The Legislative Article of the 1970 Illinois Constitution

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THE LEGISLATIVE ARTICLE OF THE 1970 ILLINOIS CONSTITUTION

Staff Introduction

Sangamon State University political scientist Jack Van Der Slik describes the legislative article of the 1970 Illinois State Constitution, with the exception of redistricting which is dealt with in a separate paper prepared by Paul Green. Dr. Van Der Slik points out the importance of the 1970 Constitution in changing the nature of the legislature from a part-time biennial institution to a full-time continuous body. In addition, he discusses the structure and internal procedures of the Illinois General Assembly, including the types of gubernatorial vetoes and legislative votes needed to override them.

The author also notes that the legislative cutback amendment, which eliminated cumulative voting and divided each of the 59 Senate districts into two Representative districts represented by a single legislator, was made possible by a 1970 constitutional provision which allowed the amendment of Article IV by initiative and referendum, the only portion of the Constitution which can be so amended.

If the people of Illinois choose to call a new constitutional convention, several issues are sure to arise with regard to the legislative article. These include:

- the Governor's veto powers, particularly the amendatory veto;
- the length of terms for members of the Illinois House of Representatives; and
- the extension of the initiative and referendum to articles other than the legislative article.

The 1970 Constitution retained the total veto and the line item veto available under the 1870 Constitution, and added the item reduction veto for appropriations bills and the amendatory veto for substantive legislation. Ten other states grant the Governor the item reduction veto, and six other states allow the Governor the amendatory veto. Any gubernatorial veto can be overridden by a three-fifths constitutional majority in both houses. Acceptance of an amendatory veto or restoration of a reduced amount is enacted by a constitutional majority in both houses.

Because the amendatory veto allows the Governor to revise the language of a bill and make specific recommendations for change, it is considered by many to be an intrusion on the legislative function. The Supreme Court has ruled that the amendatory veto cannot be construed so narrowly as to imply that its use is confined to merely technical or minor changes -- an interpretation that was proposed as a constitutional amendment in 1974 and rejected by the people. On the other hand, it cannot be a means of proposing entirely new legislation; the fundamental purpose of the bill under consideration may not be altered. This latitude disturbs many lawmakers, and the amendatory veto is certain to be part of the debate if a new constitutional convention is called.

Although a change in the length of term for House members is not likely, it is a source of irritation to some representatives who complain about having to run at two-year intervals. Four states now have four-year terms for representatives as well as senators, and proposals to lengthen terms have been proposed in in the Illinois House.

Finally, the fact that the cutback initiative succeeded will be used by advocates of the initative and referendum as an argument for its general application. As it stands, the Illinois Constitution allows the initiative only for the amendment of the legislative article. The initiative and referendum will certainly be debated in connection with a possible constitutional convention, and its application to the executive article will no doubt be a focus of discussion.

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Since 1818 the Constitutions of Illinois have been apt reflections of the state's culture and history. The 1818 Constitution spoke in the drawl of the American South. The 1848 Constitution included compromises required by the settlers from New England. The 1870 Constitution sought to settle regional differences exacerbated by the Civil War, and a key element serving that end set up legislative districts with single-member Senate elections and three-member House elections by cumulative voting. Cumulative voting helped sustain local minority party organizations by making legislative offices accessible to their candidates. The 1870 Constitution had a Bill of Rights with generous protection for the people of the state. It also restricted state power with regard to special legislation, state debt and taxation. But it encouraged generosity toward the people in matters such as protecting miners and encouraging liberal homestead and exemption laws. It protected them from exploitation by the great corporations, particularly the railroads and the big city banks, and the state's lotteries. It encouraged good education and a positive business environment, fitting what Daniel J. Elazar (1982, p. 19) calls "the commercial republic pattern." The 1970 Constitution added to the Bill of Rights, strengthened all the branches of government, and enlarged the discretion of political authorities over public policy, becoming what Elazar called "a document that is considered to be one of the most advanced in the country."

