

## MEMORANDUM

Re: Rules of the House and Senate

Based upon the assumption that Section 12 of Article II of the Constitution requires that the "rules of procedure" of both houses shall be the same, the following suggestions are offered in the hope that they may be of use to the Legislative Council.

1. Presumably, Sections 12 and 14 of the said Article II should be read together, and, normally, it would not be expected that the rules of procedure of the individual houses would have to be the same. However, the reports of the Constitutional Convention seem to indicate that it was the intent of the framers of the Constitution to provide for consistency as between the two houses in order to avoid confusion in the mind of the public. This leads to some confusion as to the meaning of the word "procedure" because under one interpretation every internal act of a house of a legislature is procedural in character, since the whole purpose of the existence of the house is to use its procedures to consider legislation. However, as a practical matter it must be recognized that there are certain inherent differences between the houses, primarily those of size, so that it would be impossible for the organization of each house to be identical in all respects. For this reason it seems sensible and in accordance with the Constitution to limit the "uniform rules of procedure" to those matters affecting the course of a bill or resolution through each house, since this is the essence of the work of a house, and the other internal matters could be said to be unimportant to the general public, although naturally, of some importance to the individual house itself.

2. Order of Business. It would seem that under any concept of uniform procedure the order in which the calendars of each house are taken up should be identical. Since, if we are to avoid confusing the public, the order in which substantial matters are considered should be the same. In this connection I have the following comments to offer:

(a) Would it not be more desirable to have the second reading of bills before the third reading in order to dispose of routine matters prior to considering the substantive file? Otherwise, a situation could well occur where a lengthy debate on the third reading file might be continued from day to day and the house not even get to the second reading file thereby hindering the ordinary process of its calendar.

(b) At each step of the legislative process the house of origin should consider its own bills first, for the reason that this will aid in final disposition of a bill in one house, and, if it is passed, in transmitting it to the other, thereby avoiding a last minute log jam of bills.

(c) If a consent calendar is to be used in one house it probably should be used in the other in the interest of "uniformity". Having no immediate estimate of the number of bills to be introduced in the Legislature, it is difficult to comment upon whether a consent calendar is, in fact, needed. But unless the number of bills greatly exceeds the capacity of the Legislature to act upon them it is questioned whether a consent calendar is a desirable tool. Under routine procedure bills appearing on the third reading file which are not controversial would probably be voted out after a brief explanation by the author, so that nothing would be added by a consent calendar. The difficulties of the consent calendar seem to be that the member has to consider two items: (1) whether he favors the bill, and (2) whether it is of such a nature as should be passed by consent rather than after floor consideration, the latter decision being an extremely difficult one to make. The practice of using consent calendars would also seem to lend itself to a good deal of preliminary

maneuvering as to which items would be placed on the consent calendar. The decision on the use of consent calendars also involves broad policy questions as to whether the Legislature is going to adopt the view that each bill to be introduced would be given a hearing and consideration at least by a committee. Under the United States Congress, where the consent calendar is most widely used, most bills introduced never get committee hearings, and the process of passing bills that have had committee hearings usually is one of weeding out those which are technical or relatively non-controversial in nature. Because of the size of this legislative body, it becomes impractical to give full consideration to these latter items, and the debate time is necessarily reserved for items of significance, which, however, would prevent the consideration and passage of technical bills unless they were handled through the consent calendar. However, many state legislatures adopt the view that each bill should be given a hearing by a committee if its author so desires. Under this concept there is a constant flow of bills being reported, and it would be simpler and fairer to have them work their way up the file in the normal course of events rather than to segregate them into "consent" and other measures.

### 3. Reference to Committees.

(a) The question is raised as to whether "uniformity" requires the same number of committees in each house with identical responsibilities as to subject matter considered. The same question is raised as to whether the names should be the same. This appears to be one of those borderline situations, but there would seem to be no real necessity for the names to be identical, although it would probably be desirable that subject matters in both houses be generally referred to the same type of committee. Thus, it would probably not be "uniform" if a bill affecting the Penal Code were referred to the Judiciary Committee in the Senate but the Ways and Means Committee in the House.

(b) The Senate seems to have a rule that prior to engrossment all bills be referred to the Judiciary Committee for technical checking. Such a procedure, if used, should probably be standard in both houses. By way of comment, such an automatic reference would seem to create an extraordinary burden on the members of the Judiciary Committee who, in effect, by such a procedure, are assuming the responsibility for technical accuracy of bills.

(c) Required quorums in committees should, likewise, be standard. For example, whether affirmative committee action can be taken by a majority of members present or whether it should be by a majority of all members appointed to the committee, should be decided under a uniform rule. so, also, if any rule is adopted permitting the approval of bills by committee members when not present at committee meetings, it should be standard.

(d) If a practice is adopted to report all bills out of committee, whether with an affirmative or negative recommendation, such practice should also be standard, or if the reverse is true, that bills remain with the committee until affirmative action or until taken from the committee by the house, then this also should be standard.

(e) Whether records are to be kept of and reports made on committee votes should also be standard. Many legislatures require that when favorable action is taken on a bill by a committee the vote on the bill by number of committee members be also recorded so that members of the house who see a split vote will be alerted to a possible controversy regarding the subject matter.

4. Further Proceedings Regarding Bills. Referring specifically to the Senate Rules, it would appear that beginning with Rule 17, most of the subsequent items would come under the heading of "procedure", which would require uniformity. The theory would be that the method by which a bill is considered on the floor

would be procedural in character and, if the original premise is right, therefore must be standard in both houses. The following comments on these matters are keyed to the Senate Rules.

but would be equally applicable to those of the House:

(a) Rules on such matters as decorum and debate and priorities of motion should be standard so that, theoretically at least, a ruling of a presiding officer of the House would be the same as that of the corresponding officer in the Senate on a particular motion under debate or similar parliamentary proceeding.

