CHAPTER SIX
OPEN AND ACCOUNTABLE GOVERNMENT

1. Policy Recommendation: Make the remote testimony for citizens permanent

The Washington state Senate recently began a pilot program, based on a Washington Policy Center recommendation, to allow citizens to testify at a legislative hearing from a remote location. The program allows ordinary people from around the state to participate in a public hearing without the time and expense of traveling to Olympia. Remote testimony is popular with citizens and with lawmakers.

According to a 2013 survey by Washington State University, 72 percent of lawmakers and lobbyists answered "yes" to the question: "Should video conferencing be used to allow constituents to provide remote testimony?"[1]

Greater access for citizens

Due to its success, Washington's current remote testimony program should be made permanent and extended to include House committee hearings. Allowing the public to give remote testimony from fixed locations around the state would give citizens greater opportunity to be part of the lawmaking process.

It would also help Washingtonians avoid difficult travel during the winter months when the legislature is in session, especially when the snowy Cascade Mountains cut Eastern Washington off from the state capitol.

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1 "Washington State Legislative Service Project: Legislators 2013," by Francis Benjamin and Nicholas Lovrich, Division of Governmental Studies and Services, WSU at http://www.washingtonpolicy.org/library/docLib/legislator_full_report_2013.pdf.

Even in mild seasons, getting to Olympia to provide testimony requires a full day of travel for many Washingtonians. Consider the following driving times under the best traffic conditions:

- Spokane to Olympia — 320 miles (5 hours, 14 minutes)
- Walla Walla to Olympia — 303 miles (5 hours, 7 minutes)
- Kennewick to Olympia — 256 miles (4 hours, 20 minutes)
- Bellingham to Olympia — 149 miles (2 hours, 27 minutes)
- Vancouver to Olympia — 106 miles (1 hour, 45 minutes)
- Everett to Olympia — 89 miles (1 hour, 30 minutes)

Remote testimony can instantly overcome these distances and provide all Washingtonians the chance to be part of the legislative process. According to the National Conference of State Legislatures, several states already provide a remote testimony option for their citizens.

Although there is broad support for allowing remote testimony, there is concern that it would be disruptive to the current hearing process. To avoid disruptions, committees could establish rules for those wishing to provide remote testimony.

Use online sign-up sheet

For example, an online sign-up sheet could be used to place citizens in a queue managed by committee staff. Signing-up for remote testimony could be required the day before the hearing (assuming proper notice of the meeting is given), so the committee chairman would know in advance the number and location of people who want to speak.

A committee could first hear from people present in the hearing room in Olympia, with time reserved for those participating remotely. The committee chairman could determine how much remote testimony to take per bill. As is the case with those attending a hearing in person, being in the remote testimony queue would not guarantee a chance to testify, because of the hearing's overall time constraints.

2. Policy Recommendation: Lawmakers should improve public notice and ban the use of title-only bills

Washington's lawmakers have adopted rules on paper that let the public participate in the legislative debate, but the casual way they routinely waive the rules undercuts these important public protections.

The state House of Representatives says one of its official goals is to, "increase public participation, understanding, and transparency of the legislative process...," and to, "enact high quality legislation through debate and collaboration that is thoughtful and responsive, and honors our diverse citizenry."[2]

This commonsense principle reflects a fundamental premise of our democracy: Citizens should be able to comment on the proposed laws we may have to live under to ensure lawmakers are informed about our opinions and expectations.

The legislature's rules require that:

> "At least five days notice shall be given of all public hearings held by any committee other than the rules committee. Such notice shall contain the date, time and place of such hearing together with the title and number of each bill, or identification of the subject matter, to be considered at such hearing."[3]

Title-only bills

The rules supposedly prohibit so-called "title-only bills," a blank bill with a title and a number, but with the text to be filled in later.

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2 "House Mission Resolution," Washington State Legislature, passed January 18, 2006, at http://leg.wa.gov/House/Documents/HouseResolution.pdf.

3 "Permanent Rules of the Senate," Washington State Legislature at http://leg.wa.gov/Senate/Administration/Pages/senate_rules.aspx, accessed April 2016.

