'd really like to see the legislature act more expeditiously, demand that any candidate seeking your endorsement support the secret ballot discharge process.

Jay Hammond served as governor of Alaska from 1974-1982.

Colorado Citizens Rewrite Legislative Rules

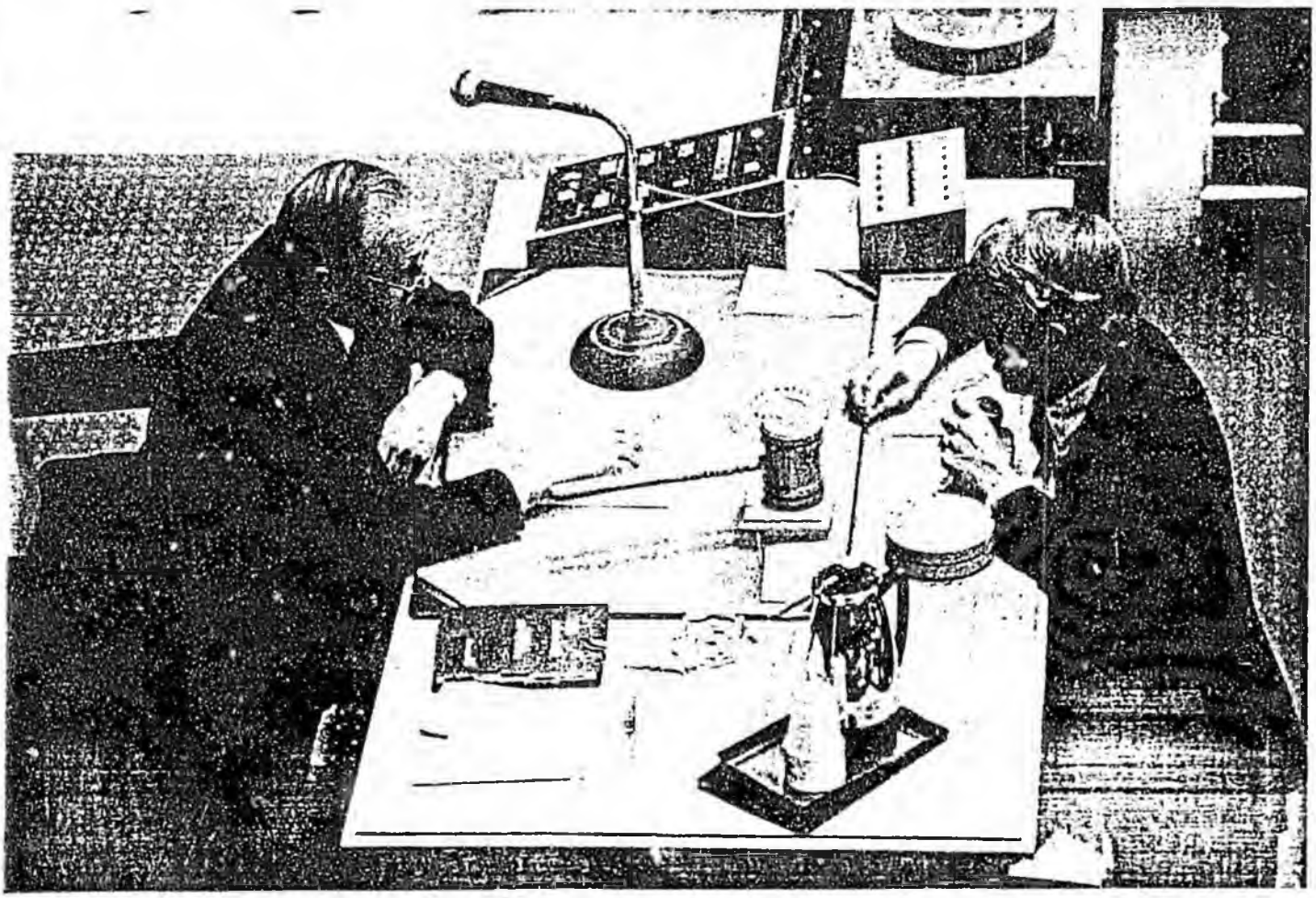
The Colorado General Assembly operated this year under new rules that didn't have as much effect as either proponents or opponents had predicted.

Fred Brown

Colorado voters once again have changed the rules for their state legislature. As they did in 1972, when they approved one of the nation's first sunshine laws, the state's independent-minded electorate has insisted that public business should be conducted fully in the open.

