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THE STATE OF THE FLORIDA LEGISLATURE

ALAN B. ROSENTHAL*

A humorist once suggested that most states were so ashamed of their legislatures that they hid their lawmakers in backwater towns like Albany, Sacramento, and Tallahassee. While state legislatures are still relatively obscure, they have undergone a metamorphosis in recent years. In this Article, Professor Rosenthal appraises the Florida Legislature, based on observations he made as a scholar-in-residence during the 1986 Regular Session. One of the nation’s leading students of lawmaking, he found much to commend, but much to improve upon in this institution where both the noblest and basest impulses of human nature come out into the open.

State governments are presently experiencing a renaissance. State capitols are where the action is. States are taking on new problems and playing a new role in our federal system. The recent Reagan Revolution, which has encouraged state initiatives through political devolutionary measures,¹ is partly responsible for the resurgence of the states. Moreover, diminished southern exceptionalism, along with the region’s acquiescence to integration, has promoted the legitimacy of all the states. Economically, the nation’s strong recovery from the 1981-82 recession also has been a factor.²

Underlying these developments was the transformation of state governments “in almost every facet of their structure and opera-

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I spent the spring of 1986 in Tallahassee observing the Florida Legislature at close hand. Some of the material in this Article derives from my observations during the days I spent with legislators, legislative staff, and the Governor and his staff.

1. These devolutionary measures, which were intended to shift power and responsibility from the federal government to the states, included cuts and changes in the Aid to Families with Dependent Children (AFDC), Medicaid, and food stamp programs as well as the conversion of many categorical programs into block grants.

Over the past twenty-five years, state governments have become more modern and have developed the managerial and technical capacity to assume new and expanded functions. This era of modernization included change in both the executive and judicial branches, but it was the legislature more than any other governmental institution that underwent a radical transformation. Perhaps state legislatures made the greatest strides because, twenty-five years ago, they had farthest to go. They were nineteenth-century institutions, ill-adapted to governance in the twentieth century. Since the United States Supreme Court’s decision in Baker v. Carr and the flurry of reapportionment that ensued, legislatures across the nation have changed. They now are truly “the first branch of government,” thoroughly revitalized, with the capacity and will to govern.

Few legislatures have changed as dramatically as has Florida’s, once an institution dominated by rural legislators but now a modern, democratic, and representative body. The purpose of this Article is to examine the condition of the Florida Legislature and compare it to other legislatures in terms of decision-making capacity, the shape of the membership, the game of legislative politics, the exercise of power, the nature of the lawmaking process, and the quality of legislative performance.

I. THE EXTENT OF LEGISLATIVE CAPACITY

Commentators believe that “enhanced capacity” accounts for the revival of state legislatures and their well-being today. New facilities, such as computers and other equipment, have increased the availability of information. Organizational and structural changes, professional staffing, and longer sessions also have increased capacity. So has the expansion of work in the interim between sessions. While capacity is probably requisite, it is by no

4. R. Nathan, supra note 2, at 7.
6. 369 U.S. 186 (1962) (holding malapportionment of the Tennessee Legislature a justiciable claim under fourteenth amendment).
means all that is required for institutional well-being. Capacity is not a linear function. More elaborate facilities, longer time spent in session, or a larger staff do not necessarily mean a better legislature. It is conceivable, in fact, that abundant capacity may be used only modestly by one legislature while a smaller capacity may be exploited fully by another.

A. Capacity as a Function of Brick and Mortar

Among the elements of capacity, facilities are most visible and obvious. The Florida Legislature is second to none in this respect. Florida's facilities offer legislators an environment that is conducive to the conduct of their work. Although some members make aesthetic objections to the architectural style of the Capitol and legislative office buildings in Tallahassee, the physical arrangements are functional and modern. In part because of their facilities, legislators work diligently and effectively.

B. Having Enough Time and Using it Wisely

Time is another element of capacity. Legislatures across the country now spend more time than they did before in session or engaged in interim work. In 1962, for example, twenty legislatures, including Florida's, met biennially. Today, the Florida Legislature, like those of forty-two other states, meets annually. The regular session in Florida, like those in thirty-one other states, is constitutionally limited. Florida's session runs for sixty calendar days, starting in early April. As in most states where sessions are limited to a certain number of calendar or legislative days, the time available for productive work in Florida has been expanded because the amount of activity in the interim between regular sessions has increased markedly. In even-numbered years, the legislature organizes just after the November general election, and members spend three or four days each month during the interim in committee meetings, preparing for the session. In odd-numbered years, interim meetings are held throughout the fall and winter.

11. Id.
12. Several state legislatures have constitutionally limited sessions. While the length varies from state to state, the range is usually between 30 and 90 calendar days. Id.
Thus, the Florida Legislature accomplishes the business of one of the nation's largest states in relatively little time.

An issue confronting most legislatures today is not whether more time is needed, but rather how the best use can be made of the time already committed. The Florida Legislature seems to make good use of its time, but it could be more efficient. At the start of the session, nearly all of the time is spent in committee meetings. Midway through the session, the House and Senate convene two or three mornings a week. With a few weeks to go, members spend about half of each day on the floor and by the last week they are on the floor most of their working time. Most legislators only spend about forty days of the sixty-day session at the Capitol, normally arriving in Tallahassee on Monday morning and leaving by Thursday evening or Friday afternoon. Nevertheless, it is politically necessary for some controversial issues—most notably the appropriations bill—to be deferred until the last days, when the pressure for decision is most intense. Even so, the Florida Legislature tends to postpone too many important issues until the final days or even the final hours, making for needless confusion and hectic activity as members scramble to finish their business.13

C. Staff Support as an Enhancement of Capacity

More than any other factor, the expansion of professional staffing has contributed to capacity. Estimates now are that more than 16,000 full-time, year-round staff members are working for the nation's legislatures. Another 10,000 are added during the course of legislative sessions. While a few legislatures have small staffs, most have from 50 to 300 professional employees.14 Florida is among those states with 400 or more professionals on its legislative payroll.

As of May 1986, the Florida Legislature employed 892 people in permanent, year-round positions, with 239 in the Senate, 478 in the House, and the rest in other legislative offices.15 These include

13. The journals of the Senate and the House are one measure of activity. In 1986, out of 1,251 pages in the Senate Journal, 690 reflected activity during the last four days and 482 pages were for the final day. Out of 1,476 pages in the House Journal, 763 were for the last four days and 438 were for the final day.


professional, administrative, and clerical employees. First are the members' aides and secretaries, who perform constituent services and help with the legislators' own bills. For ten months of the year they work in district offices, and for the nine weeks of the session most move to Tallahassee. Second are the staffs of the Secretary of the Senate, the Clerk of the House, and the Sergeants at Arms of each chamber. They are responsible for bills, calendars, journals, and other documents and records of legislative action. Third are the staffs of the Senate President and House Speaker—the executive directors, policy directors, and counsels—and of the majority and minority offices. Fourth are the centralized staffs of the Joint Legislative Management Committee in the divisions of Administrative Services, Economic and Demographic Research, Legislative Information, Legislative Library, and Statutory Revision.

