The Power Within

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THE POWER WITHIN
REPRESENTATIVE TOM MOORE*

PART ONE: AN INTRODUCTION TO THE INNERWORKINGS OF THE FLORIDA LEGISLATURE AND A GLANCE AT CONSTITUTIONAL REVISION TO IMPROVE THE PROCESS

Article III of the Florida Constitution establishes the basic framework for the exercise of legislative power in Florida. With the convening of Florida’s Constitution Revision Commission in 1977, the entire Legislative Article became open to reexamination. Elsewhere in this symposium there is considerable discussion of citizen initiative to enact statutory laws. Certainly, movement to a unicameral legislature or to single member legislative districts would significantly affect the legislative process in Florida. Similarly, a constitutional right of citizen initiative and referendum to promulgate statutory law, enacted in Florida, would open vast new possibilities for citizens to influence the legislature. While this article does not encompass those discus-


1. This two-part article discusses legislative power in Florida’s state government and proposals to improve Florida’s legislative process. The first part explains the present power functions of various legislative leadership posts and summarizes existing checks and balances on the exercise of power by legislative leaders. Following is an analysis of the potential impact of specific changes suggested by reformers as part of the package on which Florida citizens might vote in November, 1978, through constitutional revision. In a forthcoming issue of the Florida State University Law Review, the second part of this article will discuss proposals for reform of legislative procedural rules.


The Constitution Revision Commission voted on November 15, 1977, to support amendment of Article III to mandate single-member legislative districts for both house and senate. The author observed the proceedings and found the debate to be of the highest caliber. The Commission rejected a proposal which provided for single-member house districts but multi-member senate districts. It also rejected a proposal which would have constitutionally mandated that boundaries of senate districts be coterminous with boundaries of house districts. Thus, under the proposal as approved, a house district—though smaller than a senate district—might not lie entirely within a single senate district.

The number one recommendation of the Citizens Conference on State Legislatures on how Florida could improve its legislature was: “Legislative districts in both houses should be single-member.” CITIZENS CONFERENCE ON STATE LEGISLATURES, THE SOMETIME GOVERNMENTS 195 (3d ed. 1973) [hereinafter cited as THE SOMETIME GOVERNMENTS].

sions, it is related to them. For example, those who urge checks and balances on the exercise of power by presiding officers of a two-chamber legislature would likely intensify their cries for such checks and balances on a single presiding officer if Florida moved to a unicameral system.

I. The Need for Legislative Reform

The Florida Legislature ranks as one of the best state legislatures in the nation. In fact, as of mid-1970, according to a study of the fifty American legislatures published by the Citizens Conference on State Legislatures, the Florida Legislature was fourth best overall. Florida ranked high in four of five rating categories, scoring first in the “Independent” category, fourth in the “Informed” category, fifth in the “Functional” category, and eighth in the “Accountable” category. The study also highlighted the area in which Florida's legislature most needs reform: in the “Representative” category, Florida's legislature ranked a lowly thirtieth.

It is not unrealistic for the Florida Legislature to work toward and achieve status as the best state legislature in the country. To do so, however, Florida must substantially improve upon the “representativeness” of its legislature by diffusing the highly concentrated power of its presiding officers.

It is easy to observe the chaos of the legislative process in Florida on public television every evening during the legislative session. Most observers are shocked at the apparent lack of attention legislators, particularly in the house, give to their colleagues during floor debate. So much happens so quickly, especially in the closing days of a regular session, that it is not unfair to characterize the event as a “circus.”

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5. The Citizens Conference on State Legislatures carried out a major study of the 50 state legislatures as they were in mid-1970. The Florida Legislature ranked fourth overall among the 50 states, behind California, New York, and Illinois. The overall ranking was a consolidation of the states' rankings in five categories: functional, accountable, informed, independent, and representative. For an analysis of the meaning of each of the five categories and how the various state legislatures were ranked, see THE SOMETIME GOVERNMENTS, supra note 3.

6. Id. at 52.

7. Id.

8. The author did some of the research and writing for this article while in Denver, Colorado, at the offices of Legis 50 (formerly the Citizens Conference on State Legislatures). Larry Margolis, Executive Director of Legis 50, used roughly the words of the text in response to the author's question about the potential of Florida's legislature to become the best in the country.

9. The Citizens Conference on State Legislatures measured both “individual effectiveness” of state legislators and “diffusion and constraints on leadership” in the legislatures in evaluating the “Representativeness” and “Accountability” categories. THE SOMETIME GOVERNMENTS, supra note 3, at 43-47, 139.
During the short, two-month session each year, members are under tremendous pressure to pass legislation without knowing its full content or potential impact. Every first-term legislator quickly learns that the less said in explaining a bill, the better its chance of passage. Surely this is unfortunate and worth correcting.

The Florida Legislature has sought to meet the inevitable logjam at the close of each regular session in several ways, but increasing concentration of power in the leadership has been the most significant remedy. The result is that the power of a very small number of individual legislators—primarily the two presiding officers—makes most things happen or not happen in the closing days. There is reason to believe Florida would rank even lower in "Representativeness" today than it did in the mid-1970's.

10. FLA. CONST. art. III, § 3(d) provides that the regular session "shall not exceed sixty consecutive days."

11. One first-term house member wrote this response to the author after reviewing the text statement in draft form: "How true! . . . as a freshman, I found the 'old-timers' absolutely reveled in their ability to 'slip one by' and gain passage of a bill which benefited only a chosen few." While first-termers are quick to learn this fact of life about the legislative process, those who have been members the longest seem to be the best at it. See, e.g., Miami Herald, July 10, 1977, § E, at 4, col. 1, describing how legislators, wary of the ways of the Chair of the House Rules and Calendar Committee, scrutinized his last-minute bill line-by-line, looking for some catch, some grabber they felt was surely hidden in it. The chair assured them that it was "no big deal," but the grabber was discovered two weeks after the bill, the last enacted by the 1977 legislature, was passed. The Herald characterized the legislation as the product of a veteran of the process, "known for his subtle ability to slip bills of questionable origin—frequently benefiting a special interest—into law . . . ." The point was: if lawmakers had known more precisely what the bill did, objections to it would have possibly prevented its enactment.

12. The use of "special orders" became a helpful tool at least as early as 1929 in the Florida House. See FLA. H.R. RULE 45 (1929) (available in the office of the clerk of the Florida House of Representatives). Over the years, categories of bills of a relatively noncommercial nature could be placed on such "special orders" and enacted speedily. These included such items as "local bills" and "road designation bills." Present FLA. H.R. RULE 8.17 allows the Committee on Rules and Calendar to "submit a Consent Calendar to expedite the Calendar." Similarly, present FLA. H.R. RULE 8.18 does the same thing for "Bills of a Local Nature."

Another approach to handling the logjam has been the use of presession committee meetings. The Citizens Conference on State Legislatures noted that "Florida's presession activities could serve as a model which most other states would do well to adopt." The Sometime Governments, supra note 3, at 194.

13. Historical evidence of a steady process of increasing concentration of power in Florida's legislative leadership can be found in the published procedural rules of the Florida House of Representatives. A study of the earliest set of rules published in 1907 through the present rules reveals the movement toward concentration of power.

This trend is examined in some detail with specific reference to the calendaring process at text accompanying notes 39-43, and in Moore, The Special Order Calendar in Historical Perspective (1975) (available from the author on request).