The Legislative Branch in Perspective

In the American nation of states, conventional legal doctrine ascribes to the national government only the powers given it by the states in the U.S. Constitution. But the states have residual powers, all the powers not denied them by the U.S. Constitution or their own citizens according to their state constitutions. Because such authority is exercised by law, the pre-eminent governmental institution is the one that makes the laws -- in Illinois it is the General Assembly.

Traditional American checks and balances require that authorities in separate institutions share power. But there is no generically singular legislative power, executive power or judicial power. The legislature tries impeachment cases, the executive exercises a legislative veto and courts may redistrict legislative boundaries after other bodies have failed that assignment. So the boundaries between the branches and their functions have to be differentiated in the constitution. It is significant that an individual office-holder may only serve in one branch at a time. The Governor may appoint a legislator to become an agency director, but to take the executive position that appointee must resign the legislative seat.

Structure, Composition and Election of the Legislature

The 1870 Constitution established a bicameral legislature with 51 districts. Each district elected one senator to a four-year term and three representatives to a two-year term. Representatives were chosen by Illinois' unique system of cumulative voting. The state's population, according to the 1870 census, was about 2,540,000. In 1955 a reapportionment compromise and constitutional amendment gave the state 58 Senate districts and 59 three-member House districts. The 1950 census population for Illinois was about 8,712,000. The districts in Cook County were coterminous, but those downstate were not. Cumulative voting for House seats was retained.

A unicameral legislative structure received only passing consideration in the 1970 constitutional convention, but the size of the legislature and cumulative voting mechanism were controversial. The state's population in 1970 was 11,114,000. During the early debates, many delegates favored 51 senatorial districts, with 153 representatives elected from single-member districts. By the end of the convention, representation in the House became enmeshed with conflict about appointment/election of judges. These two controversial issues were voted on separately in the final ratification election. The people ratified 59 legislative districts with one senator and three representatives from each, the latter elected by cumulative voting. Cumulative voting received 57.2 percent of the votes in the referendum.

A new provision of the 1970 Constitution (Article 14, Section 3) made it possible to amend "structural and procedural subjects contained in Article IV" by initiative and referendum. The so called "cutback amendment," a proposal to reduce the size of the House by one-third and to make two single-member representative districts within each of the 59 legislative districts, was put on the ballot by petition. It passed by referendum in 1980 with 68.8 percent of the votes cast by over 3 million people, out of a total state population of 11,433,000.

The appropriate size of the legislature is a subjective matter. Only two states, New York and Minnesota, have more than 59 Senators. At 177 members, the Illinois House was exceeded in size only by Georgia, New Hampshire and Pennsylvania, but the with current 119 members it is also outnumbered in Connecticut, Florida, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New York, South Carolina, Texas and Vermont. What is perhaps more relevant is the number of people represented with the current chamber size. Table 1 (page 5) reports data for the five neighboring states and five other states with populations over 10 million in 1980. All the neighboring states have smaller legislatures, but with their smaller populations each senator and representative has substantially fewer constituents than Illinois legislators do. Compared to states with large populations, a relatively large Senate means Illinois senators have the smallest number of constituents. The number of constituents for House members is between the extremes for the large states. (As a point of reference, the average 1980 constituency population for a U.S. House seat in Illinois is 520,000.)

Table 1

Comparison of Legislative Constituency Populations:
Illinois with Neighboring and Peer States*

State	Population (in thousands)	Senate Size	Average Senate District Population (in thousands)	House Size	Average House District Population (in thousands)
Illinois	11,433	59	194	118	97
Indiana	5,489	50	110	100	55
Iowa	2,913	50	58	100	29
Kentucky	3,662	38	96	100	37
Missouri	4,924	34	145	163	30
Wisconsin	4,728	33	143	99	48
California	23,771	40	594	80	297
New York	17,575	60	293	150	117
Pennsylvania	11,880	50	238	203	59
Texas	14,321	31	462	150	95
Ohio	10,800	33	327	99	109

* Population data according to 1980 Census.

