

The principal to guide the design of a state's executive branch was clearly stated by former North Carolina Governor Terry Sanford: "make the chief executive of the state the chief executive in fact."<sup>i</sup> He continued by arguing "the governor is responsible for leadership within each state. To be able to lead, the governor needs to be freed from the barbed wire of antiquated constitutional barriers...(The governor) must have the tools he needs to lead effectively."<sup>iii</sup>

The reforms needed in most states' executive branches are not too great as so much has been done to provide governors with the powers they need over the past few decades. But there are a series of constitutional and statutory reforms that are suggested for those states that have not completely reformed their executive branches. By agreeing with the premise that a single elected official - the governor - should be in charge of what is happening in the state government's executive branch, the following reforms are suggested:

**The need to disconnect gubernatorial elections from national presidential year elections.**

The concern here is the fear or possibility that events at the national or international level tied to the presidential election may swamp the ability for state level candidates to articulate the issues and concerns that voters should be thinking about when voting for state officials. Further, a landslide victory for a presidential candidate can provide presidential coattails for their party to win down the ballot. In this situation, it is not clear that the best candidate for the state office would be the winner.

While forty-one states do hold gubernatorial elections in off-presidential years, nine still hold them in presidential election years, and the two states with 2-year gubernatorial terms alternate having their gubernatorial elections between presidential and non-presidential years. So, there will be eleven states holding their gubernatorial elections this year.

**The need to provide a governor with the possibility of a second term - and these should be 4-year terms.**

The goal of most states has been to follow the federal model of allowing the executive a four-year term. The argument for a four-year term was best summarized in the argument made by an incumbent governor at a "New Governors' Seminar" run by the National Governors' Association. In your first year, you learn how to become a governor; in the second and third years you are being the governor and getting the business of the state done; in the fourth year you are running for reelection as governor. In a two-year term, those middle two years of being governor are missing. Only two states now restrict their governors to a two-year term - New Hampshire and Vermont. So, this reform is aimed at them exclusively.

All but one state allow their governors to seek at least one, if not more additional terms. Only in Virginia is a governor restricted to a single term with no consecutive election allowed. Hence, the minute a governor is elected in Virginia and sworn in, they are a "lame duck" governor as everyone with an interest in the governorship begins to look around to see who might become the next governor. So, this reform is aimed at Virginia exclusively.

**The need to provide for the selection of a lieutenant governor to be elected with the governor, and when the office of lieutenant governor becomes vacant there is a process to fill that office involving the governor and the state legislature.<sup>iii</sup>**

The lieutenant governor is a legitimate elective position, and selecting the lieutenant governor should be handled in the same manner as the vice president is - the party's gubernatorial nominee should be the one to select the lieutenant gubernatorial candidate, and they should run as a team. If not, then there could be an array of potential pitfalls that could come between the governor and lieutenant governor that could disrupt how state government operates.

When a lieutenant governor leaves office before their term is over, or becomes governor upon the death, resignation or removal of the governor, there is also a vacancy created in the lieutenant governor's office. The suggested reform in these types of mid-term succession situations is to let the governor or new

governor select their replacement as the lieutenant governor, subject to a majority vote confirmation of one or both houses of the state legislature.

**The need to be able to handle the situation when a governor becomes incapacitated in some manner and unable to perform the duties of the office but still remains alive and "the governor."**

This past year we saw the State of Indiana face a situation in which the governor became incapacitated by a stroke but remained alive as "the governor." Luckily the state had a process in place that allowed some elected officials consult with the relevant doctors on the governor's physical health and make a decision on whether the state needed an "acting governor" to serve during the governor's incapacity. Once the governor was able to perform as governor, he would again assume that role. In the Indiana situation, the lieutenant governor was made the "acting governor" and when the ailing governor died, the "acting" part of the title was removed.

States need to make certain they have such a process in place so that when such an action is needed it can be taken, and not look like a "coup d' e tat" by some who would like to become governor. There are several ways to do this including having the lieutenant governor call in the leaders of the two houses of the legislature and ask them to survey the health situation of the governor with the relevant physicians. Then if they find there is need to replace the governor with an "acting governor" they could file this report with the chief justice of the state's highest court and have that official call the Court into session to rule on whether there should be an "acting governor" selected. Then the change could take place and the lieutenant governor or other designated successor is sworn in as the "acting governor" until the actual governor gets well enough to serve again, or dies and the "acting governor" succeeds to the governorship. This ensures that all three branches of the state government are involved in the situation and that a sense of fairness is involved in the process.