See, e.g., St. Petersburg Times, June 12, 1977, § D, at 1, col. 1:
Most Florida legislators, as well as many of their constituents, believe in "strong" presiding officers. But continuing erosion of the political strength of each individual member of the Florida Legislature who holds no formal position of power fosters an increasingly undemocratic process. Budgets and legislative proposals will continue to increase; however, the historical simultaneous trend toward further concentration of power in the legislature need not continue. If it does, the legislative product in any given biennium will continue to reflect the philosophy of the legislative leadership, not the entire body. Further, that leadership will have been selected long before the biennium in which they serve as officers. The trend should be the other way. The legislative product should be more representative of the collective political philosophy of the membership.

Barely six years ago Florida had a progressive, reform-minded Legislature that was rated fourth best in the nation. Today it has a Legislature that is:

- Beholden to the special interests;
- Obsessed with raw political power;
- Destitute of any programmatic leadership or commitment
- And driven by ego.

14. There is no right to have one's legislative representative treated "fairly" within the legislative halls, in terms of his influence over the process. Article IV, § 4 of the United States Constitution states that "[t]he United States shall guarantee to every State in this Union a republican form of government . . . ." In Luther v. Borden, 42 U.S. (7 How.) 1 (1849), the Supreme Court held the guarantee in that clause unenforceable because it was a political matter:

For as the United States guarantee to each state a republican government, Congress must necessarily . . . determine whether it is republican or not. And when the senators and representatives of a state are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority.

Id. at 42.

An equal protection challenge to apportionment of voting districts was heard in Baker v. Carr, 369 U.S. 186 (1962). But an equal protection claim that one is not fairly represented because of the poor committee assignments of one's legislator in the power structure of the state legislature stands little chance of success.

15. The power of the presiding officers is now so great and so influential that their campaigns have become long, costly, and hotly contested. Yet they are determined well in advance of the term in which the officers serve. For example, both of the Florida legislative chambers completed their leadership battles for the 1979–80 biennium before the 1977 session ended. Thus, persons who have not yet in 1977 decided whether to run for the Florida Legislature in the 1978 election face predetermined legislative leadership for the two-year term in which they will serve if they run and are elected. In a note to the author, the speaker-designate for the 1979–80 biennium stated that he spent an estimated $20,000.00 in his speakership quest, which he began in 1972. At least one candidate for speaker of the 1981–82 biennium was already traveling the state in the summer of 1977 seeking pledges of support from present majority house members. St. Petersburg Times, October 11, 1977, § B, at 14, col. 5.

16. The offices of the clerk of the house and the secretary of the senate provided the following statistics on election of new members to their respective chambers in the general elections of the 1970's:
Even the most ardent champion of the status quo can agree that certain proposals for change would make the legislature operate more smoothly. With that in mind, the next section briefly sets forth the present power functions exercised by legislative leaders as background to subsequent sections of this article analyzing proposed reforms.

II. POWER FUNCTIONS OF FLORIDA'S LEGISLATIVE LEADERSHIP POSTS

A. The Presiding Officers

The Florida Constitution provides that both houses of the Florida Legislature biennially choose their legislative officers. Each chamber must choose "a permanent presiding officer selected from its membership, who shall be designated in the senate as President of the Senate, and in the house as Speaker of the House of Representatives." Because of present legislative rules in both chambers, these permanent presiding officers exercise vast powers over the legislative process and over the other members of the legislature. The biennial replacement of powerful leaders is preferable to perpetual domination of the legislative process by one individual. However, the resulting succession of overly powerful presiding officers has led to calls for legislative reform.

The presiding officer of each chamber determines the committee assignments of each member of his respective chamber and selects all

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<tr>
<th>Election Year</th>
<th>New Representatives</th>
<th>New Senators</th>
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<tr>
<td>1970</td>
<td>32</td>
<td>9</td>
</tr>
<tr>
<td>1972</td>
<td>48</td>
<td>16</td>
</tr>
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<td>1974</td>
<td>41</td>
<td>12</td>
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<td>1976</td>
<td>31</td>
<td>6</td>
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Thus, the percentage of new members in the 120-member house ranged from 25% to 40% with each election. In the 40-member senate, the percentage of new members ranged from 15% to 40%. Ordinarily, only half of the senators face reelection each general election since they have 4-year terms. In 1972, however, all senators stood for reelection as part of the decennial reapportionment of the legislature.

17. FLA. CONST. art. III, § 2.
18. WJXT-TV4 of Jacksonville perhaps said it most succinctly in an editorial televised November 23 and 25, 1976. After briefly listing the powers of the presiding officers, the editorial said: "That's too much power." As with most other editorial comment, it concluded that lawmakers ought to reform the legislative process. See, e.g., St. Petersburg Times, June 5, 1977, § D, at 2, col. 2:

Essential to improving the lawmaking process is limiting the power of the House Speaker and the Senate President, who now dictate all committee assignments, chairmanships and control the calendars. They are not accountable in any way to members. In fact, members are accountable to the leaders.

That irresponsible power system must be broken if Florida is going to build a legislature that makes laws on their merits.
committee chairs.\textsuperscript{19} He may add to the number of members of any committee at any time or remove any individual member from a committee at any time he chooses.\textsuperscript{20} He may also remove a committee chairman from his position, as well as from the committee, at any time and for any reason.\textsuperscript{21}

Legislative employees are completely under the thumb of the presiding officer, who may hire and dismiss each employee of the chamber over which he presides.\textsuperscript{22} Individual legislators may not dictate the fate of their own legislative staffs, so even committee chairs may lose staff directors whom they strongly support.\textsuperscript{23}

The presiding officers also control the assignment of parking places, office spaces, and seating arrangements within the chambers.\textsuperscript{24} They may delegate this decision-making power to another,\textsuperscript{25} but one whom they especially favor or disfavor finds that such "little things" can be used as indicia of power or lack of power. Obviously, some parking spaces are more conveniently located than others. Some legislative

\textsuperscript{19} FLA. H.R. RULE 6.1 (1976); FLA. S. RULES 2.1, 2.20 (1976).

\textsuperscript{20} This is customary; there is no actual provision in the rules allowing or prohibiting addition or subtraction from committee membership. Even this informal power is subject to abuse, however. See, e.g., Tallahassee Democrat, Oct. 12, 1977, § B, at 1, col. 3; Miami Herald, Oct. 12, 1977, § B, at 7, col. 1; Florida Times Union, Oct. 13, 1977, § B, at 1, col. 1.

\textsuperscript{21} This power is also exercised by custom. When exercised, it causes more reaction from both legislators and the press than most other actions of the leadership. Some impressive examples of this exist in the recent history of the Florida Legislature. See newspaper articles cited supra note 20.

\textsuperscript{22} For example, the applicable house rule provides that "the Speaker shall have the right to dismiss any employee of the House and pay of such employee shall stop on the day of dismissal." FLA. H.R. RULE 1.6 (1976). The senate rule provides that the "President shall resolve disputes involving the competency or decorum of a Senate employee or attaché . . . and may terminate the services . . . for just cause." FLA. S. RULE 1.28 (1976).

\textsuperscript{23} In the summer of 1977 the president of the senate fired the staff director of an important senate committee. The committee chair was quoted by the UPI as saying "I had nothing to do with it. He was an excellent staff director." St. Petersburg Times, July 13, 1977, § B, at 12, col. 1. That staff director had served with his chair for several years in the house before they both moved to the senate. \textit{Id}.

This author's file includes a letter from a senator who said of this and another summer 1977 staff firing by the senate president: "The truth is that these staff members found themselves caught in a crossfire, and made the mistake of not siding with the Senate President or his close cronies." (Letter available from author on request.)

The result is that each aide or secretary of an individual legislator may serve his legislator and his constituents, but his paycheck comes only if he has the continued blessing of the presiding officer. This holds true for every legislative employee.

\textsuperscript{24} FLA. H.R. RULE 2.3 (1976); FLA. S. RULE 1.5 (1976).