Legislative terms of office in Illinois are typical of those in other states: four years for the Senate and two for the House. The Illinois Senate is unique in its staggered system of two four-year and one two-year term for the decade between redistricting. Although House members complain about recurring elections every two years and occasional proposals to lengthen terms are made (in 1985-86, HJR-3 sponsored by Reps. Shaw and Rice lost on third reading in the House), it is unlikely that terms longer than two years will be adopted unless or until terms for U.S. House members are lengthened. However, Alabama, Louisiana, Mississippi and Maryland do have four-year terms for both their representatives and senators.

The Illinois Constitution sets minimal eligibility requirements for legislative membership -- age (21) and residence (two years in the district before election or appointment). In addition there is a provision to give residence flexibility after legislative redistricting, i.e., a candidate may be elected from any district which contains part of the district he lived in at the time of redistricting, and can be re-elected if he has lived in the new district for 18 months prior to the election.

The existence of constitutional requirements probably precludes the legislature from adding statutory requirements. There is a workable and reasonably prompt procedure for filling legislative vacancies. There is a provision to prevent legislators from "compensation as a public officer or employee from any other governmental entity" for time served "in attendance as a member of the General Assembly." That provision has substantially curbed an alleged abuse under the 1870 Constitution known as "double dipping."

Internal Proceedings

The Constitution clearly makes the legislature a "continuous body," beginning each year on a certain date. The Governor may call special sessions of the General Assembly or the Senate, but the General Assembly may also be called into special session by joint proclamation of the two presiding officers. Sessions are open to the public and may only be closed by a two-thirds majority. In Illinois' partisan context, a two-thirds majority in effect requires a bipartisan consensus to do business in a special session.

With a majority of the constitutional membership of each chamber required for a quorum, the two legislative chambers are convened on their first day by elected executives. The Governor convenes the Senate and the Secretary of State convenes the House. Each chamber chooses its respective presiding officer. (Under the 1870 and preceding Constitutions, the Lieutenant Governor was also president and presiding officer of the Senate, a constitutional custom still followed in several other states.) The Constitution also confers formal status and appointive powers upon minority leaders in each chamber. Each house determines its rules, judges the elections and qualifications of members, and may punish or expel members for disorderly conduct. These powers keep the legislature independent from the courts in judging legislative election disputes, the meaning of rules and the interpretation of disorderly or contemptuous behavior.

Constitutional rules for business require journals, public notice of meetings, and that transcripts of debates be made available to the public. Each chamber has the power to subpoena witnesses and written records. The people are allowed to hear and observe public business, and the legislature has broad powers to obtain and hear information relevant to its business.

Requirements for enacting bills include deliberations (three "readings" of each bill on separate days, in each house), action by record vote, and enactment by constitutional majorities. (60 yes votes are necessary in the House, 30 in the Senate without regard to the actual number present, as long as there is a quorum. A quorum is also 60 members in the House and 30 in the Senate.) The Constitution clearly requires that bills be confined to single subjects, and that amendatory bills must completely set forth the language of the law being amended. There are safeguards providing that each member have at his/her desk the complete language of bills as amended prior to final passage. There is no such requirement for conference committee reports, the means used to resolve differences on a given bill between the House and Senate.

The Constitution assigns to the presiding officers of each house the task of certifying that procedural requirements have been met. What the leaders certify as properly passed is not questionable in the courts on procedural grounds.

Veto Procedures and Their Consequences

Among those who favor a powerful, visible and accountable chief executive in state government, the veto power of the Governor in Illinois has been considered exemplary. Under the 1870 Constitution, there was already a provision for the total veto, or the power to reject an entire bill. An 1884 amendment added the item veto for lines or sections of an appropriations bill. Legislative override was possible only by a two-thirds constitutional majority in both houses.