(b) Rule 20 of the Senate might be considered for amendment to prevent forcing a vote in all cases whether requested by a member or not. Under its present language it appears to require the presiding officer to press the question to a vote even when no member is particularly concerned one way or another that an individual has not voted. There are many instances where a member may not desire to vote because to do so might cause him personal embarrassment or where a vote either way would be particularly objectionable to his constituents, and his vote is not really crucial to final action on the bill. It would thus seem unnecessary, in these situations, for the matter to be specially called to the attention of everyone concerned, by asking all of the other members to vote upon whether one's reason for not voting is acceptable. Of course, if any member desired to examine one's reasons the situation would be different.

(c) The proposed additions to Rule 22 might be limited to the printing of roll calls on resolutions where requested by a member without making the further provision that this can only be done if there is no objection. This would follow the theory that the dignity of any individual member is such that he is entitled to have his colleagues' vote on a resolution printed if he desires such public record.

(d) Senate Rule 24 could be amended to provide for only one "file", since the reason for having both a general and daily file seems obscure. If only one file is to be used, then

the respective items listed in the file could appear in their appropriate order to fit in generally with the order of business specified in Senate Rule 24.

(e) Senate Rule 25 provides that the general file be heard as a special order of business. The question is raised as to whether this is really necessary since if the third reading file is the last order of business the house will reach this file in due course of events at whatever time permitted by the rest of the calendar and will presumably continue the debate on the third reading file until adjournment, whatever time that may be. Usually "special orders" are designed for the consideration of a bill or a series of bills involving one important subject matter so that at the time fixed in the order, other business is put aside to consider this extraordinary matter, because, presumably, its importance is such that it has a priority over and above its normal place in the file.

(f) Senate Rule 28 requires bills to be read in full on the second reading. It is suggested that this is time-consuming and normally should not be necessary. It may be assumed that the time necessary to read these measures in full is the present reason why second reading occurs after third reading. But if this practice is abandoned, such would no longer be necessary. It is noted also that House Rules 66 and 68 provide for reading in full on both second and third reading, which must be a time-consuming procedure of some magnitude. It may be that some members will desire some bills read in full, so perhaps a reasonable compromise on this item would be to amend the rules to provide that all readings of bills shall be by title only unless a member requests that a particular bill or bills be read in full on second reading.

(g) Also in connection with Senate Rule 28, a specific motion is provided under the heading "Should the bill be engrossed?". The question is raised as to whether this motion is desirable. Improperly used it could lead to full scale debate on the bill at this stage of the proceeding, since, if the motion is lost, the bill has been defeated. This could be abused by persons wishing to force an expression of opinion by the members on a bill at

this stage of the proceedings and then use the intervening period between that time and third reading to gather additional votes even though the motion on engrossment is carried. It would seem that adequate protection exists elsewhere, such as the right to debate on second reading, the full debate on third reading, and the right of reconsideration thereafter. For these reasons, it is suggested that this particular motion be limited to a motion for accuracy. In other words, that any member could, by motion, question whether the bill is in proper form for engrossment, in the sense that there is an error or that unauthorized amendments are attached. On this motion the debate could then be limited as to whether an error or inaccuracy occurs.

(h) Senate Rule 44 could well be revised so that the vote on the emergency clause, (or more accurately the effective date of the act), could be taken first, and then, if the requisite number of votes are in the affirmative, a motion could be made for that vote to apply to the vote on final passage of the bill. Even if a majority of the members, but not the requisite 2/3rds, vote in the affirmative on the emergency clause, so that the effective date therein set is lost, nevertheless, on motion the same vote could be applied to the vote on the bill itself, avoiding another roll call. Of course, the same procedure could be followed if less than the majority of members vote in the affirmative, since there would seem little reason to call the roll again on final passage.

(i) The language of Senate Rule 52 referring to the previous question could probably be improved.

(j) Senate Rule 56 raises a grave question of public policy, and it is noted that its provision for secret sessions is also in the House Rules. For public relations reasons alone it is wondered whether such a rule is desirable. Many reasons exist why committees desire executive sessions but generally votes, even in committee, are public and, executive sessions of the Legislature as a whole or either house thereof are rather rare. Generally the trend has been for newspapers to criticize any secret sessions of legislative bodies on the theory that the public

has a right to know, through the press, what is being said and done.

(k) Senate Rule 57 makes specific reference to messengers. Is such a rule necessary?

5. On the subject of lobbying, Rule 15 of the Senate might be aided by amendment, particularly by eliminating the procedure for disbarment. The implication rises from the present language that if a person not be denied the privilege of the floor he would otherwise have it, which presumably is not the practice.

6. As to Senate Rule 3, it is suggested that there is no need to provide an adjournment time, which implies something in the nature of an employment day as distinguished from the normal conduct of the legislative session. Also, in connection with the same rule, it seems a little unusual for the Legislature to receive messages from State officials other than the Governor. Normally, committees receive communications upon facts under consideration, but an official message from the executive branch to the Legislature as a whole is usually limited to the Governor.

7. It is also noted, of course, that there are several constitutional provisions as to matters which must be regulated by the Legislature, such as lobbying. The constitution requires also a good many joint sessions. No doubt the rules will be amended to specifically include all these constitutional requirements, primarily for the purpose of reminding the members, without the necessity of continually referring back to the Constitution, that when considering these matters there are constitutional limitations.