\textsuperscript{25} Each presiding officer presently delegates this power to his "pro tempore." The house rule states that the speaker holds the power of "general control" of the chamber, specifically over "the corridors, passages and rooms assigned to the House." FLA. H.R. RULE 4.1 (1976).
offices are small; some are large. In the old capitol, some were practically in a public passageway. Some are conveniently located; some are tucked away in almost forgotten recesses. Some desks in the house chamber have been traditionally prestigious. Some have been traditionally “dog-house” locations. (In the Florida Senate, seats are by district number, in an orderly and numerical pattern. Thus, there is no particular status to seat location.) In any event, these matters do psychologically shape legislators’ perspectives of their own power and that of their colleagues. Certainly each individual legislator is reminded that he owes his place, good or bad, to his presiding officer.

In addition to substantially influencing the role and pecking order of most individual legislators through the exercise of the above powers, the presiding officer of each chamber exercises great power over the passage or failure of every legislative proposal. When a bill is filed, the presiding officer refers it to one or more committees. A referral to only one committee can speed its passage, while referral to three committees in the house or even four in the senate will make the going tough and often kill the bill.

The presiding officer’s ability to control the flow of debate also influences passage or failure of a bill. By custom, in both chambers the presiding officer asks each legislator “for what purpose” he rises prior

26. One senator described this in a letter to the author as going “beyond the mere question of ego damage.” His letter states his concern that an individual legislator’s constituents may effectively “lose their voice” in the legislative process “at least to the extent that their legislator would normally participate . . . .” (Letter available from author on request.)

Another veteran legislator, long accustomed to roomy quarters, found himself out of favor with his presiding officer and relegated to such cramped office facilities that he opened an additional office outside the legislative office building at his own expense. (Letter available from author on request.)

27. FLA. H.R. RULE 8.8 (1976); FLA. S. RULE 4.6 (1976).

28. One house member formalized in a letter to the author his comments on this point as made in floor debate during the 1977 regular session: “Referral of a bill to three different committees, under present rules, makes it impossible to compel each committee to hear the bill before the sixty-day session expires.” By house rule, a committee chair, upon request of a member, must set a time for consideration of a bill. FLA. H.R. RULE 6.6 (1977). In effect, however, the period can run 21 days from the date of referral to this committee. Id. For bills referred to the Appropriations Committee or the Committee on Finance and Taxation, the period under the rule is even longer, specifically, 37 calendar days from the date of referral. Id.

In 1974, the author, then uninitiated and naive about the process, watched a house-passed environmental bill receive three committee references from the then-president of the senate when the senate obtained the bills in its messages from the house. The author was anxious to lobby for the bill since only two weeks remained in the session. Holding the computer print-out of the bill’s senate committee referrals, a veteran legislative observer commented to the author: “There goes that one for another year.” The author had learned another lesson about legislative power.

29. FLA. H.R. RULE 12 (1976); FLA. S. RULE 1.3 (1976).
to giving that legislator the floor. If the presiding officer does not wish to have the particular amendment or motion discussed at that point, he simply responds to the legislator seeking recognition: "I won't recognize you for that purpose at this time." While this procedure enables the presiding officer to keep the members on the same subject and bring order to the proceedings, it also frequently allows a vote to be taken on an important subject before some individual members can move their amendments to it.  

Obviously, by recognizing those members who wish to present amendments he favors and failing to recognize others, the presiding officer can significantly affect the final product resulting from the amendatory process on the floor. Once he recognizes a member who moves to terminate the amendatory process, and a majority supports the motion, those who had additional proposed amendments find themselves left to try again in the next session or to look for another, similar bill to amend.

In the house, the speaker also appoints a majority leader. By custom, the majority leader is the speaker's strong right arm. His position is based upon his relationship to the presiding officer rather than upon any grant of power from the members of the majority party. On many issues, it is literally "thumbs up" or "thumbs down" from the majority leader, who sends at least an occasional in-house report card grading individual legislators to the presiding officer.

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30. This is particularly true in the house, where written amendments actually in the possession of the clerk sometimes are never presented by their sponsors because the majority has voted to terminate the amendatory process. FLA. H.R. RULE 10.14 (1976). If a bill is being considered "section by section," then any amendments in the clerk's possession must be considered, though debate is limited to three minutes per side on each. If the bill is not being considered "section by section," which is the more usual case, then any amendment other than one pending is cut off from consideration by the House. FLA. H.R. RULE 10.14 (1976). See also FLA. S. RULES 7.1, 7.2, 7.5 (1976).

31. One first-term member stated in a note to the author that the speaker may never recognize a member's attempt to be heard "when the contribution to be made is unknown" and might undo the speaker's plans. That is, he will not even ask "for what purpose" the member rises. (Letter available from author upon request.)

32. There is no provision in the house rules for a majority leader, and he has no formally delegated authority or responsibility. The power flows directly from the speaker in whatever degree and to whatever extent the speaker determines. In the last two years, many house Democrats have discussed election of the majority leader as possibly preferable to the present appointment process. This discussion usually dies when further debate turns to the question of a grant of power to the majority leader by the democratic caucus. At present, a "democratic caucus" hardly exists as an entity in the house. It certainly does not exist politically as a policy-making body for a legislative program supported generally by members of the majority party.

In the senate, a majority leader is elected if the president calls a caucus to elect one. FLA. S. RULE 1.1 (1976).

33. The term refers to gestures members use during debate to indicate their positions on amendments.

34. A former staff member of the majority floor leader said in a note to the author
B. President Pro Tempore and Speaker Pro Tempore

Like the senate president and speaker of the house, the president pro tempore and speaker pro tempore are elected by members of their respective chambers. The power possessed by either officer at any given time depends upon the willingness of his elected presiding officer to give it to him. In both Florida legislative chambers in recent years, the pro tempore candidates have run for their leadership posts in tandem with a candidate for presiding officer, though it appears that this was not always the case. Thus, the majority of the majority party, having elected this "team," may reasonably expect that the elected presiding officer will delegate authority and responsibility to his "pro tempore" running-mate. Nevertheless, without protection by rule, it has been demonstrated recently that a presiding officer can strip even the elected pro tempore of the authority and responsibility delegated to him through committee assignments and a chair.

In recent times, the "pro tempore" has been given authority and responsibility for approving all funding requests from members of his chamber for everything from legislative travel, stationery, and district office expenses to typewriters and other everyday necessities. Inherent in the power to approve an expenditure, obviously, is the power to disapprove it.

C. The Chair of the Committee on Rules and Calendar

The second most powerful legislator in each chamber is the chair of the Committee on Rules and Calendar. If he remains in the favor of his elected presiding officer, this individual exercises substantial control over the flow of legislation to the respective chamber floor. In

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that he agreed with the statement in the text. Nevertheless, he would word it differently: "The Majority Floor Leader has, in the past, advised the Speaker as to voting patterns and records of members of the House on particular issues of importance to the House leadership, in order to determine the atmosphere of the House to future legislative proposals which may be pending." (Letter available from the author upon request.)

35. This election is pursuant to procedural rule, as opposed to election of the presiding officers, which is constitutionally mandated. Compare Fla. H.R. Rule 1.1 (1976) and Fla. S. Rule 1.1 (1976) with Fla. Const. art. III, § 2.

36. Speaker Pro Tempore John Ryals stated in a note to the author that to his knowledge he was the first candidate for speaker-pro-tempore-designate to run in tandem with the candidate for speaker-designate. (Letter available from the author upon request.)

37. When the senate president realigned several senate committee chairs and committee assignments, the senate president pro tempore was among the casualties. The senate president did not, and could not, remove the pro tempore from that elected position but did remove him from assigned positions of power. See newspaper articles cited supra note 20.