In practice, very few gubernatorial vetoes were overridden under the 1870 Constitution: in fact, there were only four. The legislature's practice was to pass nearly all its legislation late in June and then adjourn sine die. Therefore, the Governor's vetoes were not even considered by the legislature. Perhaps more important was the political reality that, because of cumulative voting and minority representation in the House, the Governor could always count on his party for more than one-third support and thereby prevent a veto override.

The 1970 Constitution moved the description of veto procedure to the legislative article rather than to the executive article, where the writers of the 1870 Constitution had placed it. (Veto provisions in the U.S. Constitution and in the National Municipal League's "model state constitution" are located in the legislative article.) However, the language proposed for that section was originated by the constitutional convention committee on the executive article. The changes substantially enlarged the Governor's discretion, but also increased the capacity of the legislature to override vetoes.

In addition to the total veto and the item veto, the Governor is given the item reduction veto for appropriations and the amendatory veto for nonappropriation bills. The item reduction power is a useful budgetary tool which allows the Governor to revise downward an item or section of an appropriation bill (a power granted in ten other states). The amendatory veto allows the Governor to revise the language of a substantive bill and make "specific recommendations for change to the house in which it originated." Six other states have provisions for an amendatory veto.

If the legislature disagrees with the Governor's veto, item veto or amendatory veto, it may override by a three-fifths constitutional majority in both houses. Restoration of an amount reduced by the Governor and acceptance of the Governor's amendatory recommendations is enacted with a constitutional majority in both houses.

Although the veto section is complex, one veto technique available to the U.S. president and some Governors is not available to the Illinois Governor. That is the so-called pocket veto. Elsewhere, when an executive does not act on a legislatively passed bill and the legislature adjourns, the bill dies, as it were, in the executive's pocket. In Illinois, bills presented to the Governor within 30 days after passage must be acted on by the Governor within 60 days. If the Governor does not return a vetoed bill within the 60 days, it "shall become law."

There has been substantial conflict about the breadth of power that the Governor has with the amendatory veto. Proponents of a narrow interpretation of the Governor's power have argued that the amendatory veto should be limited to technical and minor changes. That interpretation was rejected in the Supreme Court. In 1974 it was proposed as a constitutional amendment and defeated by the people. The Court has asserted that the Governor may not, by amendatory veto, propose a new bill to the legislature, change the fundamental purpose of a bill or make "substantial or expansive changes" in it.

In 1984 Speaker Madigan convened a task force to consider the amendatory veto. It produced a proposal to limit the Governor's amendatory veto, which Madigan introduced to the House as a constitutional amendment in 1985. The proposed amendment provided that for a bill subjected to an amendatory veto, the legislature could reject the Governor's recommendations and pass the bill in its original form by a record vote of a constitutional majority, instead of a three-fifths majority. To be placed on the ballot, the proposed amendment was required to pass by a three-fifths majority in the legislature, but failed in the House with a vote of 65 yeas and 47 nays.

Because the Governor has many veto options and the legislature is a continuous body, there is routine legislative consideration of the Governor's vetoes in which legislative overrides are commonplace. Some interest groups and legislators consider the amendatory veto by the Governor too intrusive upon the prerogatives of the legislature. However, the leaders of the legislature frequently can muster the three-fifths majorities necessary to override such vetoes.

Effective Date of Laws

The Constitution has a clear statement on the effective date of laws. It requires the legislature to determine a uniform effective date, presumably in order for people to become informed about the substance of new regulations. It allows exceptions to the uniform effective date by legislative enactment. It provides a constitutional effective date for legislation passed after June 30, the traditional deadline for legislative sessions, or July 1 in the next calendar year. It allows, however, for an earlier effective date for legislation passed by a three-fifths majority of the members in each house. There is a great deal of confusion about effective dates, most of it involving bills to which the amendatory veto has been applied. The confusion is not essentially a constitutional problem, but one that begs for judicial or statutory clarification.

Pay and Immunity

Compensation for legislators is provided by law. The courts have determined that the Compensation Review Act (Ch. 63, Par. 901 et seq.) is a proper implementation. Salary changes for legislators may not take effect during the term for which they have been elected. Increases voted after the 1978 election but before the new legislature convened in 1979 were judged as not violating this section.

Immunity from arrest is a privilege against civil rather than criminal arrest. Legislators are liable for traffic violations which are a "breach of the peace."

A legislator's speech in debate is immune from "any another tribunal," but a member may be expelled by a two-thirds majority of his or her colleagues (Section 6(d)).

Special Legislation

In the mid-19th century, many legislatures abused their lawmaking power by enacting private, special or local legislation. Some of these enactments were corruptly "bought and sold." In the 1870 Constitution, the section on special legislation enumerated 23 specific prohibitions on "local or special laws," and concluded that "where a general law can be made applicable, no special law shall be enacted."

By the time of the 1970 constitutional convention, a mountain of case law existed on special and local legislation. A major source of pressure for such legislation would be relieved by generous home rule provisions in the local government article.

The Constitution asserts the principle that laws shall be general, not special or local. Case law requires that distinctions be logical and fair. Whether or not general laws can be made applicable is left to judicial determination.

Impeachment

The power of the House to impeach and the Senate to convict is a gun-behind-the-door for the legislature to be the peoples' judge against executive and judicial officers. This power appears in the 1818, 1848, and 1870 Constitutions. The language of the 1970 Constitution provides the House "sole power to conduct legislative investigations to determine the existence of cause for impeachment . . . ." This effectively overruled a 1969 Supreme Court decision that prevented a legislative investigation of judicial officers.

Adjournment

The tradition of bicameralism and its implied checks and balances requires the two chambers to cooperate in determining when they shall be in session. The Constitution allows only small variations by one chamber without the consent of the other. The 1970 Constitution added paragraph (d), allowing the Governor power to settle disputes on adjournment.

The Institutionalized General Assembly

The Illinois Legislature is marked by attributes that political scientists ascribe to an "institutionalized organization."

- It is well-bounded. It is clear who is in the organization and who is not. There is a strict and selective procedure for becoming a member of the legislature.
- It has a complex organization with distinctive functions and a specialized division of labor.
- It's operations follow objective rules and criteria, not mere favoritism or discrimination.

Obviously legislative membership has always been unambiguous, but now other players in the system are also clearly defined. Who belongs to staff and which staff each person belongs to has been made increasingly clear. The General Assembly's own Legislative Research Unit (LRU) periodically publishes names and assignments in its Directory of State Officials. Most of the individuals listed are people in explicitly legislative positions, but the Directory also indicates the other state agencies and their officially designated "legislative liaisons." Similarly, the LRU provides a Directory of Registered Lobbyists, which indicates who is registered to represent each of the various interest groups and organizations.

The legislature's committees and their jurisdictions are increasingly clear. Specific staff persons are assigned to each committee by each party in both chambers. Party leadership positions are well-defined. Legislative agencies (commissions) have been reduced in number; existing ones have more focus, and creating new ones is relatively difficult.

Operations go by the rules and the intention of the rules. Very few bills come to the floor in either house without reference to standing committees. Deadlines are meaningful, "stopping the clock" is a fiction of the past. Members' rights are respected by leaders, staff and lobbyists. Facilities and service agencies are arranged to meet member needs. There is a constitutional requirement that "a bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage," and great effort is made to fulfill it.

The legislative article should facilitate, not impede, representative democracy. The 1970 Constitution enabled the legislature to operate year-round and to manage its own affairs. In the years since then, the legislature's institutional development has been obvious to close observers, and its evolution can be expected to continue.

REFERENCES

Dillard, Kirk W. and James D. Martin. 1985. "Effective dates of Laws 'Passed' by the Illinois General Assembly." Illinois Bar Journal 83, No. 8, pp. 434-442.

Elazar, Daniel J. 1982. "The Principles and Traditions Underlying State Constitutions." Publius, Vol. 12, pp. 11-25.

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