**The need to significantly reduce the number of other separately elected state executive branch officials.**

Most reformers argue that electing a governor and lieutenant governor is as far as the states need to go in electing state executive branch officials. Once the state begins to move beyond electing these two officials, several things happen. First, the governor's ability to govern the executive branch is limited by the fact there are other separately elected officials who have responsibility over some agencies and departments. Yet, many who vote for a governor feel they are electing the person who will be in charge of the whole executive branch of state government, not realizing that they are not correct in this assumption.

There are three exceptions to this rule however. The state attorney general, as the state's lawyer, can be a legitimate elective position, chosen separately from how other executive branch officials are chosen. This does vary from the federal model in which the attorney general is selected by the president with the advice and consent of the US Senate. The state auditor should not be chosen by the governor but can be selected by the legislature or directly by the people. The goal is to have someone in that office who is free to fulfill the responsibilities of auditing the activities of other officials without being compromised by how they arrived in the position. The state treasurer serves as the state's banker in terms of the normal cash flows in and out of the state treasury. The state treasurer also serves as the state's investor in terms of investing funds for a variety of purposes including retirement plans and "rainy day funds" – and is involved in making certain the state's credit rating is kept at the best level possible. Earlier reforms have aimed at keeping a separation between the governor and the state treasurer. The key is to make sure that the person chosen to serve as state treasurer has the requisite skills in money management.

**The need to provide the governor with the ability to appoint the heads of departments or agencies with or without the approval of the state legislature.**

For those officials responsible for running functional departments and agencies, the reform answer is clear. There is no need to insulate these offices from the governor, as the responsibilities of their offices are those that many will hold the governor accountable for in the first place.

Therefore, states need to consider reducing the number of separately elected officials and let the governor be responsible for appointing the officials who run these agencies, with or without the confirmation or approval of the legislature.

**The need to provide the governor with the authority to reorganize the executive branch of state government by executive order, with the review and consent of the state legislature.**

There are several reasons for the need to reorganize a state government. First and foremost has been the drive to modernize and streamline the state executive branch for efficiency, economy, responsiveness and gubernatorial control.

The reform answer here is fairly clear. Governors should be provided with the power to reorganize the executive branch of state government through an executive order process. But this process should include a legislative review and confirmation function that might help reduce problems and build support for the changes being suggested. When it is the governor making the changes through an executive order, with or without legislative review, it would seem more likely that the role of the chief executive would be enhanced. This would lead to the governor becoming more like a chief executive with more extensive control over the executive branch.

**The need to review the state budgetary process available to a governor to use in the case of financial emergencies.**

While governors generally have considerable budgetary power in preparing and then executing the enacted state budget, recent events indicate more thought might be needed on one further aspect of this power. Every state operates under a balanced budget requirement and it often falls on the governor's shoulders to take the steps to cut the budget when there is a revenue shortfall due to a downturn in the economy.

There are several types of authority provided governors to make cuts in already enacted budgets. They include: no restrictions on this authority, across-the-board authority only, a maximum percent reduction limit, required consultation with the legislature, and a variety of other steps idiosyncratic to a particular state. The message here is that states need to review this "power to cut" they have provided their governors and see if and how it works. With the evidence available from the two most recent economic downturns of the 1990s and early 2000s, some states may want to revise or fine-tune this power whether it is in the state constitution or a state statute.

**The need to review the governor's veto power to include the item veto potential with a super legislative majority needed to override a gubernatorial veto.**

Over the past four decades governors have gained considerable veto power over legislation passed by the state legislature. Every governor has the ability to veto a bill in its entirety, and forty-three governors have the power to veto particular items in a bill without vetoing the whole bill.

The reforms needed here are not too great, as so much has been done to provide governors with these powers. Clearly, the seven states not allowing the governor the power to veto items in bills should consider adding that power to the office. And the four states allowing just a majority of the legislators elected to override a governor's vote should consider changing that override vote needed to a form of super-majority – two-thirds of the legislators present and voting or three-fifths of the legislators elected.

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<sup>i</sup> Terry Sanford, *Storm Over the States* (New York: Harper & Row, 1967): 188.

<sup>ii</sup> *Ibid.*, 187.

<sup>iii</sup> For more on this see Brian J. Gaines, "An Accident Waiting to Happen? Legal Provisions On Incapacity of American Governors," *Policy Forum*, 17:1, 2004 (Institute of Government & Public Affairs, University of Illinois, Urbana, IL).