In practice, legislators often introduce title-only bills anyway. Title-only bills are not a transparent way to introduce changes to state law; they are essentially used by lawmakers to circumvent the state constitution. New bills are not supposed to be introduced in the last ten days of the session, unless two-thirds of lawmakers agree.

To get around this constitutional restriction, some lawmakers introduce title-only bills late in the session as a placeholder, so they can put in the real text later without having to secure the required two-thirds vote.

Legislative transparency

If the constitutional protection is truly preventing lawmakers from being transparent and doing their work, they should propose a repeal of the 10-day limit and replace it with legislative transparency protections that would:

- Provide mandatory public notice and waiting periods before legislative action;
- Truly ban title-only bills;
- Have the legislature follow the same transparency standards as local government.

In 2013, lawmakers introduced proposals to implement these legislative transparency requirements (Senate Bill 6560 and its companion House Bill 2369), but these measures did not receive a public hearing.

SB 6560 would have improved public hearing notice and banned title-only bills, and would have forced the legislature to make decisions the same way city and county officials do. It would have prevented committees from going into recess, as members negotiate secret agreements on amendments, then coming back into public session to vote on them formally.

Enacting legislation like that proposed by SB 6560 would enhance transparency and bolster public confidence in the law-making process.

3. Policy recommendation: The legislature should make itself subject to the Public Records Act and the Open Public Meetings Act

All state and local government entities in Washington are subject to the Public Records Act and the Open Public Meetings Act, except for the legislature, which is exempt from full disclosure under the claim of "legislative privilege." This is why state lawmakers are able to go into an executive session to develop strategy and privately discuss why they do or do not support a bill, while local governments are prohibited from using executive sessions to discuss public policy decisions.

Nearly all local government records and internal communications are subject to public disclosure, but members of the legislature and their staff claim legislative privilege and do not routinely release emails and other internal policy related records to the public.

This double standard understandably irritates local government officials, who must operate under a different standard of disclosure. It is also a disservice to citizens, who are denied the fullest disclosure of the records and activities of their state lawmakers. To lead by example, the legislature should subject itself to all the requirements of the Public Record Act and Open Public Meetings Act on the same basis as other public entities in Washington.

4. Policy Recommendation: Adopt constitutional reform to require a two-thirds vote of lawmakers to change a voter-approved initiative

Article 1, Section 1 of the state constitution says, "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights."

The clear authority of the people over their government means that, before any legislative powers are granted, the people reserve for themselves co-equal lawmaking authority. This sovereign authority is explained in Article 2, Section 1:

> "The legislative authority... shall be vested in the legislature, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature. (a) Initiative: The first power reserved by the people is the initiative."

Despite reserving this power to enact laws, it is very difficult for citizens to qualify an initiative for consideration. The number of valid signatures needed to put an initiative on the ballot is eight percent of the votes cast for Governor in the most recent election, or about 246,000 signatures.[4]

4 "Current Petition Check Statistics," Elections and Voting, Office of the Secretary of State, Olympia, Washington, at https://www.sos.wa.gov/elections/initiatives/faq.aspx, accessed April 2016.

5. Policy Recommendation: Reduce the number of statewide elected offices

At present the people of Washington elect officials to nine statewide offices (not counting justices to the state supreme court). These offices are Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Superintendent of Public Instruction, Commissioner of Public Lands and Insurance Commissioner. Yet for many years there has been a debate about whether this is the most effective way to structure our state government.

One view holds that the best approach is using the "long ballot" to institute the greatest amount of direct democracy, by requiring election of a large number of high-level state officials. This reasoning dates from the Progressive Era of the early 1900s.

Others argue a "short ballot" approach is better because the people choose a limited number of top officials, who are then held uniquely responsible for the proper functioning of government. Proponents of this view say that in practice most people don't know who is elected to minor state-wide offices and that elected officials are subject to greater public scrutiny when there are fewer of them.

All statewide elected offices, except for Insurance Commissioner, are established by the state constitution. The Insurance Commissioner is also the only one for which the legislature, not the constitution, has established the elective nature of the office.