Especially important are the eighty-two persons who work for the sixteen standing committees of the Senate and 152 persons who work for the twenty-four standing committees of the House. These staffs are at the heart of the policy process. They not only conduct research and produce reports during the interim and analyze bills during the session, they also participate in setting committee agendas, devising committee strategies, exploring policy options, communicating political and substantive information, working to reduce conflict, and negotiating agreements. Even though political considerations count heavily, the accurate, timely, and compelling information provided by staff always plays a role in the lawmaking process. Committee staffs are highly qualified, and none more so than the Senate and House Appropriations staffs. In general, these staffs have considerable discretion; yet they are responsive to the chairmen of the committees and subcommittees for which they work.

While staffers provide some stability in a highly political institution that suffers from a lack of continuity, they remain subject to the control of legislators, primarily the leaders. The situation is far from perfect. Anxiety among committee staffs—particularly in the House—peaks every two years when the leadership changes and jobs are in peril. Furthermore, management by legislative leaders, who are preoccupied with more pressing matters, leaves much to be desired, as it does in nearly every legislature.\(^\text{16}\) Despite these

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\(^{16}\) See, e.g., National Conference of State Legislatures, Review of the Florida Joint Legislative Management Committee 16-33 (1986).
institutional shortcomings, the staff of the Florida Legislature ranks second to none.

II. THE SHAPE OF LEGISLATIVE MEMBERSHIP

More crucial than the capacity of a legislature is its membership. The composition of the nation's legislatures has changed dramatically during the past twenty years, mainly as a result of reapportionment. Nowhere has reapportionment had as marked an impact as in Florida, where new urban legislators wrested control from rural "porkchoppers." The post-reapportionment elections of 1966 brought in a number of outstanding progressives, and the subsequent blending of new and seasoned members proved a potent combination.

As described by one leader of that generation:

[T]hese were new faces thrust into an old institution, without ties—no ties to the leadership, no ties to the lobbyists, no ties to the old cabinet officers who had been there from time immemorial. They were brand new on the scene and they felt they were taking a fresh look at the institutions [of government].

These newcomers acquired power and learned to use it, working successfully to modernize the legislature, the executive branch, and the judiciary.

A. Racial and Ethnic Minorities and Women

Since the days of rural dominance, the composition of state legislatures, including Florida's, has been shifting. Minorities have more representation than before. By July 1984, 385 of the nation's state legislators were black, 5.3% of the total. This is a modest gain from a decade earlier when blacks comprised 3% of all legislators. In Florida, the first black member since 1889 was elected to the House in 1968. Since then the numbers have increased to 4 in 1978-80, 5 in 1980-82, and 10 in 1982-84 and 1984-86. Only 2 of

17. See Skene, supra note 8, at 133-34.
the 40 senators are black, so that presently 12 of the 160 members of the legislature, or 7.5%, are black. Most recently, Hispanics have won representation; eight served in the House in 1986.

Women also have made substantial gains, in Florida and throughout the nation. Nationally the number of women legislators increased from 301 in 1969, or 4.0% of the total, to 1,101 in 1986, or 14.8% of the total. The number of women in the Florida Legislature increased during this same period from two to twenty-two in the House and from one to nine in the Senate. In 1986, 18.3% of the House and 22.5% of the Senate were women. Blacks and Hispanics in the House and women in both chambers have had major impacts on the issues that received attention. Moreover, the presence of a significant number of women in the Florida Senate has changed its atmosphere and style.

B. Where Have All the Lawyers Gone?

Another shift in the composition of legislatures has been occupational. No longer do lawyers predominate. Increased demands on legislators' time and conflict of interest and financial disclosure requirements have taken their toll. Although still the largest occupational grouping, lawyers have declined from 30% of the membership of American legislatures in 1960 to only 16% in 1986. Time demands also have affected farmers, who once accounted for 22% of the nation's legislators but comprise only 10% today. Teachers at the elementary, secondary, and higher education levels have increased their representation in legislatures more than any other group, increasing from only 3% of the states' lawmakers in 1966 to 8% today.

Florida has a slightly higher proportion of attorneys than the average legislature—30% in the Senate and 22.5% in the House. But, as in the nation as a whole, the proportion of lawyer legislators has declined in Florida, from 39% in 1969-70 to 26% in 1979-

22. Fla. H.R., Office of the Clerk, Number of Women Members of the Florida Legislature since 1929 (n.d.) (on file with Clerk).
24. See FLA. CONST. art. II, § 8; id. art. III.
80. Since then, however, that proportion has been relatively stable and currently averages 24%. 28

C. The Citizen Legislature—Hanging in the Balance

One of the most significant changes in the composition of many legislatures has been the movement from “citizen” to “professional” legislators. 27 Generally, the citizen legislator has an occupation or substantial interests outside the legislature. The professional, however, is usually someone who has no other significant occupation and little time or interest for anything but politics. How someone defines himself and the amount of time spent on the job as a legislator are the chief distinguishing criteria for the two breeds.

Twenty years ago, a few California legislators described themselves occupationally as “legislators” in their state directory biographical sketch. Now, significant proportions of the members in several states consider themselves full-time legislators, and even larger proportions consider themselves almost full time. 28 This trend is prevalent in large states like California and New York as well as in smaller states, such as Wisconsin, Arizona, and Iowa.

Florida still has a citizen legislature. In 1984-86, only fourteen members defined their occupation as “legislator.” 29 But a number of other members, however they characterized their occupations, pursued little else besides the legislature and politics. One reason that Florida has been able to preserve its citizen legislature is that, with constitutionally limited sessions of sixty days, members do not have to spend an inordinate amount of time away from outside jobs. But over the years their time commitments have increased due to interim work, service on advisory boards, joint committees and commissions, attendance at meetings of national and regional organizations, and, in particular, work in district offices and on constituent affairs. Some years ago, for example, it was estimated that on average a senator spent approximately 200 days a year on

the legislative job. It is doubtful that most senators spend substantially less today.

Another reason for the preservation of the citizen legislature in Florida is the level of legislative salaries. In a number of states salaries have increased markedly—to $43,000 in New York, $33,732 in California, $35,000 in Pennsylvania, $36,520 in Michigan, and $32,500 in Illinois. These salaries provide members with income that compensates them—adequately if not munificently—for the time they spend on the legislature. Wisconsin, for instance, pays its legislators $27,200, which provides about three-quarters of the total income of the average member. In Florida, the salary was only $12,000 until recently. It had remained at this low level since 1969, when it was raised from a mere $1,200. The low salary made it impossible for many members to devote full time to the legislature. In 1985, however, legislators voted themselves a pay raise and provided that their salaries would increase automatically every year by the same percentage that the average salary of state employees rose during the preceding year. An attempt to repeal the automatic pay-raise provision failed in 1986. Considering this improved remuneration, as well as the increased time demands, it appears the Florida Legislature will have a larger proportion of relatively full-time, professional members in the years ahead.