38. Both "pro tempores" in house and senate have had this responsibility in recent times.
both chambers, the "Special Order Calendar," a product of the Committee on Rules and Calendar, is the procedural device for effectuating this control.39

Procedures for placing bills on this calendar vary in the two chambers. Under the applicable house rule, a majority of the membership of the Committee on Rules and Calendar theoretically establishes the list of bills on the special order calendar for any given legislative day.40 In the senate, an alternating three-member panel from the committee establishes the daily list.41 As a practical matter, each individual member consults the rules chair, or asks a committee chair or minority party leader to do so on his behalf, and requests the chair to place the bill on the special order calendar.42 In the house, if the rules chair approves, the bill is brought up for consideration before the full Rules and Calendar Committee, which normally accepts the list presented to it by the chair. The bill then goes to the floor.

If the rules chair or the senate three-member panel is not inclined to place the bill on the Special Order Calendar, the individual sponsor of the bill has an uphill fight. Support from the committee chair of the substantive committee which reported the bill favorably out of committee becomes almost essential. If the chair of the substantive committee opposes the bill, it would have to be widely popular to make it past the objections of both the rules chair and the chair of the substantive committee.

The chair of the Committee on Rules and Calendar also determines the order of the bills on the list designated as the Special Order Calendar. Thus, it is not unusual for a bill to be on the Special Order Calendar for several legislative days. It may also nearly reach consideration on one legislative day, only to be near the end of the list the next day. In fact, there is no guarantee that it will even be on the Special Order Calendar the next day.43

39. In short, if a bill is even slightly controversial and fails to reach the "Special Order Calendar," it is virtually dead.


41. FLA. S. RULE 4.17 (1976).

42. There is a printed form to accomplish this. A committee chair completes this formal request for a particular bill, signs it and sends it to the chair of Rules and Calendar.

43. This was not always the case. For example, the 1949 House Rules provided the first historical insight into the evolving use of the "special order calendar" for bills other than those of "great public importance." FLA. H.R. RULE 6.20 (1949). In 1949, for the first time, the rules specifically allowed a bill to move from the special order calendar on one day, back to the regular calendar the next day, but this at least assured that the bill went
D. Chairs of Substantive Committees

Because of the heavily concentrated power of the presiding officer and the rules committee chair, the chairs of the various substantive committees in the Florida Legislature are not as powerful as their counterparts in the United States Congress. Nevertheless, they do hold considerable power vis-a-vis individual members of the legislature who hold no formal positions of power.

Among the substantive committee chairs in both chambers, the two most powerful in each chamber are the chairs of the Appropriations Committee and the Committee on Finance and Taxation. In recent times, each presiding officer has referred an increasingly larger percentage of bills to one or both of these two committees. They have become "super committees," which often rehash substantive matters on controversial bills which have been thoroughly debated in public hearings before other committees.

The power of a committee chair includes the ability to agenda or fail to agenda any bill referred to his committee for consideration. Often timing itself is critical. A committee chair can kill a contro-

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"to the head of the regular calendar." Today, such a bill simply goes back to the regular calendar, with no further special consideration of its previous "special" status. FLA. H. RULE 8.15 (1976).

In the 1976 session the author had a mobile home bill which was listed for several days on the Special Order Calendar and then removed with little chance of ever again appearing there. See FLA. H. R. RULE 8.15 (1976). It ultimately became law, but only because it was amended to another mobile home bill by Representative Chester Clem at the request of the author. Act of Oct. 1, 1976, ch. 76-278, 1976 Fla. Laws 754.

44. In 1975, for example, there were 3,494 bills referred to house committees. Of these, 1,153 went to the Appropriations Committee and 340 went to the Committee on Finance and Taxation. Of the 1,153 referred to Appropriations, 824 were left in the Committee upon adjournment. Of the 340 referred to the Committee on Finance and Taxation, 192 died in committee upon adjournment. (Records in the Office of the Clerk of the Florida House of Representatives.)

45. Representative Dennis McDonald, for example, fought almost daily to push his widely popular phosphate severance tax proposal through the 1977 legislature. In a note to the author about the multiple committee references and hearings to which his bill was subjected, he explained that he saw little value in re-argument of the same facts and testimony before each hearing. His bill ultimately passed in amended form during the second special session in June, 1977. Act of July 1, 1977, ch. 77-406, 1977 Fla. Laws 1768.

Similarly, the author sponsored the Safe Drinking Water Act, ch. 77-337, 1977 Fla. Laws 1453, and shepherded the bill through substantial discussion in the House Natural Resources Committee and further substantive debate in the House Appropriations Committee. In fact, the Appropriations Committee had dealt with the funding of Florida's drinking water program in the appropriations bill itself prior to the hearing on the proposed Safe Drinking Water Act. The author viewed the additional hearing for what it was: not a hearing on appropriations for implementing the drinking water program, but a hearing to reexamine the substance of the proposed legislation and perhaps kill it or amend it substantially.
versial bill by taking it up when the opponents outnumber the proponents, or vice versa. Many bills receive no hearing at all; some reside in the bosom of the same committee for the entire legislative session. Often, this is due simply to the volume of bills, especially in the Appropriations and Finance and Tax Committees. Nonetheless, the percentage of bills leaving a committee favorably or unfavorably can be a measure of the fairness of a committee chair.46

As previously discussed, the special order calendar is important in determining whether a bill will be heard on the floor. A bill usually will not be placed on the special order calendar if the chair of the committee reporting it actively opposes it, since committee chairs tend to collectively establish a policy of "you stay out of my bailiwick and I'll stay out of yours."

On the floor, a committee chair obviously and properly has considerable influence over legislation dealing with a subject within the jurisdiction of his committee47 and can use his leadership position to pass, amend, or kill such legislation. Particularly during the hectic closing days of a legislative session, he can effectively work with the speaker and the rules chair either to kill a bill or to promote its listing on the Special Order Calendar for a speedy floor vote.

A bill passed in one chamber and sent to the other can be withdrawn from committee in the second chamber upon motion of that committee chair on the floor without a hearing in his committee.48 If a house committee chair, for example, withdraws a senate bill from his committee shortly after it passes the senate and is referred to his com-

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46. For example, in 1975, except for Appropriations and Finance & Taxation, all but one of the committees reported on most of the bills referred to them. In the one exception, only 40 of 144 bills were reported out of committee. (Records in the Office of the Clerk of the House of Representatives.)

47. In the last week of the 1977 session, a certain senate bill within the subject area jurisdiction of a house committee reached the house floor. The chair disliked and opposed the bill. He almost killed it simply by volunteering to move the bill for the senate sponsor, as a chair often does on bills from the other chamber within his subject area. He offered four supposedly "friendly" amendments, any one of which, if adopted, would have sent the bill back to the senate rather than immediately enrolling it for delivery to the Governor. In such event, the bill likely would have died since it probably would not have been considered again by both chambers before adjournment. But the chair's opposition to the legislation was anticipated by some house members who "caught" him trying to "help" the bill with his friendly amendments. The house rejected his amendments and overwhelmingly passed the bill. The chair simply voted against the bill. See the history of Senate Bill 1317, particularly action in the house on second reading on June 1, 1977, FLA. H.R. JOUR. 1038 (1977).

48. This is very common, especially with bills referred to the Committee on Appropriations. Of the 1,153 bills referred to the House Appropriations Committee in 1975, only 90 were reported out of the committee. However, 239 were withdrawn from the committee by motion of the chair in floor action; over 70%, then, died without a hearing. (Records in the Office of the Clerk of the House of Representatives.)
mittee, it is almost certain that the legislation will appear on the house special order calendar within the next day or two. If the chair or the house leadership opposed a senate-passed bill, the bill or its companion would probably languish in the substantive committee until the session ended.