Many top elected offices are similar to appointed positions

In contrast to the nine elected positions, all other senior officials in the executive branch are appointed by the Governor. They make up the Governor's cabinet and include many important positions.

Here are some examples:

> Secretary of Social and Health Services, Director of Ecology, Director of Labor and Industries, Director of Agriculture, Director of Financial Management, Secretary of Transportation, Director of Licensing, Director of General Administration, Director of Revenue, Director of Retirement Systems, Secretary of Corrections, and Chief of State Patrol.

The duties and responsibilities of these appointed officials are similar to, and often more important then, those of minor elected officials, like the Secretary of State, Superintendent of Public Instruction, Commissioner of Public Lands and Insurance Commissioner.

Ending policy conflicts within the executive branch

Today, Washington's eight other statewide elected officials are independent of the Governor. They lobby the legislature independently, and even work against what the Governor is trying to accomplish. Any such conflict is easily resolved in departments that are administered by appointees. If a policy disagreement arises among cabinet officers, the Governor settles it by formulating a single, unified policy for his administration.

Similarly, if the legislature is unable to reach agreement with a cabinet official over important legislation, the dispute can be taken "over his head" to the Governor. The Governor may or may not agree with the position the cabinet appointee has taken, but at least the legislature will get a final answer. The legislature would know that, through the Governor, the executive branch speaks with one voice.

Increasing the accountability of the Governor

The reason this works is that the Governor has direct authority over the performance of appointed officials. They serve at

his pleasure and are answerable to him. The Governor in turn must report to the voters for the overall performance of the administration.

The state constitution should be amended to abolish the Secretary of State, Superintendent of Public Instruction and Commissioner of Public Lands as independently-elected statewide officials. The way the Insurance Commissioner is selected can be changed by the legislature.

These four positions should then be restructured as cabinet agencies headed by appointees, making the Governor fully accountable to the people for the actions of these departments of the executive branch.

6. Policy Recommendation: Amend the constitution to allow district elections for supreme court justices

Under the constitution all state supreme court justices are elected statewide. This increases the costs of these races and in practice means that most candidates come from the Puget Sound region. As currently conducted, supreme court elections do not provide geographic and cultural representation on the state's highest court.

To improve geographic representation on the supreme court, elections should be changed to district elections. This would provide more regional diversity and help reduce the cost of running for office, while providing candidates more time to focus on voter outreach, debates and forums in their area of the state.

Only one of the nine justices on the court once lived in Eastern Washington at the time of taking office appointment. Had Justice Debra Stephens not won election, *all* of the state's supreme court justices would be from the Puget Sound region.

In recent years, any justices who did come from Eastern Washington got their start on the court through appointment. Justice Stephens was appointed by Governor Gregoire. Justice Richard P. Guy was appointed by Governor Gardner. Recent practice shows that unless a Governor makes an appointment, Eastern Washington is unlikely to be represented on the state supreme court.

Increasing geographical representation on the court

Justices are not elected as representatives, but they are charged with making impartial decisions, and the life experiences of those who serve on the court are important in making those decisions. Many people argue that gender and ethnic diversity should be represented on the court. The same could be said of geographic and cultural diversity across Washington state.

Election by district is a well-established system for choosing justices. Ten states use districts for the election or appointment of justices:

- Four states, Illinois, Louisiana, Kentucky and Mississippi, elect justices by district;
- Six states, Florida, Maryland, Nebraska, Oklahoma, South Dakota and Tennessee, appoint justices by district.

Changing to district elections for supreme court justices would make the highest court fully reflective of "One Washington," rather than a part of state government dominated by the Puget Sound region. District elections would create more choices for voters, reduce election costs, and encourage more qualified people to run for public office.

Additional Resources

"District elections for supreme court gets public hearing," blog post, Washington Policy Center, January 29, 2015

"Providing opportunity for remote testimony and improving public notice," blog post, Washington Policy Center, March 3, 2014

"Reducing Washington's 'long ballot' for elections, time to restructure statewide elected policy offices," Policy Notes, Washington Policy Center, August 2008

Title-only bills used to circumvent state constitution," blog post, Washington Policy Center, March 18, 2013

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