D. The Quality of the Members

The full-time/part-time status, vocation, race, and sex of the membership are not as important as its overall quality. Observers of the Florida scene point to the late 1960's and early 1970's as a "golden age," when legislators of extraordinary quality assumed power after the revolution brought on by reapportionment. Many of those members—Louis de la Parte, Terrell Sessums, Murray Dubbin, Bob Graham, George Firestone, Fred Schultz, Tal-

32. Rosenthal, supra note 27, at 85.
34. Fla. Legis., History of Legislation, 1986 Regular Session, History of Senate Bills at 41, SB 85; id., SB 91; id. at 123, SB 691; id., History of House Bills at 204, HB 32.
bot D'Alemberte, Lawton Chiles, Kenneth H. MacKay, Marshall Harris, Reubin Askew, Robert L. Shevin, and Richard A. Pettigrew, among others—were outstanding lawmakers. They elevated the performance of the legislature to noteworthy heights. Members of the House first elected in 1972 and 1974, especially Hyatt Brown, Ralph H. Haben, Herb Morgan, Steve Pajcic, H. Lee Moffitt, Samuel P. Bell, Elaine Gordon, James Harold Thompson, Frank Mann, and Betty Easley, are thought by many observers to constitute a "second golden age" of the Florida Legislature. This group achieved its greatest power in 1978 and continues to hold it today. The ranks of the "second golden age" are thinning, however, and new members will soon be taking over.

Perhaps the quality of legislative membership is diminishing in Florida and in many other states. In Florida there had been a major improvement from the "porkchopper" generation and a less perceptible change in the years since. Now, however, a gradual decline may be underway. One reason is financial disclosure requirements, which discourage successful business executives and attorneys from seeking office. Another reason is the national trend toward single-member districts, which became the exclusive

43. Rep., Dem., Ocala, 1968-1974; Sen., 1974-1980; Member of Congress, 1983-
53. Rep., Dem., Ormond Beach.
59. In the 1950's, only nine states elected all of their legislators from single-member districts. As of 1984, 34 states did so. See Niemi, Hill & Grofman, The Impact of Multimember
method of apportionment in Florida in 1982. Previously, the House had five six-member, six five-member, five four-member, three three-member, five two-member, and twenty-one single-member districts under the 1972 districting plan. The Senate had seven three-member, seven two-member, and five single-member districts. Prior to 1972, Dade County had as many as twenty-one members in a multi-member district delegation.

As a result of single-member districts and other factors, the national trend is toward more self-interested and parochial legislators. As legislative pay rises and more full-time professionals enter legislative ranks, this trend is likely to be reinforced. Consensus will be more difficult to build and the legislative process will be harder to manage. At the present time, however, the quality of Florida's legislative membership ranks high in comparison with other states. The legislature continues to attract talent; it just takes time for that talent to develop. The classes of 1972 and 1974, whose talent was not recognized until years later, has apparently established the standard for the future.

III. THE GAME OF LEGISLATIVE POLITICS

In recent years state legislatures have become increasingly politicized, with members paying more and more attention to impending elections. When one election is over, legislators begin thinking about the next one. The campaign never really ends.

A. The Advantages of Incumbency

Contemporary legislators want to remain in the legislature for more than one or two terms. They are not dabblers, nor are they driven by a sense of noblesse oblige. They are interested in public office, and they want to advance their political careers as far as possible. Hence their preoccupation with elections. A recent study showed that twenty-one of forty-three Indiana and Missouri representatives who left voluntarily sought another elective office. One who ran for Congress probably spoke for a large number when he explained that he wanted to either "get in" politics full-time as a member of Congress, or "get out" and devote himself to his busi-
ness. Another study, which focused on Indiana from 1958 to 1984, found that a smaller percentage of incumbents were retiring voluntarily while the same number retired to seek higher office. Some legislators leave as soon as they have a shot at higher office; some wait longer; others settle down after they move from the house to the senate; and still others burn out and get out.

As in other states where the job of lawmaking has become more attractive, Florida legislators are attempting to remain in office or move to other elected positions. In the Florida House, for example, from 1968 through 1984, of 120 members, the number of incumbents either running for re-election or for other office ranged from 103 to 117. The percentage ranged from 86.6 in 1972 to 97.5 in 1984 and has not fallen below 93.3 since 1978. In the Senate the pattern is similar. From 1974 through 1984, the percentage either running for re-election or for other office ranged from 80 to 95.

Incumbents who attempt to regain their seats enjoy a "spectacular" success rate. On average, 81% of incumbents seek re-election, and the overwhelming majority of them are successful. In Florida, the success rate of incumbents is high, but higher in the House than in the Senate. From 1968 through 1984, the success rate for incumbents running for the House ranged from 82% to 95% compared to a 71% to 95% success rate for incumbents running for the Senate in the years 1974 through 1984. In the 1984 elections, 115 of 120 members in the House ran for re-election, two ran for higher office and three resigned voluntarily. Of those incumbents who sought re-election, 93% succeeded. Of the twenty members up for re-election in the Senate, one chose not to run and one was defeated.

This trend is exacerbated by the fact that legislative districts are becoming less competitive. The less competitive the district, the

63. See Rosenthal, supra note 27, at 87-89.
64. Fla. H.R., Office of the Clerk, Incumbency in the Florida House of Representatives (n.d.) (on file with Clerk) [hereinafter cited as House Incumbency].
65. Fla. S., Office of the Secretary, Senator Election Data (n.d.) (on file with Secretary) [hereinafter cited as Senator Data].
68. Compare House Incumbency, supra note 64, with Senator Data, supra note 65.
happier the incumbent. In Florida, as elsewhere, the objective of incumbents is to discourage competition and run unopposed. Legislators wait anxiously for the qualifying period in July to see whether anyone will file to run against them. Members of the House have been fortunate in this respect. The percentage of incumbents running unopposed in the period from 1968 through 1984 ranged from 12.9 in 1972 and 23.3 in 1982, when reapportionment encouraged competition, to 43.8 in 1976, 43.9 in 1980, 45.6 in 1984, and 46.2 in 1968. Senators have had more difficulty. Except for 1974 and 1984, when about half ran unopposed, roughly three out of four senators have faced opposition of some kind.

Incumbents are able to discourage or defeat opposition because their resources are greater. Many of them represent districts that statistically can be classified as "safe." They are safe because they are made that way by decennial reapportionments that favor one party or the other or shore up the support of incumbents. They are safe also because incumbents work effectively to keep themselves that way. First, incumbents are able to raise the money necessary for campaigns and ordinarily can outspend those who challenge them. In Florida, legislators who succeed in building big campaign warchests sometimes discourage serious challenges. When challenges do arise, incumbents spend substantially more than do their opponents. Second, incumbents, by virtue of their legislative office, are in a position to be of help to their constituencies, which gives incumbents another advantage over challengers. The recent trend in the states has seen the constituent service function, particularly casework, develop and become stronger. Today members in the senates of eighteen states and the houses of eleven states have personal aides who foster contacts with constituents. Ten legislatures provide district offices for their members, which is a further advantage to incumbents. Florida legislators

70. House Incumbency, supra note 64; Senator Data, supra note 65.
71. However statistically safe they are, legislators tend to run scared. A study of the Alabama Legislature found that, despite ample evidence of the safety of their districts, nearly all the legislators said their districts were electorally competitive. Cohen, Perceptions of Electoral Insecurity Among Members Holding Safe Seats in a U.S. State Legislature, 9 Legis. Stud. Q. 365, 366-67 (1984).
have both aides and district offices. Most put in some time each week during the interim on casework, and some make it almost a full-time job.