E. Minority Party Leadership

In both chambers, members of the minority party elect a minority leader. This leader, as well as other minority party members with seniority and higher positions of influence, may exert considerable influence over the legislative process. For example, when an individual member of either party is unable to get a bill on the floor via the special order calendar because the chair of the committee which heard the bill is opposed to it, a minority party leader may assist him in persuading the rules chair to bring the bill before the full rules committee. Since minority party members are by custom excluded from committee leadership, they are not subject to the pressure of staying out of a committee chair’s bailiwick. If the measure has some popular support, a minority party member of the rules committee might well persuade both the rules chair and a majority of the members of the committee to place the bill on the special order calendar, notwithstanding the opposition of the particular chair.

The role of the minority party is also enhanced by numerous provisions in the rules and the constitution which require a two-thirds vote for certain action. Even when the minority party does not have enough members to constitute one-third of the chamber, it may find support from enough of the majority party to prevent certain actions and, at the least, to slow down the process.

III. Existing Checks and Balances on Power

A. On the Presiding Officers

Nothing in the constitution, statutes, or legislative rules prohibits a presiding officer from succeeding himself. In fact, there is no guarantee that a presiding officer will not successfully maintain his position

49. This is formalized by rule in both chambers. Fla. H.R. Rule 1.1 1976; Fla. S. Rule 1.1 (1976). Both rules call for election of the minority leader at a caucus of the minority party.

50. Such a bill is discussed in note 45 supra. The House Minority Leader secured placement of House Bill 2480, a mobile home bill, on the Special Order Calendar at the request of the author, who was prime sponsor of the bill.

51. See, e.g., Fla. Const. art. III, § 8(c) (requiring a two-thirds vote to override the Governor's veto).
for several terms through exercise of the power of his office. The Florida Constitution limits the term of an officer to no more than four years but does not prohibit reelection of an individual to another term in the same office.52

Furthermore, there is no formal process for removal of the presiding officer. Indeed, the constitution provides that he is a "permanent" officer.53 Thus, arguably no statute or rule could establish a procedure for removal of a president of the senate or speaker of the house during his two-year term other than by removal from the legislature itself.54 If the power of the leadership continues to increase as it has in the past, it will become increasingly possible for a strong leader to perpetuate his personal control of a chamber.

There is no check on the power of the presiding officer to appoint to or remove members from committees or chairs. Likewise, there are no checks on the power to fire and hire legislative employees. Though the procedural rules in the house are silent as to the removal power of the presiding officers, it is presumed to be inherent within the power to appoint. The senate rules specifically state that committee chairs "continue in office at the pleasure of the President."55

The house rules limit the speaker's power to refer bills to a maximum of three committees.56 The president of the senate is not similarly restricted. Because of time prohibitions, if a bill has three or more references, it must receive active support from the leadership to have chance of passage.

By rule, any house member has the right to "move for reference to a different committee" from the one to which the speaker referred a bill.57 Upon such a motion, a simple majority could change the reference. It is virtually impossible, however, to make a timely motion because it must be made "no later than the succeeding legislative day" following the reference.58 At first glance, that seems fair, though within a tight time-frame. But it is hardly possible, since another rule makes clear that "introduction and reference" of bills is last on each day's

52. FLA. CONST. art III, § 13.
53. Id. § 2.
55. FLA. S. RULE 2.20 (1976).
56. FLA. H.R. RULE 8.8 (1976). The rule limits referral to Appropriations, Finance and Taxation, and one other committee.
57. Id. at 8.9.
58. Id.
order of business, while “motions relating to committee references” are considered early in the day’s schedule.\(^\text{59}\) By custom, bill references, considered a ministerial task, take place after members have left the chambers. Thus, it is often well into the succeeding legislative day, and after consideration of motions pertaining to bill references, that a member or his staff has much chance of learning that a bill went to an unfriendly committee, contrary to his expectations. At this point, only a two-thirds vote can change the speaker’s referral.\(^\text{60}\) Thus, it is evident that the presiding officer’s power to initially refer bills is significant.\(^\text{61}\)

The presiding officer’s power to control floor debate is also significant. If a presiding officer in the Florida Legislature is to receive an open challenge to his power, it is most likely to occur on the floor during debate or other business of the chamber.\(^\text{62}\) Numerous times during any legislative session, a member will rise to a “point of order” under the rules, the only way one member may interrupt another without the consent of the member who has the floor.\(^\text{63}\) Once a point of order is made, however, the presiding officer determines whether or not the point is well taken. The integrity of the chair is considered so important in such matters that, even though a majority of members may believe the presiding officer erred in a ruling on a point of order, the decision of the chair will be upheld if appealed.\(^\text{64}\)

There is one critical area in which the present Florida Constitution plays a key role in floor action. Article III, section 4(c) provides the right of any “five members present” to require “the vote of each

\(^{59}\) Id. at 8.2.

\(^{60}\) A simple majority vote will secure a different reference upon a timely motion. But any tardy motion (i.e., made after the order of business of “[m]otions relating to committee reference on the succeeding legislative day”) would be out of order, and it would take a waiver of the rules to obtain a different reference. Fla. H.R. Rule 8.9 (1976). A “two-thirds vote of all the members present” is required to waive the rules. Id. at 15.2.

\(^{61}\) When the speaker has referred a bill to the Committee on Appropriations or the Committee on Finance and Taxation, only a “two-thirds vote of the members present” can change the reference, regardless of when the motion is made. Fla. H.R. Rule 8.9 (1976). Thus, the presiding officer’s power to bury a bill in either of the two supercommittees—or both of them—is very difficult to prevent. Even if a bill had absolutely no fiscal impact of any kind, a two-thirds vote would still be required to remove it from either of those two committees after the speaker’s referral.

\(^{62}\) If a presiding officer refuses to allow a motion which is properly before the legislative body, other state courts have held that the legislators may at once appeal the ruling of the chair, debate the question as they would any other question, and overrule the chair’s decision. State ex rel. Southey v. Lasher, 42 A. 636 (Conn. 1897). The same rule applies to questioning the ruling of the presiding officer on a motion to adjourn. See Pevey v. Aylward, 91 N.E. 315 (Mass. 1910); Chariton v. Holliday, 14 N.W. 775 (Iowa 1889).

\(^{63}\) Fla. H.R. Rule 12.3 (1976); Fla. S. Rule 2.46 (1976).

\(^{64}\) Allen Morris, respected and venerable clerk of the house, often repeats that “a Speaker of the Florida House has never been overruled on an appeal to the full House of any decision on a point of order.”
member voting on any question” to “be entered on the journal.” If five or more members felt a presiding officer had ruled incorrectly on an expressed voice vote, they could force him to call for the vote again to record the vote of each member. The constitutional requirement would clearly support a writ of mandamus against a presiding officer who failed to do so.  

B. On Other Legislative Leaders

The major check on the exercise of power by those in other leadership positions is the power of the presiding officer to remove each or all from their leadership posts. Needless to say, there is little “balance” of power between the presiding officer and any individual committee chair or other legislative leader, and individual members have few, if any, real levers to challenge legislative leaders in the exercise of their power functions. Some procedural rules purport to provide safeguards to individual members, but they are largely ineffectual. For example, house rule 6.6 provides that an individual member may withdraw a bill from committee on a point of order if it has not been acted upon by the committee within twenty-one days of its reference thereto; however, “acted upon” includes reference to a subcommittee (by vote of the committee) which generally catches all but seasoned veterans of the process by surprise. Another way for the chair to keep the bill in his committee longer than the rule period is by motion to extend the period of time for committee consideration of the bill. Before the sponsor is aware that his bill is affected (he may even be absent from the chamber when the motion is made), the motion can be passed, and the sponsor must start counting the days again. Lastly, if a member successfully though unwisely invoked rule 6.6, he would encounter an unwritten rule that his bill would never receive consideration for the special order calendar.