The 1988 amendment to the constitution is called GAVEL, an acronym for Give A Vote to Every Legislator. It passed by an impressive 72 percent, sending a clear message to the General Assembly that the people wanted binding caucuses outlawed and every bill heard. It's not that Coloradans are particularly unhappy with their lawmakers;

Fred Brown is political editor for *The Denver Post*



Speaker Carl "Bev" Bledsoe, left, confers with Representative Paul Schauer.

Majority Leader Chris Paulson

Limiting the Majority

Colorado is not alone in trying to limit the powers of the majority party. The most common limitation on majorities is a requirement for extraordinary votes to pass specific types of legislation. More than half the states require extraordinary majorities to approve constitutional amendments, and all but 11 impose such votes to override gubernatorial vetoes.

Arkansas, California, Delaware, Louisiana and South Dakota require majorities greater than 50 percent to pass tax bills, and the South Dakota Senate and both chambers in Wisconsin cannot pass changes in retirement benefits by simple majority.

Any provision designed to protect the rights of minority parties can have the effect of limiting the majority. This would include rules (or informal practices) that grant the minority leader power to appoint committee members of the minority party, the absence of limitations on floor amendments, proportional representation on committees, or provisions that allow for minority committee reports.

Rules that allow dilatory tactics by a minority of the membership may be particularly troublesome to majority parties. Perhaps the best known protection of legislative minorities is the U.S. Senate's filibuster rule that allows members to hold the floor and prevent the Senate from pursuing its agenda unless two-thirds of the members vote to shut off debate.

And the filibuster serves the minority equally as well in the Texas Senate where former Senator Bill Meier holds the world record–44 hours–and is listed in the *Guinness Book of World Records*. In Texas the filibuster is especially effective over a weekend when the senator wants to attract public attention, and in the dying days of a session when other members want to move their own bills along and will withdraw support to get things moving again. When a senator wants to filibuster in Texas all he has to do is stand up and start talking, but he can't lean on the desk, eat, drink or walk around. And, unlike the U.S. Senate, he must confine his remarks to the bill's topic.

The South Carolina Senate has a curious practice, referred to as "senatorial courtesy," by which a senator can request that a bill not be considered unless he is present. Members then "take a walk" when the bill they wish to delay is about to be called. While the practice has never been used on an appropriation bill, it is often used with other legislation. A strong majority can force action eventually, but the practice allows the minority to delay, and, presumably, to bargain for changes in the legislation.

—Karl Kurtz

Note: For more information on these procedures, see *Inside the Legislative Process: A Comprehensive Survey of the American Society of Legislative Clerks and Secretaries*, NCSL, 1988.

it's just that they don't see why the operations of government shouldn't be held to high standards.

In the 1989 session, things went smoothly under the new rules until late in the session when the spending packages were assembled. The Republican majority, especially in the House, retreated to familiar ground—the party caucus—to sift through the 200-plus pages of the state budget.

The majority party wouldn't let the annual budget bill go to the floor without tying up enough votes in caucus to ensure passage of specific provisions. But GAVEL still inhibited discussion, say House leaders.

"It took us longer to arrive at what we thought was consensus," says House Speaker Carl "Bev" Bledsoe.

"It created less chance for cooperation and not more," says House Majority Leader Chris Paulson. "Part of the hard feelings that occurred on the tough issues stemmed from the fact that people couldn't go to a caucus and communicate with each other."

Besides giving a vote to every legislator, GAVEL gave a hearing to every bill. It has three major provisions:

- It requires consideration "on its merits" of every measure referred to a legislative committee of reference and specifies that a motion to report a bill to the full chamber "shall always be in order"—what Bledsoe calls the "super motion."
- It requires that bills appear on the House or Senate calendar in the order in which they were reported out of committee.
- It outlaws the binding caucus, saying that legislators cannot "commit themselves or any other member or members, through a vote in a party caucus or any other similar procedure, to vote in favor of or against any bill . . . or other measure . . ."

Some legislators were offended by the insinuation that they were subverting the process and would continue to do so unless rigid rules were locked into the constitution. 'I think it really put a taint on the interpersonal relationships among members," says House Majority Leader Paulson.