Generally, all members of the Senate and House are attentive to the needs of their districts and listen to the problems of constituents. They introduce local bills to benefit communities in their districts. They endeavor to get as much money for their districts as possible from state aid formulas, particularly the Florida Education Finance Program (FEFP). They seek to have funds for state programs spent in their districts, and members increasingly insist on putting "turkeys" (formerly known as "pork" in Florida) for their districts in the appropriations bill. All these activities give Florida's incumbent legislators a head start in their efforts to be re-elected.

B. The Emergence of Partisanship

Despite the advantages of incumbency and the relative safety of many districts, competition for partisan control of state legislatures is on the rise throughout the country. After suffering a sharp decline in the post-Watergate years, Republicans are resurgent in the states. As of the 1984 elections, the Republicans had majorities in thirty-one chambers while the Democrats controlled sixty-five. Two chambers were tied. Partisanship is on the rise not only in legislatures where partisanship has traditionally been strong, such as Michigan, New Jersey, and Wisconsin. It also is increasing in places where partisanship has meant little, such as in Oklahoma, South Carolina, and Vermont.

Partisanship is a new and significant phenomenon in Florida. The number of voters who identify with the Republican Party has been increasing. Currently, about the same percentage have alle-

75. The "needs," as members perceive them, range beyond constituent service or casework as such. The actual extent is described in detail in M. Jewell, REPRESENTATION IN STATE LEGISLATURES 78-102.
76. "Turkeys" are projects, such as civic centers, university buildings, parks, monuments, and bridges, which have not been recommended through the normal executive process, but which are approved by the legislature due to the political influence of a member. A. Morris, THE LANGUAGE OF LAWMAKING IN FLORIDA 80 (10th ed. 1985).
77. See Tucker and Weber paper, supra note 69.
giiances to each major party. Although Democrats still outnumber Republicans in registration, Florida has the fastest-growing Republican registration in the country. The Republican upsurge, however, has not yet been significantly reflected in the legislative ranks. There has been a gradual build-up of Republican strength in the House since 1974 to 36.7% of the membership in 1986. In the Senate the percentage rose to 32.5 after 1980, then declined and was 25% in 1986.

For some years the Republicans have been organized as the minority party in both the Senate and the House, while House Democrats recently established an active majority office. Both the majority and minority parties, under their respective leaders—the president, president-designate, and minority leader in the Senate and the speaker, speaker-designate, and minority leader in the House—devote much of their effort to electoral politics. They work at re-electing their own members and targeting and defeating the opposition’s most vulnerable incumbents. The President’s Fund in the Senate and the Speaker’s Fund in the House are vehicles for the majority’s campaign financing activities. A joint Senate-House campaign fund is the device used by the Republicans.

Despite some partisanship in the electoral activities of legislative Democrats and Republicans, the Florida Legislature is not really a partisan place—at least not yet. Relatively few of the issues that arise are decided along party lines, and few attempts are made by the minority to make a record and electorally embarrass the majority. In the 1986 Regular Session, however, Republicans did coalesce and oppose Democrats on a number of bills relating to elections—the Speaker’s public financing bill, election reform provisions, and the abolition of runoff primaries—and on a few other

81. *Republicans are making gains, but history is against them*, Orlando Sentinel, Mar. 23, 1986, at A-8, col. 1.
83. For information about fund raising by legislative leaders in other states, see Rosenthal, *supra* note 79, at 52-53.
86. FLA. H.R. JOUR. 85 (Reg. Sess. Apr. 8, 1986) (HB 884 was defeated in the Ethics and Elections Committee).
measures, such as the sunsetting of sales tax exemptions and several amendments to the appropriations bills. Republicans also stuck together in a number of committees, where their strength was disproportionate to their number and their attendance more regular than that of the Democrats.

For the most part, however, bipartisan cooperation prevails. In the House, which was controlled by the Democrats in 1986, the Republicans chaired fourteen subcommittees. More importantly, consultation between the majority and minority in the House and Senate has worked to keep conflict minimal. In the 1986 Regular Session, the Minority Leader and Assistant Minority Leader of the House were part of the decision-making process on some major issues, especially taxing and spending bills. They were consulted on the special order calendar, even during the closing days. A similar relationship existed in the Senate. The majority leadership assisted the minority by helping to pass their bills, obtaining floor time, overseeing their pet projects, and consulting them on the special order calendar. In return, the majority leadership received substantial cooperation from the Minority Leader. The mutual respect of the parties’ leaders proved to be an important ingredient of bipartisan cooperation.

C. The Impact of Elections

The effects of electoral politics on the legislative process in Florida can be seen in the behavior of members who face severe electoral challenges. A few senators were in this position in 1986. Senator Roberta Fox, for example, was under great pressure after winning an extremely close election in 1982 and subsequently seeing her district become 40% Hispanic and less than 50% Democratic. Although the Florida Legislature is not responsible for foreign policy issues, she was forced to respond to such concerns when they were expressed by her Hispanic constituents. Her behavior in the Senate changed because of the pressures of re-election. She promoted legislation to benefit Hispanics and, on budget issues, became more oriented to her district than even her most constituent-minded colleagues.

In 1986, the greatest impact on the legislative process stemmed from the statewide candidacies of several senators and representatives as well as the Governor. Three legislators, Senator Harry A. Johnston, who was serving as President, Senator Mann, and Representative Tom Gallagher, were running for governor. Representative Bobby Brantley was running for lieutenant governor. Senators Joe Gersten and Edgar Dunn and Representative James Watt were seeking to become attorney general. Senator Betty Castor, Representative Larry Hawkins, and Representative Easley were in the race for commissioner of education. Governor Graham, who was constitutionally limited to two four-year terms, was challenging incumbent Republican Paula Hawkins for the United States Senate. Several legislators were running for other offices. One senator was running for an open congressional seat and two House members were competing to become mayor of Jacksonville. Even though Speaker Thompson and President Johnston promised to keep politics to a minimum during the session, the perception was that with so many office-holders seeking re-election or higher office, politics would be paramount. When asked before the session whether politics would affect the session, Speaker Thompson replied, "Has a cat got climbing gear?"

While electoral politics was kept within bounds, it left its mark on the 1986 Regular Session. Members running for re-election in close races and candidates campaigning for higher office were distracted from their legislative responsibilities. Photographers trailed them through office building corridors, television crews wired them for sound and filmed them on the floor of the chamber, and several members left Tallahassee occasionally to make quick cam-

90. Dem., West Palm Beach, 1974-1986.
98. United States Senator. Sen. Hawkins was defeated in the general election by Gov. Graham.
101. Thompson sees himself with all the marbles in politically charged session, Gainesville Sun, Apr. 6, 1986, at 1F, col. 2.
102. Campaigns will have big impact on session, St. Petersburg Times, Apr. 6, 1986, at 8D, col. 3.
paign appearances. As a candidate for governor, President Johnston endured the constant tension between the goals of his campaign staff and his Senate staff. Toward the end of the session, with Senate and House conferees in critical negotiations on the appropriations bill, he left Tallahassee for a weekend fund-raising event. The reaction was sharp; he was taken to task and derided by House members.