C. Through the Legislative Process in General

There are currently important constitutional restrictions on the

65. See State ex rel. Schwartz v. Bledsoe, 31 So. 2d 457 (Fla. 1947). The precursor of present art. III, § 4(c) was said to be mandatory in Advisory Opinion to the Governor, 12 So. 2d 583 (Fla. 1943).

66. FLA. H.R. PRECEDENT NO. 6.6(e) (1971), an adjudication by Speaker Richard A. Pettigrew. FLA. H.R. JOUR. 790 (1971). The “precedents” are published each year by the Florida House of Representatives. They represent the presiding officer's interpretation of a given rule.

67. This is understandable when one realizes the extent of a committee chair's power to influence other chairs in the calendaring process. No specific challenges to the “unwritten rule” are documented because members recognize a chair's power before they have a problem with placement of their bills on a committee's agenda.
legislative process which allow a minority of members of each chamber to exercise checks on the process.

1. Constitutional Requirement for Reading of Bills on Separate Days, Unless Waived. Article III, section 7, requires each bill to be "read in each house on three separate days, unless this rule is waived by two-thirds vote."\(^6\) Although a bill may pass by majority vote, a minority in excess of one-third can slow down the process. The delay is usually for one day; sometimes long enough to generate enough opposition to kill it on the vote for final passage.

From 1975 through 1978, the house procedure included the "carrying over" of bills from the second to third reading on the next legislative day, except during the last few days of the session.\(^6\) That essentially meant that debate on amendments took place on one day and debate on final passage on the succeeding day. Prior to the 1975 session, however, and still in the senate, waiver of the three readings mandated by the provision was customary, so that the amendatory process and final passage often occurred on the same day.

2. Reading Bills in Full. A one-third minority may constitutionally require that any or every bill be read "in full" on any or every reading.\(^7\) Presumably, such a minority would do so only under special circumstances; for example, to protest the overly speedy passage of a bill which was not printed, to give members time to read it. The constitution does not limit this right to such narrow circumstances, however.

3. Waiving the Rules. The procedural rules themselves check the legislative process. Often a motion to waive the rules is made. One-third of the membership on their collective toes, however, can prevent waiver of the rules on matters of concern to them.\(^8\) At critical moments, even a ruling from the chair that two-thirds approval of members carried by a voice vote on a motion to waive the rules may be challenged if five members request a recorded vote. If it is important enough to the one-third minority, this also can slow down the "legislative train" that may be rolling faster than a substantial number of members wish.

IV. SUGGESTED CONSTITUTIONAL REFORMS

When this article was begun, the author was not at all convinced

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68. FLA. CONST. art. III, § 7. First reading simply involves the initial referral to committee. Second reading is for amendment on the floor by majority vote. Third reading is the time to debate the bill on final passage, though amendments may be adopted by two-thirds vote.

69. The speaker simply declared that he supported such a practice. There is usually little objection if the speaker asks the house to waive the constitutional requirement.

70. FLA. CONST. art. III, § 7.

71. Id.
that constitutional revision was a proper mechanism for achieving legislative reform. After all, there is considerable merit to the position that constitutional restraints on the legislative branch are inferior to traditional checks and balances among all three branches of government. After study and analysis of various reform proposals, however, this writer concluded that some proposals for reform through constitutional revision would meet certain situations better than internal rules reforms. Removal of certain existing constitutional restraints on the legislative process seems advisable, while more effective restraints are needed to deal with the end-of-the-session logjam and other problems of the process.

As for restoration of power to individual legislators not in the highest leadership positions, several proposals make sense. The author supports both the election of presiding officers by a constitutionally mandated secret ballot and the establishment of a clear constitutional right of individual legislators to vote to remove them from office. The writer opposes any limitation on eligibility for reelection of a presiding officer, though such a constitutional revision is an obvious alternative to the other two proposals.

A. The Legislative Process

It is time to revisit some old proposals to improve the constitution’s legislative article. The following sections consider suggestions for constitutional reform which were proposed in the 1960’s.

1. Passage of Bills. A revision considered by the current Constitution Revision Commission, and largely rejected, was a total rewrite of article III, section 7. The present section includes, as previously mentioned, constitutional requirements that bills be read on three separate days and “in full.” These constraints, though intended to assure deliberation and a sound legislative product, fail to effectively accomplish those lofty objectives. In fact, as presently worded, a strong and obnoxious minority of one-third of these members present can hamstring the process for no good reason, just as well as a strong and obnoxious leadership can railroad bills through with two-thirds waivers. Also, the first reading of a bill is now simply a bothersome ministerial function which could be better handled in a publication process authorized by the legislative rules.

A better approach is that of the Model State Constitution, promulgated by the National Municipal League in 1963. In that document, the suggested constitutional language on passage of bills states: “No bill shall become a law unless it has been printed and placed upon the
That language combats two of the greatest built-in evils of the legislative system: (1) the legislators' lack of information on content and impact of the "final form" of a bill before voting on final passage; and (2) the legislative logjam at the end of each session. The latter has members concerned about passage of their own hastily-drawn and lengthy amendments, rather than the final form that other legislation took while their heads were turned to their own top priority items. The suggested provision mandates a time limitation to the amendatory process for each individual bill and reservation of the last three days of the session for voting bills up or down without amendment. Such a provision would force legislators to transfer last-minute energy now expended on the amendatory process to needed deliberation on the merits of the large number of bills they must vote on. It is during the last three days of a regular session that much of the harm from poorly and hastily drawn legislation is done. Highly ambiguous phrases, grammatically incorrect language, or even directly conflicting legislation make their way into the statutes because legislators are unable to scrutinize bills in the last-minute amendatory process.

Perhaps the Model State Constitution is too inflexible. Even so, the benefits probably outweigh the detriments. If an ambiguity entered a proposed bill by amendment and was discovered on the last day of the session prior to the vote on final passage, then at least a decision could be made about whether or not the ambiguity was so harmful as to require defeat of the legislation. Secondly, flexibility can be provided. For example, a sentence could be added to the proposed language requiring publication and notice "at least three days prior to final passage": "Two-thirds of the membership of a house, by motion ap-


On November 15, 1977, the Constitutional Revision Commission met and discussed, among other things, the quoted language from the Model State Constitution. The author noted that commissioners constructively observed that "placed upon the desks of the members" was narrower than an alternative phrase such as "furnished to all members." Also, "printed . . . in final form" was mentioned as less desirable than "published in written final form." (There was some concern that "printed" might exclude "typing and photocopying" which would likely be the manner of publishing and furnishing the bills to members in the closing days.) The author agreed and incorporated these two suggestions in the draft amendment in Appendix "A" at the conclusion of Part I of this article. One commissioner also suggested changing "three days" to "two days."

The Commission's final list of proposed constitutional changes included amendment of art. III, § 7 to provide that publication in the journal would meet the requirement for first reading of a bill.

proved in a separate vote as to each specific bill, may shorten the three-
day period for any bill, but only during the last three days of a regular
session or during an extended or special session.”

Publication and notice of the “final form” of each bill would still
be required; however, the legislature could meet those requirements
and still correct, for example, an ambiguity discovered on the last day
of the session in a bill pending on final passage that day. The printers
might need to add some workers the last week; but whether the
benefits outweigh the costs would be a value judgment to be made
by the legislature on each real or imagined last-minute emergency.