Paulson, a Republican from the Denver suburb of Englewood, the bluntest of the amendment's critics, called it "very vague, disjointed, and now it's part of the constitution. It just adds to the

innuendo that the legislative process is somehow not to be trusted," Paulson says.

Nonetheless, even GAVEL's critics concede it did some good. Perhaps its biggest success was in doing away with the pocket veto by committee chairman. Its earliest victim was the House Rules Committee, once a "killing ground" for legislation the House leadership didn't like.

GAVEL's automatic calendar provision, the one requiring all committee-approved bills to be scheduled for debate in the order in which they were reported out, is the system the Senate has used for years. But the House has resisted.

With the amendment in place, Speaker Bledsoe, a plain-speaking cattle rancher from eastern Colorado's prairie, simply decided not to appoint a Rules Committee before the legislature's 1989 session. "It wouldn't have any power at all," Bledsoe said.

The amendment also was demonstrably successful in forcing legislation out of committee. While the Senate didn't have a Rules Committee, it did have Appropriations and State Affairs—two committees with broad authority to consider a wide range of legislation, and with chairmen who understood the sig-

Frank Kimmel

Minority Leader Ruth Wright

Shorter Session Doesn't Thwart Oklahoma

Encouraged by the governor and the state's largest newspaper, Oklahoma voters set time limits on their legislature in March, establishing a new time frame for the legislative session and setting stricter rules for adjournment.

And despite a long-time tradition of dragging out the closing session with 24-hour days, and a change in the speakership only nine days before, the Oklahoma Legislature managed to adjourn on time this year. They were, in fact, finished with their work almost two hours early.

Even before the ballot question passed, limiting sessions to 80 days, the House and Senate established cutoff dates for hearing bills in an attempt to conform with the May 26 deadline they knew it would impose.

While there are a few concerns for next year, when the session will be nearly a month shorter because the initiative changes the opening day to February instead of January, most legislators are pleased with the outcome.

"It feels different; it feels good," said Senate President Pro Tem Robert Cullison, who had been one of the most vocal opponents of the measure.

Representative Cal Hobson, who led the movement to oust speaker Jim Barker, said "the revolt gave us the ability to finish." While a special session looked probable under Barker (to deal with prison crowding and extra education funds), leaders reached agreements on the issues shortly after Steve Lewis, the new speaker, took over.

Passed by a large margin, the initiative modifies the state's constitution, establishing a later legislative starting date and fixing a definite date and time for sine die adjournment. Now the Legislature will start the first Monday in February instead of the Tuesday after the first Monday in January and adjournment now must come at 5 p.m. on the last Friday of May. In the last few years, the last day of session in Oklahoma was likely to inspire debate over the very definition of a day. The minority party has gone to the state Supreme Court twice since 1986 to have it defined.

But opponents of the measure still have concerns over the effects of the shortened session. Jean McLaughlin, president of the Oklahoma League of Women Voters, worries that the amendment is a simplistic solution to a complex problem. McLaughlin says that the shorter time frame will not eliminate the large number of bills that pile up at the end of session. "A shorter session only exaggerates this problem," she says. "Legislative action should be preceded by intensive study and analysis. A shortened session will just encourage hasty action and inadequate consideration of pressing issues."

George Humphreys, director of research for the House, says compressing deadlines at both the beginning and end of the session does create some concern, but he noted that there will be an effort to encourage members to pre-file bills, to use the interim more effectively for studying proposed legislation, and to bring more discipline to committee consideration of bills.

And observers say that because Governor Henry Bellmon led the movement for a shorter session, he will be inclined to work more closely with the Democratic leaders in the Legislature.

–Tony Hutchison

Suit for GAVEL Violation Dismissed

A number of Colorado organizations worked together to get the GAVEL amendment passed, but when it came to filing a lawsuit alleging violations of GAVEL by the legislature, Common Cause had to go it alone. Sandra Eid, president of Citizens for Legislative Reform, said the group would have had a hard time getting approval from its 40 or so member organizations to proceed with a lawsuit, and maintained that negotiations could work out problems with compliance before the legislature convenes again next year.

Common Cause filed suit in May, alleging that lawmakers violated GAVEL by securing commitments on the budget bill during caucuses; but on June 16 District Court Judge Sandra Rothenberg dismissed the suit, saying she could not rule on the question because state legislators are immune from legal challenges involving legislative actions.

During a court hearing, lawyers argued over whether legislative immunity, a doctrine that dates back to 16th-century England, protects legislators during caucus deliberations. Common Cause lawyers argued that they should not be protected because caucuses are basically political meetings. But defendants' lawyer said caucuses should be considered "legislative activity" because they are subject to the state's open meetings law.

House Majority Leader Chris Paulson said, "This group [Common Cause] has tried to intimidate the legislature, and the courts have found no merit in it at all. We can't have self-professed public interest groups trying to run roughshod over elected officials."

Briggs Gamblin, executive director of the state's Common Cause chapter, said, "We're very disappointed, but we're not finished." At press time, the group was mulling over its options—to file suit on the budget or to appeal the case to the state Supreme Court. "We're not going to drop it," said Gamblin. "We're going to pursue it." —*Pat Wunnicke*

nals from leadership about which bills probably weren't worth even putting on the table. Coincidentally, the House counterparts of those committees—House Appropriations and House State Affairs—were often used in the same way after it became less fashionable in recent years to use Rules as a bottomless pigeonhole.

"I never used the Rules Committee a whole lot in that way," says Bledsoe, who has been the speaker since the 1981 session. "But a little bit. If we had a bill that some of us felt was a bad bill to have on the floor, it wouldn't get to the floor."

But this year, several bills that wouldn't have had a chance before GAVEL, including some sponsored by Democrats, came out of committee and even passed.

"We as a minority party felt much better about it than in previous years," says House Minority Leader Ruth Wright. "We used to tread lightly, hoping a bill would make it through Rules. This year it was just much more of a democratic process."

Nan Morehead, chairman of the Colorado Social Legislation Committee, agrees. "That part of it has been very successful," she says. She and five other public-interest lobbyists were the originators of GAVEL. In June 1987, after the end of that year's session, "we were just really frustrated by not being able to get anything through."

In a series of meetings over the summer of 1987, the group—which included representatives of Colorado Common Cause, the state League of Women Voters and Citizens for Correctional Reform—"spent a lot of time talking about abuses." The group organized itself as Citizens for Legislative Reform and went about drafting legislation that it would try, first, to get the legislature to pass. If that failed, as anticipated, Citizens for Legislative Reform was ready to circulate petitions to put the question on the 1988 general election ballot.

Two offenses—keeping bills off the table in committee and never letting them get to the floor from House Rules—were "real easy to zero in on," Morehead says.

The binding caucus issue was a bit more difficult—"serious, but the hardest one to explain to people," she says.

The majority party in Colorado always has used the caucus extensively to solidify party positions on important legislation. In the closing days of the session, in the logjam of important issues that have been put off until everything can be looked at in relation to everything else, legislators spend more time in caucus than they do on the floor.

But if it were used in no other situation, the caucus would persist as the only way to deal with the complicated long appropriations bill, the state's annual budget.

The bill is drafted by a six-member Joint Budget Committee, which spends months studying the governor's budget suggestions and listening to its own staff's recommendations. The bill that emerges is a statement of legislative philosophy; in Colorado's weak-governor system, the governor's budget has about as much status as a letter to Santa Claus. The long bill, as it is reverentially called, has attained almost mythic proportions as complex, hard to understand and manageable only by the application of strict party discipline.

But even party discipline is subject to the Colorado tradition of open government. Even before the state passed its open-meetings Sunshine Law in 1972, then-speaker John Fuhr had opened up the House Republican caucus to the press and public.

Former Senator Ralph Cole, the Sunshine Law's most ardent opponent right up until he retired from the legislature in 1988, challenged its application to the caucus as unconstitutional. In 1973, the year the sunshine law took effect, Cole sought a declaratory judgment in Denver District Court, arguing that the law violated his right to free speech and conflicted with a provision to the Colorado Constitution that allows the General Assembly to set its own rules.

But 10 years later, in 1983, the Colorado Supreme Court finally had the last word on the issue of whether to open caucuses. It said, in effect, that because a caucus vote could determine what happens to legislation on the floor, it was subject to the sunshine law requiring that meetings "at which public business is discussed or at which any formal action may be taken" be open to the public.

The 1983 court ruling, however, did not raise the issue of the binding caucus. Colorado legislative leaders insist that the true binding caucus—where a split members-only decision can still force a solid caucus position, thus sealing a bill's

Representative Wayne Knox

fate – hasn't been used in the state for 20 years. They would argue that the more recent Colorado tradition of requiring a floor majority to commit itself in caucus is fairer and more open than the deal-making and vote-trading that goes on in other states.