The atmosphere could not help but be affected by members competing for statewide office. Senator Gersten attacked Senator Dunn in radio and television advertisements, on the Senate floor, and in committee. Whenever these two came together, other senators and the press would be distracted from the business at hand to the personal conflict between them. The gubernatorial race proved even more salient in its impact. Many House Republicans supported Representative Gallagher. Many House Democrats supported former Representative Pajic, who ultimately won the Democratic nomination but lost the general election to Republican Bob Martinez. A contingent of Senate Democrats favored President Johnston. He was the target for the most criticism. Throughout the session, House members attributed electoral motives to the Senate President for his positions on policy issues. For their part, President Johnston’s supporters believed that the House leadership—in particular, Appropriations Chairman Bell—was trying to embarrass the Senate President whenever possible. If one considers the traditional rivalry between the House and Senate, then it is not surprising, as one staffer commented, “No one in the House wants to make the Senate President look good.”

The issues of the 1986 Regular Session were also influenced by electoral politics. The bills introduced, particularly President Johnston’s drunk-driving legislation, were a reaction to opinion surveys and the impending election. The Senate’s reluctance to increase taxes for educational funding was in part a function of the President’s candidacy and the tough re-election races facing several Democrats. Electoral concerns also affected the Senate’s initial posture—if not its subsequent action—toward tort reform and insurance regulation.

104. E.g., FLA. LEGIS., HISTORY OF LEGISLATION, 1986 REGULAR SESSION, HISTORY OF SENATE BILLS at 351, SB 756.
105. The Tort Reform and Insurance Act of 1986, ch. 86-160, 1986 Fla. Laws 695, was a response to increases in liability insurance in Florida. The legislature, particularly the Senate, favored regulating insurance rates over capping damage awards in personal injury suits.
Legislative cooperation with Governor Graham, at least from the Democrats, was affected by the United States Senate contest. House leaders in particular wanted to challenge the Governor, but instead exercised restraint. The Governor was at the top of the Democratic ticket, and legislative party leaders realized that the stronger he appeared, the better the party's members would do. Asked whether House Democrats would help the Governor's campaign by pulling their punches, Speaker Thompson replied, "Every chance we get."106

IV. THE EXERCISE OF LEGISLATIVE POWER

Power is one of the most intriguing features of the legislative process. Of special interest is the exercise of power by the legislature vis-a-vis the governor and executive branch, and the distribution of power within the legislature among leaders, committees, and members.

A. The Legislature's Relationship with the Governor

Some years ago, it was doubtful that legislatures could ever gain the upper hand over governors.107 But even then a number of legislatures already had control and others were achieving parity with their governors. Today, governors dominate legislatures in only a few states. Legislatures have been the more powerful branch of government for some time in a few states,108 while in most states—Iowa, Maine, Minnesota, Ohio, and Wisconsin, for example—executive and legislative powers are balanced. In states like New York, New Jersey, Maryland, and Kentucky, where legislatures historically have been weak, they recently have asserted their

Nevertheless, several proposals were designed to reduce large awards, to cap noneconomic damages, and to modify the doctrine of joint and several liability. For a thorough review of these issues and their resolution, see generally Fort, Granger, Polston & Wilkes, Florida's Tort Reform: Response to a Persistent Problem, 14 FLA. ST. U.L. REV. 505 (1986) (reviewing tort changes); Schulte, Availability, Affordability, and Accountability: Regulatory Reform of Insurance, 14 FLA. ST. U.L. REV. 557 (1986) (reviewing insurance regulation reform).

106. Graham survives session unbloodied, Florida Times-Union, June 15, 1986, at F1, col. 5.
power. Recently, legislatures and governors have been vying for control.  

Constitutionally, the governor of Florida is at a disadvantage. According to one assessment of "formal authority," the chief executive in Florida ranks in the lowest category, with Alabama, Arkansas, Kentucky, Mississippi, North Carolina, Rhode Island, South Carolina, and Texas. According to another assessment, the chief executive in Florida ranks in the moderate range on "formal authority," equal to twenty other states, weaker than twenty-three, and stronger than six. The Florida Constitution limits the governor's powers mainly by the unique Cabinet system, whose members are elected statewide and who decide many matters collectively. In earlier years, the principal power in the state lay in the Cabinet. In the era of biennial legislative sessions, "there was a great sigh of relief in Tallahassee when the Legislature went home and the Cabinet then proceeded to administer the government with the general acquiescence of the Governor for the next two years." In 1968, Florida revised its constitution and strengthened both the legislature and Cabinet. 

During the last two decades, Florida has made the transition to legislative government. Today Florida has one of the strongest legislatures in the nation. The legislature leaves its imprint on just about everything of consequence in Florida government. Major initiatives originate in the legislature, although executive departments, agencies, and the governor's staff also are productive. The legislature takes responsibility for mediating among rival interests, building a consensus, shaping the product, and getting a bill passed and ready for the governor's signature. It does not depend upon, nor does it take kindly to, leadership from the governor or anyone else. In Florida, the legislature regards itself as the leader.

110. This categorization is based on tenure potential, control over other major state offices, administrative appointments, budget authority, and veto power. A. ROSENTHAL, LEGISLATIVE LIFE 235-38 (1981).
111. This categorization is based on tenure potential, and appointment, budget, organization, and veto powers. Beyle, Governors, in POLITICS IN THE AMERICAN STATES 193-203, 454-59 (4th ed. 1983).
112. Remarks of Robert Mann, Florida Senate Seminar, Legislative Reform in Historic Context, in West Palm Beach, Fla. (Jan. 11, 1985) (unedited transcript) (on file with Senate President's office).
113. In 1978, a proposed constitutional amendment that would have abolished the elected Cabinet was defeated almost three to one. THE FLORIDA HANDBOOK 1985-86, at 593 (A. Morris ed. 1985).
Nevertheless, the power of the governor, whatever the limitations of the office, cannot be discounted. If the governor is personally assertive, programmatically inclined, politically skillful, and adept at public relations, he will have substantial influence. The past two governors, Reubin Askew and Bob Graham, have had these characteristics and thus provided strong leadership. They influenced the formulation of policy, the budget, administration of laws, and implementation of programs.

The legislature is not only independent of the governor but aggressive in its relationship to him. During Governor Graham's tenure it has been conscious of its prerogatives, confident in its power, and ready for an occasional battle. The legislature's willingness to engage in political combat—and its apparent delight from it—may be attributable in part to the peculiar chemistry between Governor Graham and key legislators. In dealing with legislators, the Governor frequently has stood on principle—though his behavior could be as political as theirs—which has rankled some members. He also has been criticized for taking credit for programs that relied heavily on legislators for their support, for seeming to agree with legislators while actually disagreeing, for having overly ambitious goals, for ignoring his allies, for being unwilling to compromise, and for being a rather distant "cold fish."114

Governor Graham's legislative programs may or may not prove successful, but he has been an effective leader. Because of his popularity and adroit use of the press to appeal to the people, the legislature had to take the Governor's initiatives seriously. It did not, however, take them as gospel; some it turned down, others were overhauled, and the remainder were modified.