Further, the suggested flexibility is itself limited. A “separate vote
as to each specific bill” would prevent one blanket motion to shorten
the three-day period on all bills, and the last phrase of the proposal
assures a deliberative process during the first fifty-seven days of each
regular session. There is no good reason to rush bills through the mill
in the early days.

A rewrite of article III, section 7 might also include the following
revision regarding recorded votes: “The yeas and nays on final passage
and on any vote to shorten the three-day period shall be entered in the
journal.” This language would emphasize the critical nature of such
votes, assuring accountability and discouraging any sacrifice of the
guarantee of a deliberative process.

Such revision of article III, section 7 could assure greater scrutiny
of legislation by all citizens. Those persons on the outer fringes of
the process who nevertheless are substantially affected by a proposed
law would have a better chance to affect what the legislature is about
to do to them. The often-quoted statement, “No [person’s] life, liberty
or property are safe while the Legislature is in session,” would become
less believable. “Compliments”—now too often heard in legislative
circles—to the effect that “ol’ so-and-so really snuck one by everybody”
would be heard less frequently. The measure of a legislator’s effective-
ness would depend not on his ability to keep quiet on potentially con-
troversial parts of his legislation, but on his ability to defend those very
parts in a forum of well-informed colleagues.

2. Committees. The Model State Constitution also contains the
following suggested constitutional provision on legislative committees:

74. This is a variation on the suggestion of the Model State Constitution, supra
note 72, art. IV, § 4.15. The comparable provision in the Florida Constitution requires
votes to be recorded in the journal only on final passage. Fla. Const. art. III, § 7.

75. The amendment proposed in this section appears in its entirety in Appendix A.

76. The Final Accounting in the Estate of A.B., 1 Tucker 247, 249 (N.Y. Surrogate’s
Court 1866).
Committees. The legislature may establish such committees as it may deem necessary for the conduct of its business. When a committee to which a bill has been assigned has not reported on it, one-third of all the members of the legislature shall have the power to relieve it of further consideration. Adequate public notice of all committee hearings, with a clear statement of all subjects to be considered at each hearing, shall be published in advance.77

A comparable addition to Florida's constitution would accomplish two goals: it would end use of the committee as a "cemetary" for legislation desired by a majority of the legislative membership,78 and it would constitutionally mandate adequate publicity of committee hearings, formalizing those principles of open government not constitutionally guaranteed but already practiced in the Florida Legislature.

B. Presiding Officers: Selection, Removal and Reelectability

These topics are central to the power of Florida's presiding legislative officers. For example, the specific proposal for the selection process, if adopted, would make the other two specific proposals less important. Thus, each subsection here requires evaluation in light of any action on the others.

1. The Selection Process; Secret Versus Open Ballot. During the reelection battle for the speakership of the house in the winter of 1975–76, numerous newspaper editorials argued the merits or lack of merit of election of the speaker by secret ballot. A democratic caucus proposal from the previous legislature had called for a secret ballot.79 Opponents asserted that a secret ballot would violate the open-government principles that had made Florida a leader in "sunshine" laws.80 Ability to vote in secret contrary to a publicly stated position, they argued, would undermine the integrity of the Legislature.

77. Model State Constitution, supra note 72, art. IV, § 4.13.
78. If a majority of the committee wanted to kill a bill it could do so, but only by taking it up rather than by letting it die through inaction.
79. In the winter of 1972–73, the Florida House of Representatives designated a "select committee on House leadership" to make recommendations on procedures to elect future house leaders. That committee, chaired by Representative Ralph Turlington, filed a report with Speaker Terrell Sessums containing seven recommendations, one of which provided that the election "be held by secret ballot." The report of this 11-member select committee was adopted unanimously at the Democratic caucus on Thursday, April 12, 1973.
80. Representative John Forbes of Jacksonville led the fight for an open ballot in the 1976 Democratic caucus. He had previously requested an opinion from the attorney general on the application of Florida's Sunshine Law to the election procedures of a Democratic caucus of the house of representatives. The attorney general noted the adoption of the 1973 caucus rule of procedure, concluding: "Such rule, which was adopted unanimously at the Democratic caucus on April 12, 1973, upon recommendation
When considering such arguments, one must first examine the rationale behind all sunshine laws. First and foremost is the principle of "accountability." That is, open voting makes the individual casting the vote accountable to others who are interested in his vote. The most important follow-up question, however, is: "Accountable to whom?" One's constituents? Or the legislative leadership itself? While the answer is both, the difference between constituents and legislative leadership is rather obvious. In the case of his constituents, "accountability" for his vote in the election of the speaker is quite some time away. In the case of the leadership, accountability is immediate and can be quite determinative of the lawmaker's future role in the legislature. For example, at the time of the January 1976 speakership election, individual legislators faced reelection ten months later. At that time, constituents of individual legislators would have to evaluate votes on literally thousands of other matters in addition to the vote for speaker designate. The one vote on the speaker's race would probably be lost in the passage of time and the volume of legislation. The only fact likely to be recalled by constituents would be whether their legislator voted for the winning or losing candidate. Further, since personal role and influence in the legislature could well be determined by whether the lawmaker was on the winning side, that in itself might influence constituents against their legislator who unsuccessfully challenged the victors in a leadership battle.

As soon as any "open" vote for the presiding officer is announced, the "new leadership" is established. Many months prior to actual assumption of formal title, "accountability" to the new leadership immediately shifts power toward the winners. In the 1976 speaker's race, newspaper accounts reported that each candidate claimed possession of pledges which, added together, resulted in a number greater than the number of members entitled to vote. Apparently someone was playing it more than one way with the candidates. Not surprisingly, everyone wants to be with the winner.

Hard-nosed, hard-ball politics and raw intimidation seem much more likely to influence a legislator's vote in an open ballot process than in a secret one. If one believes at all in Machiavellian politics, then one recognizes that "fear" is more likely than "love" to motivate
one's vote for a presiding officer. Yet with a secret balloting process, a legislator could vote his conscience with less fear of recrimination. For the same reason, a laborer ought not have a union boss looking over his shoulder as he marks his ballot for president of the union and drops it into the ballot box. Democracy rests in part on the right to elect leaders in secret, without candidates or their lieutenants looking over the shoulder of the voter.

2. Removal. Perhaps change in the makeup of the legislature every two years is a frequent enough opportunity to change the legislative leadership. In any event, under present constitutional language it is possible that even gross abuses of power during a term would not render a presiding officer subject to removal from office unless he was removed from his membership in the legislature.

Since the term for these offices is only two years, there is certainly some merit in simply waiting out the term to correct leadership problems and in requiring more than a simple majority vote for removal of a presiding officer during a term. True, removal ought not come as the result of an act of political animosity over a trivial or sudden event. It seems reasonable, however, that a simple majority could decide there was a serious lack of confidence in a presiding officer and oust him. It is the only effective way to make the presiding officer accountable to those who elect him and whom he serves.

Such an amendment to article III would provide individual members with a tool to check arbitrary and capricious use of power by a presiding officer. Indeed, the existence of the provision would discourage a presiding officer from taking any action in the first instance that would greatly offend a substantial number of members. At the same time, it is unlikely that it would result in weak officers, afraid to move boldly. Despite the availability of removal from the speakership by a simple majority, "[t]he [United States] House of Representatives has never removed a Speaker . . . ." A proposed constitutional pro-

82. I conclude, therefore, with regard to being feared and loved, that men love at their own free will, but fear at the will of the prince, and that a wise prince must rely on what is in his power and not on what is in the power of others, and he must only contrive to avoid incurring hatred, as has been explained.