The Colorado caucus system – at least until GAVEL – worked this way: The majority party, the Republicans in both House and Senate, would discuss and amend and tinker with legislation until there were enough votes on the prevailing side in caucus to ensure a winning vote in the full chamber. The Republicans in the 35-member Senate waited until they got 18 votes wrapped up in caucus; it took 33 votes in the House caucus to send a bill to the full 65-member body.

Before that, but only in the House, theoretically as few as 17 votes could determine which way the 65-member chamber voted on an issue. That could happen if the majority party had only a 33-32 edge and the caucus voted 17-16 to commit itself to a particular vote.

But that's only an extreme application of theory. In practice, as recently as 10 years ago, the Republicans allowed a two-thirds vote in what was then a 38-member caucus to bind 33 votes. That meant that 26 votes could force seven other Republicans to vote against their better judgment.

Everyone today roundly condemns such minority rule, but counting votes in caucus until a majority is assembled is still seen by at least the House majority leadership as the only way to handle the budget bill.

As Speaker Bledsoe puts it, the minority party shouldn't be allowed to "play games" with the budget, tacking on costly amendments with popular appeal that no one can afford to vote against politically, but which the state can't afford financially.

"The majority party supposedly has a different approach to spending than the other party," Bledsoe says. "And it's the people, the voters, who decide which party wins the majority," he adds. When he was in the minority, the speaker said, he "expected the majority party to make the big decisions – because they won the election."

The binding caucus isn't an easy issue to explain to the average voter, but GAVEL's backers finally decided that the only way to get at it was to tack it on to the two committee provisions. Because of its complexity, "we always listed it last," Nan Morehead says.

The first attempt to implement the changes was a bill introduced by veteran Denver Representative Wayne Knox, a Democrat, late in the 1988 session. Not surprisingly, the bill died in the House State Affairs Committee. The GAVEL group immediately activated its petition drive to put the proposal on the November 1988 ballot. "We felt it would end up that way anyway," Morehead says. "But it was important to give the legislature one last chance."

There was only muted opposition to the proposal. Several legislators muttered quietly that amending the constitution was unnecessary, but none of them seemed eager to take a high profile in opposing a proposal with such reformist appeal.

GAVEL passed. And so did an amendment the legislature itself put on the ballot – to limit legislative sessions to 120 days, 20 days fewer than the previous, more flexible limit. The shorter-session amendment passed by only 5 percent while GAVEL had an overwhelming 44 percent majority.

The combination of fewer days and more work created considerable apprehension before the session began. One former legislator suggested that controversial issues would be avoided as much as possible because the time they consume in hearings would prevent committees from working through their agendas.

But "two of the three parts worked very well," says Representative Knox. Speaker Bledsoe had warned before the session that "it's going to make a process that's fairly inefficient even more inefficient." Knox disagrees. "I guess you can say it's efficient not to consider bills. But it's obviously unfair and undemocratic."

Senate President Ted Strickland had said the combined effect of the amendments would be to make the lobbyists more powerful and reduce citizen participation. There wouldn't be time for long hearings or even lengthy advance notice. Legislators would have to rely on the ever-present lobbyists for the information they would need quickly.

"Oh, you bet," everyone had to work harder, Knox says, including the lobbyists. "The lobbyists were running around with their tongues hanging out," says Minority Leader Wright. But in retrospect, most legislators feel that lobbyists didn't have any particular advantage – and lobbyists agree.

Early in the session, many lobbyists complained that they couldn't keep up with all the committee meetings. And they were always nagged by the fear that GAVEL permitted a bill to be called up for action at any time. But the "super motion," as Speaker Bledsoe calls it, was never used. Not once.

Party Caucus Alive in Other States

Other states use the party caucus heavily, but not quite in the same way that Colorado does.

Wisconsin uses a similar procedure in handling its budget, but the caucus affixes a lot of other legislation to the bill, thus bypassing other committees. William T. Pound, executive director of the National Conference of State Legislatures, says the Wisconsin practice has led to "unprecedented vetoing" by Republican Governor Tommy Thompson. He vetoed parts of words and struck single digits from multidigit figures.

Washington's state legislature also has a strong caucus tradition, but there it's a question of both parties meeting almost every morning to "talk things out" before they go to the floor, according to Pound.

And in Pennsylvania, the caucus is used heavily—both to inform members and to get a sense of where the membership is headed on an issue. And while votes aren't binding, there's a clear implication that if it's discussed in caucus, you go the way the leadership goes.

Lawmakers in other states have different ways to forge party policy. In many places, Pound says, the leadership is more autocratic than it is in Colorado. Senates generally tend to be more open everywhere—"smaller, more collegial, more stable," he says.

The old dictatorial style is fading, though, Pound adds. It's true that leadership still clings to wielding power through committee assignments, the awarding of budget pork or the campaign mechanism of collecting money centrally and doling it out to members. But as individual members get more staff help and more access to information, they're becoming more independent.

Ruben Valdez, a contract lobbyist who was the speaker the last time the Democrats controlled the House, says lobbyists accommodated themselves to the quickened pace. Nor did he notice any particularly increased reliance by legislators on the lobbying corps.

Briggs Gamblin, executive director of the state's Common Cause chapter, says considering more bills in less time may have had the benefit of increasing the effectiveness of the better-informed lobbyists while lessening the powers of the good-ol'-boy lobbyists who used to wield influence primarily by trading war stories with key legislators in the relaxed atmosphere of a nearby bar.

GAVEL, in fact, was working just fine until the long bill came up. Then the old anxiety about the budget took over. "It's almost a cultural thing with the Republicans," says House Minority Leader Wright.

In the Senate, the GOP caucus insisted on 18 votes before it would close off discussion on any departmental section. The senators eventually had to abandon that strategy when they couldn't put together 18 votes for a public education spending package. So the last Senate caucus vote on the long bill was a simple majority, thus weakening the potential argument that the binding caucus was at work again.

Senator Wayne Allard, a Loveland veterinarian, who is the Senate caucus chairman, says the caucus never took a roll call, never took names, and "a few people changed their vote from caucus to the floor"—hardly "binding."

However, Colorado Common Cause didn't see it that way and raised the possibility of a lawsuit (which, in fact, it filed when the session ended). So by the time the long bill got to the House, the Republican caucus there had devised another procedure. The 39 Republicans would recess every now and then so that a cadre of temporary assistant floor leaders could go out into the hallways to count votes.

"We tried extremely hard to abide by the letter of the law," Speaker Bledsoe says. The leadership met with staff and with lawyers before it unveiled the recess-and-count procedure. "My theory was, if you put interpretations on a document like that (GAVEL), why, you're just inviting trouble," Bledsoe says.

He and Paulson also argue that the amendment, in any event, conflicts with their First Amendment rights to express themselves on legislation: If they can't keep the promises they make, then their rights are violated.

Both Gamblin and Bledsoe seemed resigned early in the session to the necessity of a court case to sort out exactly how GAVEL must be applied to the legislative process. Paulson complains that the amendment invited litigation from the start. "It's so poorly done anybody can interpret it any way they want," he says.

Colorado Governor Roy Romer, a Democrat, complained at the close of the session that the Republican legislature "has got a lot to learn" about how to live with the provisions of GAVEL and its own 120-day limit. "We ought to get up here and do business and not try to play partisan games," he said.

One problem is that a number of bills sent to Appropriations died there when the session ended May 10—or were reported out so late that there wasn't time for the other chamber to act on them. Bills with fiscal impact aren't subject to the legislature's deadlines for moving other bills out of committee from house to house. Every other bill did get a hearing, Gamblin noted, but when it came to spending bills, the legislature "found a loophole."

Legislators, though, believe that the institution responded, grudgingly perhaps, with more bipartisanship.

Sandy Hume, a Republican from Boulder, was the only member of the Senate caucus who refused to participate in the caucus straw votes—because he felt it violated the new amendment. Says Hume: "I think it is eminently reasonable that we could function quite adequately under GAVEL. I think it would vastly decrease the influence of partisan politics."

And Senate Caucus Chairman Allard says this year's budget bill, in the Senate at least, was "more bipartisan—because it's done on the floor instead of in caucus." And without a chairman's pocket veto in committee, "everybody in that committee has to take responsibility for voting."

House Minority Leader Wright says GAVEL helped the other party, too. "GAVEL also relieved Republicans from the kind of pressures leadership could put on them to toe the line or otherwise your bill doesn't get out of Rules. I think the Republicans were able to be more independent," she says. "Things were just wide open on the floor. We even killed one of the speaker's bills."