The annual budget records the comparative power of the two branches. The governor presents his recommended budget to the legislature in February. The process of deciding appropriations issues is then vested in the legislature. The Senate and House Appropriations Committees put together appropriations bills through a laborious process—agreeing first on the funding for continuing operations, then considering new or expanded programs. The governor's priorities receive consideration, but the favor of Senate and House is with priorities determined by the legislative leadership, the Appropriations Committees and the subcommittees. As the

1986 Regular Session commenced, the Governor's legislative lobbyist noted that Graham had three main priorities: "budget, budget, budget."115 Yet, the Governor's budgetary priorities—his preference for more spending on social programs and higher cigarette taxes, as well as particular funding levels for specific purposes—were generally disregarded by lawmakers.

The legislature has several devices for exerting control over executive branch operations through the budget. For example, the "letter of intent" that accompanies the appropriations bill directs agencies in the spending of appropriated funds. In 1986, one issue that arose was whether the letter of intent could be used to erode the governor's line-item veto power. In 1985, Governor Graham vetoed several projects in the Public Education Capital Outlay (PECO) bill.118 The House challenged the vetoes in the Florida Supreme Court, arguing that the Florida Constitution limited the governor to using the line-item veto only for "general appropriations bills." The court held that, for purposes of the line-item veto power, the PECO bill was a general appropriations bill.117 In an attempt to circumvent the court's decision, the legislature in 1986 included funds for a large number of projects in one line-item of the appropriations bill, then used the letter of intent to specify on which projects the money should be spent. Governor Graham did not take up the challenge.

A governor's veto power is an ever-present concern among legislators. "The most direct power the governor can exercise vis-a-vis the legislature is the use or threat to use the veto."118 The threat that he will veto a legislator's bill or the appropriation for his pet project encourages members to cooperate. Alternatively, when a veto is a possibility, the hint that the governor will sign a member's bill or let his project stand can buy good will. Although Governor Graham normally has been reluctant to make deals for his own priorities, he has done so on occasion. The veto is used not only to forward the governor's programs, but also to block legislative action with which the governor disagrees. The legislature does not contest most gubernatorial vetoes. Some vetoes are sustained,

117. Thompson v. Graham, 481 So. 2d 1212 (Fla. 1985).
most recently, the veto of a 1985 bill that would have relaxed handgun licensing requirements, and some are overridden, such as Governor Graham's veto of the PECO bill in 1984.

Governor Graham has been undeterred by the prospect of legislative overrides and believes: "It's the Governor's job to veto, if he feels it necessary. It's the Legislature's job to override, if they feel it necessary. I'll do my job and let them do theirs." With a new governor entering office in January 1987, the relationship between the governor and the Florida Legislature probably will change. Nevertheless, the Florida Legislature will continue to be strong, independent, and aggressive toward the governor, no matter who holds the office.

B. The Power of Legislative Leaders

The strength of the Florida Legislature's leadership partially explains its aggressive posture; in few states do senate presidents (or majority leaders) and house speakers exert leadership as forcefully as in Florida. Indeed, one former member has commented that Florida has as much, or more, power concentrated in its leaders as any other state. The president in Massachusetts, the majority leader in New York, and the speakers in Colorado, Maine, New York, Ohio, and Texas wield power similar to Florida's leadership.

Most states have witnessed a gradual decline in the power of legislative leaders because members are less willing to be led. New leadership styles, based more on consensus-building than command, are emerging in many states. Florida has seen such an emergence of this style, with both Senate and House leaders building consensus through skillful use of resources and working from positions of strength.

120. Interview with Jill Chamberlain, Press Secretary to Governor Graham (Jan. 30, 1986) (notes on file with the author).
121. Remarks of United States Representative Kenneth H. MacKay, Florida Senate Seminar, Legislative Reform in Historic Context, in West Palm Beach, Fla. (Jan. 11, 1985) (unedited transcript) (on file with Senate President's office).
One notable constraint on Florida’s leaders is the regular rotation of leadership. Traditionally, a new president and speaker take office at the biennial organizational session after each general election. That tradition has been broken only once in modern times. Unsuccessful efforts have been made to change the system, most notably by former Speaker Richard Pettigrew.

Rotating leadership is advantageous in that it results in a circulation of members in key positions. Because no one can hold power too long, any possible abuse is limited. More importantly, younger members have a chance to attain the highest leadership office in their legislative body. Perhaps this openness to new leaders explains the high quality of leadership in Florida.

These advantages are outweighed by the disadvantages of rotation, most notably the discontinuity of leadership. Because pledges of support are collected years in advance, future leaders are likely to spend years on the “leadership team” before becoming speaker or president. Even so, no job is comparable with speaker or president; there is no substitute for firsthand experience in the top leadership position. It takes time to learn and, unfortunately, by the time one gets a sense of the job he is on the way out. A president’s or speaker’s power starts to ebb at the outset of his term, soon after committee chairmen are appointed. It plummets after his successor has been designated the following May, and it disintegrates at the conclusion of his second legislative session.

Rotating leadership also results in a discontinuity of policy. New leaders usually have new programs they want enacted, partially as monuments to their tenure. Few want merely to consolidate programs of predecessors; that is not the way to leave one’s mark. Consequently, some legislative policies are always changing. Education, for example, has seen major new programs almost every two years, going back at least as far as a general revision of the school


125. See Pettigrew & Rhodes, The Case for a Re-electable Speaker, FLORIDA STATE UNIV., GOVT’L RESEARCH BULL., Mar., 1972.

126. As of this writing, the House speaker for 1987-88 (Rep. Jon Mills, Dem., Gainesville), 1989-90 (Rep. Tom Gustafson, Dem., Ft. Lauderdale), and 1991-92 (Rep. Bell) appear to have been selected. The 1993-94 decision is not far off. Although the 1987-88 Senate president was purportedly chosen last year in the Senate Democratic caucus (Sen. Ken Jenne, Dem., Hollywood), a coalition of conservative Democrats and Republicans elected Sen. John Vogt, Dem., Cocoa Beach, as president during the November organization session.
code in 1972, and extending through the 1983 and 1984 educational reform legislation. A former speaker vividly described his two years in office as "a brief window of opportunity, but you have the power of a 300-pound gorilla."

Legislative power springs from many sources, including the leader's ability to appoint and remove committee chairmen and members, to set the special order calendar for consideration of bills on the floor, to play a major role in setting budget priorities, to refer bills to committees, to control the professional staff, and to accord recognition to members in various ways, enhancing their political reputations. Further, the president and the speaker are effective because leadership is respected by the membership: legislators acknowledge that leadership is the key to the whole process. They want, and expect, strong leadership.

The president and speaker lead by delegation, inclusion, and reward, not raw authority. Much influence is given to standing committees and their chairmen. Because they are part of the "leadership team," committee chairmen have a relatively free hand with issues—except, of course, for leadership priorities. In the 1986 Regular Session, for example, Speaker Thompson's team included approximately twenty-five members. Within that team a smaller group was frequently consulted on policy and strategy. An even smaller core was in on everything. President Johnston's team included about ten senators, most of whom regularly participated in decisions. Inclusion goes beyond the team concept, however. Leaders try to include as many members as possible so members will have a stake in, and thus support, the leadership position.

Finally, leaders try to maintain influence by helping members. Such help includes saying "yes" to their requests, assisting them with pet bills, providing a "turkey" or two, supporting their districts on appropriations issues, mobilizing support and raising funds for their campaigns, and dispensing lesser favors.

Consequently, leaders incur debts and build loyalty. On tough issues they must try to build consensus. Hence, they must carefully choose the issues on which they want to lead, remain within the bounds set by membership preferences, count heads and persuade members, and engage in deals and trades as necessary.

127. E.g., ch. 72-221, 1972 Fla. Laws 658.
129. Interview with H. Lee Moffitt, former Speaker of the Florida House (Feb. 6, 1986) (notes on file with the author).
Overall, because of its size, the House is more tightly organized and more manageable than the Senate. Leadership is stronger there. The Senate has more experienced and individualistic members who constrain strong leadership. At any particular time, however, a president’s or speaker’s strength depends in part on his own philosophy and approach to leadership, and on his personal skill.

V. THE NATURE OF THE LEGISLATIVE PROCESS

Much of the discussion of the legislative process per se (the route by which a bill does or does not become law) focuses on efficiency. Legislators and others are often interested in devices such as time-saving techniques, deadline systems, limitations on bill introductions, and committee scheduling. Although these matters are important, other key questions about process are seldom addressed. These questions concern how the session’s agenda is established, what type of scrutiny bills receive, what methods of negotiation and bargaining are employed, and the patterns of settlement that prevail.

A. The Formal Process of Lawmaking

The legislative agenda is determined by the members of the Senate and House whose bill introductions constitute the session’s business. Historically, Florida has been among the nation’s leaders in the number of bills introduced. From 1963 to 1974, Florida averaged more than 6,000 introductions each biennium, a number of which were similar or identical “companion” bills filed in the opposite chamber. Only California, Massachusetts, and New York averaged more. Florida’s introductions have declined recently. With about 5,050 bills introduced in 1983-84, Florida fell far behind New York (more than 33,000), Massachusetts (nearly 18,000), and New Jersey (more than 7,500), and slightly behind California, Illinois, Louisiana, and Maryland. The most recent data show only a 10% increase from the 1983-84 biennium.

Nearly a third of all bills introduced focus on special interests. Such bills are advanced by a group wanting to use governmental

131. Rosenthal & Forth, There Ought to be a Law!, 51 State Gov’t 81, 82 (1978).
authority to promote its professional, occupational, or economic interests. Another third are "agency bills," containing the legislative programs of executive branch departments and agencies. Most of these concern noncontroversial matters of administration, organization, and implementation.

The final third come from various sources. The appropriations bill, the most important bill in the process, is required by law. These "Sunset" provisions, providing for the termination of a law unless reauthorizing legislation is enacted, spur others. Federal mandates sometimes precipitate bills, such as legislation enabling the state to qualify for federal funds. Court decisions also prompt legislation. In addition, there are local bills needed by specific communities, bills that respond to complaints made by constituents, and bills designed by legislative, county, and municipal officials to promote district interests. Many bills result after studies conducted by standing committees, special committees, and commissions. There are also bills to carry out the governor's and legislative leaders' program objectives.

Senate and House standing committees scrutinize many of these bills. They narrow the issues and can amend or modify bills. Even with preparatory work during the interim it is impossible thoroughly to scrutinize every bill. Many, however, are companion bills, similar or identical in the two chambers. Many have been through the process before and have become familiar to members.

Formal review begins with a bill analysis by the committee staff, which analysis then serves as a basic document for members. Whether the chairman puts the bill on the agenda is critical to its survival. If he does, the bill will undoubtedly be reported favorably, although not necessarily in its original form. During the 1986 Regular Session, for example, of the 2,456 referrals to Senate committees, 1,251 were placed on the agenda. Of these, 1,226 were reported favorably and only 25 unfavorably. Of the 2,143 referrals to House committees, 925 were placed on the agenda. Of these, 911 were reported favorably and only 14 unfavorably. It should be noted, however, that a substantial number of the Senate and House referrals were the same bills and had been assigned to two, or sometimes three, committees. For instance, most of the 367 bills referred to the Senate Appropriations Committee and the 651 bills

134. Fla. Const. art. III, §§ 8, 12.
referred to the House Appropriations Committee had first been considered in other committees.

A bill on the agenda gets a hearing in committee. The sponsor can present the bill, witnesses can testify in support or opposition to it, and committee members can discuss it, amend it, and substitute a committee version for it. Members will not kill it, however. If they are unsympathetic to a colleague's bill, they will pass it on, expecting it to die somewhere else. Chances are that it will be buried in the Appropriations Committee, where bills with likely fiscal impact must be reviewed. The two Appropriations Committees are more stringent than the rest. Senate Appropriations favorably reports only 23% of the bills referred to it compared to 50% for Senate standing committees. House Appropriations favorably reports only 27% compared to 43% for House standing committees.

Bills that negotiate passage through one house do not always undergo comparable scrutiny in the other chamber. Often companion or similar bills find their way through the Senate and House simultaneously. Sometimes bills passed in one chamber go right to the floor in the other. In a few instances, bills do not receive committee scrutiny in either chamber because House bills can be referred directly to the calendar by the presiding officer.

Although the substantive committees and the Appropriations Committees are primarily responsible for the formal scrutiny of legislation, others also take part. The Rules Committee of each chamber reviews bills for placement on the special order calendar, in effect deciding which bills receive action on the floor and which languish on the second reading calendar. With so many bills being reported favorably by committees, the Rules Committee has the critical job of managing the flow to the floor. Its job is even more critical late in the session, when committee chairmen permit sponsors to withdraw bills and seek positions on the special order calendar. In the 1986 Regular Session, for example, one out of five bills in Senate committees and almost three out of ten bills in House committees were withdrawn. Thus, fewer than one-third of referred bills die in committees. Most of the remainder find their way to the Rules Committee, which comes under greater pressure to let bills reach the floor as the session nears its end.

The special order calendar determines which bills will be heard on the floor and in what order. Virtually all bills that make it to the floor pass, although some are altered. Action on the floor does not necessarily entail scrutiny because most bills are processed rapidly, without debate or amendment. But some, perhaps one in
ten, provoke discussion and amendment on the floor. Contrary to the belief that legislators are unfamiliar with most of the bills on which they vote, most members of the Senate and House are generally familiar with the overwhelming number of issues they consider. They have seen many of these issues in previous sessions, attended to some during committee meetings, been briefed by aides on others, and have discussed informally a large number of them with colleagues and lobbyists.

B. The Informal Process of Lawmaking

The informal process of legislating is important but fluid and difficult to specify. It begins before a bill’s introduction, when groundwork is laid and sponsors are recruited, and runs through the bill’s enactment and signing by the governor. It takes place in leadership suites, members’ offices, the corridors of the Senate and House, in committee, on the floor, and at the many receptions held by interest groups. In this process legislators and lobbyists frequently interact, mobilizing support, developing strategy, exchanging information, and reinforcing each other. Most interactions occur among allies who share values or interests and either support or oppose a particular proposal. Some interactions, however, are between parties with conflicting interests who, under legislative auspices, come together to negotiate and reach agreements. This is how consensus, toward which the legislature strives, is developed.

Plans are put together informally so that much of what goes on in committee and on the floor has been scripted in advance. Most informal work is merely ratified in the formal setting, but occasionally there is a breakdown in subcommittee, committee, or on the floor. It is then necessary for key participants to meet in the small conference rooms (or “bubbles”) at the rear of the Senate and House chambers, the members’ lounges, the president’s or speaker’s conference room, or anywhere they can expeditiously get together to rebuild their coalition and reshape their agreement.

The formal and informal processes overlap and reinforce one another. Each is necessary for the legislature’s functioning. Despite relatively permissive committees, the system works overall. It probably works most effectively on major issues, where the leadership is committed, and less effectively on minor bills and special-interest issues, where decision-making is more decentralized.
C. The End-of-Session Logjam

At the close of the session, the system buckles under the pressures of workload, controversy, and rivalry.136 A large proportion of business on the floor takes place at the very end of the sixty-day session. In 1986, for instance, 40% of the bills that passed the Senate did so during the last three days and 23% passed on the last day. In the House, 36% passed during the last three days and 20% passed on the last day.137 It is not only that many bills do not reach the floor until the end, but the leadership deliberately postpones final action on some of the toughest issues until the deadline for adjournment forces contestants to resolve their differences. It is during the last week that a Senate-House conference committee tries to reach a consensus on the appropriations bill. The appropriations conference report is not accepted, nor is the bill passed, until the very end. This enables the leaders to maintain control over the members by virtue of their control over the members' pet projects. Conference committees also settle other outstanding major issues in the waning hours.

Most bills do not go to conference. Rather, in the last few days they travel back and forth from House to Senate, picking up and shedding provisions. For a bill to be enacted, the Senate and House versions must be identical. This is not easy, given the policy differences and the roles of lobbyists in supporting one chamber or the other. It is made even more difficult by the traditional rivalry between the House and Senate, which is more intense in Florida than most other states. Both sides are resourceful in their negotiations and unwilling to settle until time is about to run out.

To further complicate matters, during the last week of the session members connect different bills, constructing what are known as "trains." A train, or omnibus bill, usually covers a single general subject, but may combine more than a dozen separately introduced pieces of legislation. The object is protection. A member's pet bill may be attached to "must-pass" legislation that has considerable support. Similarly, a bill the governor opposes may be linked to bills that the governor cannot afford to veto.

The end of the session undermines, at least to some extent, the committee process. Bills that would otherwise die are withdrawn

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137. The session was extended three hours, so it ended not on the last regular day, June 6, but at 3 a.m. on June 7. FLA. S. JOUR. 1092 (Reg. Sess. June 6, 1986) (vote on HJR 1433).
from a committee, with the chairman's permission, as sponsors or lobbyists try to get them to a more favorable committee or to the special order calendar. Even if a bill has not been withdrawn, as long as the committee has not voted it down it can be introduced as an amendment to another bill. It then has a chance of being linked to one of the trains and steaming through to enactment during the last-minute confusion. Resurrecting a bill in this manner is the moment of truth for those members and lobbyists who delight in the game of legislative legerdemain. It also suggests that the committee system needs shoring up.\textsuperscript{138}

Despite the frenzy of the end-of-the-session rush, the leaders maintain surprising control. Indeed, leaders have more of a role than would appear from the floor. Until the very end the major feature of the settlement process is the ability of leaders to manage, even though they cannot dictate every outcome. Over the course of the session leaders are very successful in structuring settlements. Their policy views, however, do not always prevail. The more ideological or philosophical the issue, the more unpredictable the outcome.

The process is leadership-centered. Others, however, play significant roles. The Appropriations Committees and their subcommittees wield substantial influence, and other standing committees, particularly those with jurisdiction over economic and regulatory matters, are delegated many issues including most of the special interest concerns. Nor are individual members shut out. Those with entrepreneurial and subject-matter skills can be key players on disparate issues. The governor is a major force, and executive agencies are critical within their own spheres.

Finally, lobbyists representing a myriad of interests are engaged in the resolution of practically every issue. The short session and the intense nature of the Capitol community throw legislators and lobbyists together. Thus, their relationships in Tallahassee are closer than those in other state capitals. In most cases, legislators work with lobbyists not out of dependency but because they want to. As a result of political philosophy, experience, or constituency, legislators and lobbyists share particular interests and consider

\textsuperscript{138} Leaders and members agree on the need to improve the system but seem unable to do much. In his opening address to the Senate, President Johnston urged committees to be tougher in reviewing bills. "I do not want bad ideas to be left hanging around as possible amendments when floor work picks up in May," he said. "So I can't emphasize strongly enough that your job is not only to pass good bills, but to kill bad ones." FlA. S. Jour. 3 (Reg. Sess. Apr. 8, 1986).
themselves allies on certain issues. Campaign contributions reinforce the alliance, but seldom create it.\footnote{139}

VI. CONCLUSION: THE QUALITY OF LEGISLATIVE PERFORMANCE

The performance of a legislature depends on capacity, membership, power, politics, and process. The Florida Legislature performs well because legislative capacity has been developed and is productively used, individual legislators are remarkably talented, and internal power is sufficiently concentrated for the legislature to lead the state. The legislative process is, however, flawed. Although we can hardly expect perfection in a process that is representative, democratic, and beset with conflict, the lawmaking process can be improved in Florida.

First, legislative leaders and committee chairmen can say "no" to members more often. They can kill poor bills rather than pass them on, hoping they will die elsewhere. Second, some of the major issues and more of the minor ones can be resolved earlier so that the end-of-the-session agenda is more manageable and is handled more deliberatively. Third, leaders can keep the "trains" shorter and slower, so they do not become vehicles for bills of dubious kinship and questionable quality. Fourth, in order to dispel suspicion and promote cooperation, communication between Senate and House leaders should be increased as the session progresses, not just in the crunch of the closing days. Fifth, rivalry between the Senate and the House can be restrained.

Most importantly, throughout the process the legislative eye must be kept on the prevailing public policy. During the course of a session, legislators often become preoccupied with the politics of enacting legislation. This is understandable because they are busy fashioning support, overcoming opposition, and negotiating measures through the Senate and House. But in the heady game of lawmaking, legislators may lose sight of their ultimate public policy objectives. They pay too little attention to issues of funding, implementation, and the question of how (and whether) the bill they are so vigorously trying to enact will work. Often, exceedingly ambitious programs are modestly funded and frequently do not work as intended.

\footnote{139. The inference that lobbyists call the shots and legislators serve as their handmaidens in return for campaign contributions, free meals, and other favors is incorrect. Although some legislators do the bidding of lobbyists in certain instances—and money is doubtless important in politics—for the most part integrity is not impeached.}
On balance, Florida can take pride in its legislature. If the purpose of a legislature is to represent people and groups, to provide a deliberative process by which conflict can take place and consensus built, and to produce outcomes that further the overall interests of the state, then the Florida Legislature does its job well. It ranks among the nation's best.