83. Questions arose during the January, 1976, House Democratic Caucus balloting about whether the voting process was truly "secret." One of the tellers for the defeated candidate estimated that only six to eight of the ballots for the successful candidate did not have signatures or initials on them. See, e.g., St. Petersburg Times, Jan. 15, 1976, § B, at 1, col. 3.

Appendix B sets forth a proposed constitutional amendment which would add the phrase "by secret ballot" to the existing language of art. III, § 2 governing selection of the presiding officers.

vision expressly authorizing removal of legislative leaders by majority vote is set out in Appendix C.85

3. Reelectability. In its 1971 study, the Citizens Conference on State Legislatures recommended use in Florida of a reelectable presiding officer.86 The obvious corollary, in light of Florida’s already strong legislative leaders, is that a reelectable presiding officer should not be vested with all of the powers now possessed by Florida’s leaders.

Thus, the choice here is between amendment of the Florida Constitution to limit the number of consecutive terms that one individual may serve as presiding officer or, alternatively, deconcentration of the power of the presiding officer rendering less objectionable the possibility of reelection as authorized by the present constitutional language.

The case against restricting the number of terms lies in the availability of other checks on power87 and the desirability for maximum flexibility within the legislative article. In addition to checks and balances from outside the legislature, specific proposals for substantive procedural rules reform (discussed in detail in Part II of this article) pose considerable potential for realizing the second of the above approaches.

There should be no fear of a presiding officer’s eligibility for several terms once the legislature itself both formalizes its inherent ability to check potential abuse of power and distributes power more evenly. The benefits of having a reelected leader seem clear in terms of continuity in the legislative process: more efficiency including a reduction in the present, almost constant, upheaval due to maneuvering for a favorable place within the next presiding officer’s leadership. Accountability of the chosen leader to his colleagues would do much to eliminate concern that the reelected presiding officer would be characterized by his flare for retribution.

85. The Commission’s initial list of proposed constitutional changes included amendment of art. III, § 2 to “[clarify] that the presiding officer serves at the pleasure of each house and can be removed before his term expires.” FLA. CONST. REV. COMM’N, FIRST DRAFT PROPOSED REVISIONS TO 1968 CONSTITUTION.

86. THE SOMETIME GOVERNMENTS, supra note 3, at 195. The Florida House followed this by establishing its own Subcommittee on Speakership Succession which filed a report in April, 1972, recommending that the speaker be allowed to stand for reelection for a total of not more than two successive terms. The report fully analyzes “the case for changing the limitation on the Speaker’s tenure.” It was forwarded to Representative Murray H. Dubbin, then the chair of the Committee on Rules and Calendar, by cover letter of April 7, 1972, from Representative Louis Wolfson, II, chair of the Subcommittee. (Available from the author upon request.)

87. For example, an independent executive and judiciary, a free press, and an informed electorate.
C. Other Proposed Constitutional Changes

Obviously there are many other subjects under the general rubric of legislative reform that can be approached through constitutional revision. This part of this two-part article has concentrated on those issues of individual power and procedure that deal with the inner workings of the legislature as they relate to constitutional revision.

Other items not discussed here, if successfully included in constitutional revision some future day, also could substantially affect the legislative process. This symposium includes an analysis of various proposals for citizen initiative and referendum. Recall of legislators as a process established by the constitution deserves a comprehensive analysis. But these topics remain for others to pursue.

V. Conclusion

The proposed revisions that are discussed both in this Part I and the forthcoming Part II are for this writer the most important and pertinent to the subject of legislative reform at this time. Whether the future Florida Legislature will operate in a highly democratic, fair, and efficient manner will depend largely on the people and the elected members they send to Tallahassee. Legislators themselves will continue to make or break whatever rules exist for the legislative process. This is as it should be and cannot really be changed no matter how much one might wish to do so. All that any citizen can do is share his view, as the author has done here, on how to shape the forms most conducive to a better democracy.

The Florida Legislature can be the best state legislature in the nation. In the opinion of the author, the constitutional revisions of the legislative article that can help achieve that goal include:

(1) Rewriting present article III, section 7 to better assure a deliberative and informed legislature, especially in the hectic closing days of each legislative session. This revision should include the elimination of existing requirements for three separate readings and of the provision that one-third of a chamber's members could require bills to be read in full. Appendix A contains a proposed revision which would redirect legislative energy to the merits of the final form of

bills, especially important during the end-of-the-session logjam. This
has been done in part by the current revision commission.  

(2) Amending article III, section 2 to assure greater independence
of individual lawmakers in selecting legislative presiding officers.
Appendix B is a proposal to add the words “by secret ballot” to the
constitutional language on selection of officers.

(3) Amending article III, section 2 to clearly establish accounta-
ibility of a presiding officer to the members. Appendix C proposes the
addition of a sentence to that section to make clear that a permanent
presiding officer may be removed from office during his term. The re-
vision commission has approved this proposal and recommended it to
the voters.

This writer concludes that both constitutional revision and reform
of legislative procedural rules are sound avenues for reaching a worthy
destination: a better legislative process for Florida. Procedural rules
reform will be discussed in a forthcoming issue of the Florida State
University Law Review.

90. Proposal No. 7 by the Constitution Revision Commission provides that “publi-
cation in the journal shall satisfy the requirement of the first reading.” See note 72 supra.

91. Proposal No. 207 by the Constitution Revision Commission provides that the
presiding officer of each house shall serve at the “pleasure” of its members. This differs
somewhat from the initial proposal, which was discussed in note 85 supra.
Appendix A

PROPOSED REVISION OF ARTICLE III, SECTION 7 OF THE STATE
CONSTITUTION RELATING TO PASSAGE OF BILLS

(Substantial rewording of section 7. See article III, section 7 for present text.)

Section 7. Passage of bills.—Any bill may originate in either house and after passage in one may be amended in the other. No bill shall become a law unless it has been published in written, final form and furnished to all members at least three days prior to final passage and the majority of the membership of each house has assented to it. During the last three days of any regular session or during any special or extended session, two-thirds of the total membership of a house, by motion approved in a separate vote as to each specific bill, may shorten the three day period for any bill. The yeas and nays on final passage and on any vote to shorten the three day period shall be entered in the journal. Each house shall provide for the publication of all acts. No act shall become effective until published as provided by law.

Appendix B

PROPOSED AMENDMENT TO ARTICLE III, SECTION 2 OF THE STATE
CONSTITUTION RELATING TO CHOOSING OF LEGISLATIVE OFFICERS

Section 2. Members; officers.—Each house shall be the sole judge of the qualifications, elections, and returns of its members, and shall biennially choose its officers, by secret ballot, including a permanent presiding officer selected from its membership, who shall be designated in the senate as the President of the Senate, and in the house as Speaker of the House of Representatives. The senate shall designate a Secretary to serve at its pleasure, and the house of representatives shall designate a Clerk to serve at its pleasure. The legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution.

Appendix C

PROPOSED AMENDMENT TO ARTICLE III, SECTION 2 OF THE STATE
CONSTITUTION RELATING TO REMOVAL OF LEGISLATIVE OFFICERS

Section 2. Members; officers.—Each house shall be the sole judge of the qualifications, elections, and returns of its members, and shall biennially choose its officers, including a permanent presiding officer selected from its membership, who shall be designated in the senate as President of the Senate, and in the house as Speaker of the House of Representatives. Such officers shall serve at the pleasure of the members of each house, which may remove any of its officers upon a majority vote of its total membership. The senate shall designate a Secretary to serve at its pleasure, and the house of representatives shall designate a Clerk to serve at its pleasure. The legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution.