



# LEGISLATIVE REFERENCE BUREAU

## Organizing the Wisconsin State Assembly: The Role of Memoranda of Understanding—an Update

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In the fall of 2017, we published an article in the *Journal of the American Society of Legislative Clerks and Secretaries* that examined the impact of two Memoranda of Understanding entered into by the majority and minority party leadership to govern assembly floor proceedings.<sup>1</sup> The MOUs, as they are called, were agreed on at the start of the 2013–14 session and the 2015–16 session. The MOUs were not adopted as assembly rules or enacted into law.<sup>2</sup> Instead, they were negotiated agreements dealing with the conduct of legislative business. The MOUs aimed “to provide greater transparency of the legislative process”; to “establish the structure for a more productive debate”; and to “provide for greater public participation in the legislative process.”<sup>3</sup>

To achieve these goals, the MOUs required that assembly floor sessions were to start and finish at set times, legislative business was to be conducted during normal business hours, floor debate was subject to negotiated time limits, and recessing the floor to go into partisan caucus was strongly discouraged. The aim was to provide a predictability to assembly floor proceedings so as to allow for greater citizen participation in the legislative process, by providing individuals the opportunity to easily observe and follow assembly proceedings.

Our article compared assembly floor proceedings in the two legislative sessions before adoption of the MOUs with the two sessions after adoption to determine if the MOUs had their intended effect. We looked at a number of variables, including the number of floor days during the session, the number of hours in session on each floor day from start to adjournment, the number of floor days in which the assembly adjourned after 9 p.m., and the number of bills passed by the assembly. We found that the number of floor days decreased dramatically after adoption of the MOUs, from a high of 36 floor days in the 2009–10 session to 23 days during the 2015–16 session. In addition, the total time in session during a floor day decreased from 419 hours in the 2011–12 session to 194 hours in the 2015–16 session. Even with fewer days on the floor, legislative output was not diminished: the average number of bills passed each floor day was 15 in the 2009–10 session, but rose to 21 in the 2015–16 session. There were far fewer requests for a recess during a floor day in the two sessions after adoption of the MOUs than in the two sessions before adoption, decreasing by more than 65 percent. This allowed assembly business to be conducted with fewer interruptions. Finally, the assembly completed its work on a floor day in a more timely fashion. In the 2011–12 session, on 14 of the 31 days that the assembly

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1. Richard A. Champagne, Emma J. Gradian, and Madeline R. Kasper, “Organizing the Wisconsin State Assembly: The Role of Memoranda of Understanding,” *Journal of the American Society of Legislative Clerks and Secretaries*, Volume 23, Fall 2017, pp. 4–14, [http://www.ncsl.org/Portals/1/Documents/aslcs/2017completeProfessionalJournal\\_245.pdf](http://www.ncsl.org/Portals/1/Documents/aslcs/2017completeProfessionalJournal_245.pdf).

2. There was one assembly rules change relating to the 2015 MOU, though it was not contained in the MOU: the assembly amended its rules to allow the presiding officer to enforce time limits on debate. Assembly Rule 71m provided that a member could move that all pending amendments and substitute amendments on a bill be tabled *en masse* and the body would then proceed immediately to the main question pending without any further debate on amendments or substitute amendments. This procedure, however, could be used only if the time limits for debate established by the Rules Committee had expired.

3. The 2013 and 2015 MOUs are reprinted in the appendix.

was in floor session, it adjourned after 9 p.m. In contrast, during the 2015–16 session, on only 5 of the 23 floor days did the assembly adjourn after 9 p.m.

In the article, we found that the MOUs achieved their intended aim. There were fewer floor session days, the assembly usually conducted its business during regular business hours, debate on bills was subject to negotiated time limits, and there were fewer interruptions in assembly proceedings. There is now an expectation that the assembly will not conduct its business late into the night and that debate on legislation is subject to time limits. Although the terms of the MOUs are negotiated, this did not mean that the majority and minority parties always agreed on the terms of the MOUs. As we noted in the article:

The negotiated terms of an MOU on any given floor day may not have been ideal from the perspective of the minority, which typically wishes more time for debate, but the minority party had a say. This is important. To the extent that a basic tenet of parliamentary procedure is that the majority of a deliberative body must be able to achieve its goals, while the minority of that body must have the opportunity to be heard, the MOUs struck a balance between these two goals, which are often in tension.

## The 2017 MOU

During the 2017–18 legislative session, majority and minority leadership negotiated and adopted the third MOU, entitled “Memorandum of Understanding for the 2017–2018 Legislative Session.”<sup>4</sup> The 2017 MOU is almost identical to the 2015 MOU, requiring time limits for debate, priority consideration for certain amendments, strict enforcement of floor rules, and discouraging recesses for partisan caucuses, as well as other provisions relating to committee procedures and practices. The 2017 MOU includes 19 separate items, and adds two new provisions: one requiring party leadership to meet every six months to discuss the operation of the assembly, the other dealing with the order in which committee members could question speakers during hearings.

Table 1 contains the session statistics we gathered in the article for the 2009–16 period and adds the new 2017–18 session statistics. Significantly, the numbers for the 2015–16 and 2017–18 sessions are almost identical. There were 24 floor days in the 2017–18 session and 23 floor days in the 2015–16 session. Also, the assembly convened for far fewer hours during the 2017–18 session than in each of the previous sessions. From start to adjournment on floor days, the assembly met for 150 hours in the 2017–18 session. Importantly, 140 of the 150 hours were spent on legislative business and not in recess. This means that 93 percent of a typical assembly floor day in the 2017–18 session was spent

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4. The 2017 MOU is reprinted in the appendix. The 2017 MOU was signed initially by the minority leader, Representative Peter Barca, but during the 2017–18 session, a new minority leader was selected, Representative Gordon Hintz, who did not re-sign the MOU for that session.

**Table 1. Legislative session statistics, 2009–18**

	Biennial session				
	2009–10	2011–12	2013–14	2015–16	2017–18
Floor Days	36	31	31	23	24
Total session time in hours (start to adjournment)	293	419	207	194	150
Actual session time in hours (not including recess time)	129	219	167	152	140
Total number of recesses called	50	32	15	15	15
Number of floor days with at least one recess called	31	30	10	10	12
Floor days adjourned after 9 p.m.	9	14	7	5	7
Number of bills passed by assembly	551	319	435	480	485
Average number of bills passed each floor day	15	10	14	21	20
Number of assembly amendments offered to bills passed by assembly	702	838	558	616	630
Average number of amendments offered to bills passed by assembly	1.27	2.62	1.28	1.28	1.30

Note: Special and Extraordinary Session days were not included in the floor days tally if they occurred simultaneously with Regular Session days.

State of the Union and Budget Address Session Days were included only if other legislative business occurred on that day.

conducting floor debate and other legislative business. The 2015–16 session was also high at 78 percent. This differs from the two sessions before adoption of the MOUs when the time spent in legislative business was 44 percent in the 2009–10 session and 52 percent in the 2011–12 session. Thus, with most of a floor session day devoted to floor debate and other legislative business, and not in recess, members of the public could more easily follow legislative activity, knowing that the assembly would not frequently interrupt its floor activity. Because the MOUs required time limits for debate, as well as set start times, the course of a legislative day from start to adjournment was more predictable.

One of the key aims of the MOUs was to eliminate interruptions in a legislative day, especially for partisan caucuses. As stated in the 2017 MOU: “There will be objections to breaking for caucus, except under extenuating circumstances.” Before the MOUs, the assembly almost always recessed a floor day for partisan caucuses or other reasons. This resulted in longer and less predictable floor days, as the time for reconvening the assembly was uncertain. During the 2009–10 session, for instance, 50 different recesses were

called. Similarly, during the 2011–12 session, the assembly recessed on 30 of the 31 floor days. Recesses were a regular part of a legislative day in the pre-MOU period. During the 2013–18 period, in contrast, only 15 recesses were called during each legislative session, a significant reduction when compared to the 2009–12 period. The vast majority of floor days in sessions governed by the MOUs did not have a recess. With fewer recesses and negotiated time limits for debate, the assembly reduced the number of floor days that it adjourned after 9 p.m. During the 2017–18 session, the assembly adjourned after 9 p.m. only seven times, continuing the downward trend from earlier sessions. Late night sessions in the assembly continue to occur, but they are the exception.

Fewer days on the floor and fewer hours in session on each day did not reduce assembly workload, however, at least as measured by passage of bills and consideration of amendments. The number of bills passed in the assembly during the 2015–16 and 2017–18 sessions was close to the number passed during the 2009–11 session and was substantially more than the number passed during the 2011–12 session, but with significantly fewer days on the floor. In the 2009–10 session, for instance, the assembly took 36 floor days to pass 551 bills and in the 2011–12 session took 31 days to pass 319 bills. In contrast, in the 2017–18 session it took 24 days to pass 485 bills. During the 2015–18 period, therefore, the assembly on a typical floor day passed a greater number of bills and took up a greater number of amendments than on typical floor days during the 2009–12 period. Under the MOUs, at least in terms of passing legislation, more was accomplished in less time.

## Concluding comments

The 2017–18 legislative session was the third session governed by the MOUs. Among other reasons, the assembly leaders adopted the 2017 MOU in the belief that it would “establish the structure for a more productive debate.” In this update, we have presented key legislative session statistics in order to identify changes in legislative activity in sessions governed by MOUs, as compared to earlier sessions. The 2017–18 session statistics confirm the core findings from our 2017 article in the *Journal of the American Society of Legislative Clerks and Secretaries*. The assembly meets for fewer days but is engaged in legislative business for as many hours as it was before adoption of the MOUs. Further, the assembly recesses less often and rarely for partisan purposes. Finally, the time limits on debate have made late night sessions infrequent and seem to have brought a predictability to the legislative day that was not present before adoption of the MOUs. In these respects, the MOUs have changed how legislative business is conducted on the assembly floor. ■

# Appendix

## **Memorandum of Understanding for the 2013–2014 Legislative Session**

This Memorandum of Understanding has been set forth by the leaders of the 101st Wisconsin State Assembly in order to provide greater transparency of the legislative process to the citizens of the state of Wisconsin. This document has been arrived at through hours of civil discussions between the two party leaders and hopefully, will set a new bipartisan tone for the 2013–2014 session. We, the Assembly leaders, believe that this signed document will establish the structure for a more productive debate. The beneficiaries of this memorandum are the people of Wisconsin. These changes will allow representatives to better serve their constituents and will provide for greater public participation in the legislative process.

- Our goal this session is to finish debate at a reasonable time.
- The Rules Committee will meet to set goals for the structure and timing of debate, including the division of the time on final passage for both parties.
- The Majority Leader and Minority Leader will make an effort to minimize the number of contentious bills on any session day.
- The Majority Leader and Minority Leader will consult before the Rules notice is distributed regarding the time frame for debate on each bill.
- The time frame for debate on a bill will be defined by the point at which the Assembly Chief Clerk reads the bill to the point at which there is a vote on final passage.
- Amendments submitted to the Assembly Chief Clerk by 9 a.m. on a session day will receive priority consideration and shall be considered by each caucus.
- Bipartisan Leadership Meetings will be held on a regular basis.
- The floor rules will be strictly enforced; including time limits. There will be objections to breaking for caucus, except under extenuating circumstances, and extending time limits for debate.
- There will be a minimum of 30 minutes set aside for debate on final passage of each bill, unless agreed to by the Majority Leader and the Minority Leader.
- The session start time published on the Rules notice will be strictly followed.
- When the agreed upon time frame for debate has expired on a bill, the Majority

Leader may make a motion to dispense of all remaining amendments. Every effort will be made to consider all amendments.

- If a Rules Committee meeting needs to be convened, any such break for the meeting will not count against the agreed upon time for debate on the bill under consideration.

### **Memorandum of Understanding for the 2015–2016 Legislative Session**

This Memorandum of Understanding has been set forth by the leaders of the 102nd Wisconsin State Assembly in order to provide greater transparency of the legislative process to the citizens of the state of Wisconsin. This document has been arrived at through hours of civil discussions between the two party leaders and, hopefully, will continue to set a bipartisan tone for the 2015–2016 legislative session. We, the Assembly leaders, believe that this signed document will establish the structure for a more productive debate. The beneficiaries of this memorandum are the people of Wisconsin. These changes will allow representatives to better serve their constituents and will provide for greater public participation in the legislative process.

- 1) Every effort will be made this session to finish debate at a reasonable time.
- 2) The Majority Leader and Minority Leader will make every effort to minimize the number of contentious bills on any session day and will make every effort to spread out the bills over the course of a session week.
- 3) Amendments submitted to the Assembly Chief Clerk by 10:30 a.m. on a session day will receive priority consideration and shall be considered by each caucus.
- 4) The floor rules will be strictly enforced, including time limits. There will be objections to breaking for caucus, except under extenuating circumstances, and extending time limits for debate.
- 5) The time frame for debate on a bill will be defined by the point at which the Assembly Chief Clerk reads the bill to the point at which there is a vote on final passage. At the discretion of the Speaker Pro Tempore, every effort will be made to count the time for debate on a bill in a fair and equitable manner.
- 6) There will be a minimum of 30 minutes set aside for debate for each caucus on final passage of each bill, including after any pending amendments have been tabled en masse, unless agreed to by the Majority Leader and the Minority Leader.
- 7) The session start time published on the Rules notice will be strictly followed.



- 8) If a Rules Committee meeting needs to be convened, any such break for the meeting will not count against the agreed upon time for debate on the bill under consideration.
- 9) Every effort will be made to give 4 days' notice before a committee meets for a public hearing with the understanding that the last weeks of regular session commonly result in fewer than 4 days' notice.
- 10) Every effort will be made to have 48 hours' notice between a committee hearing and executive session with the understanding that the last weeks of regular session may result in fewer than 48 hours' notice.
- 11) If the Majority Leader and Minority Leader do not have time to meet before the Rules committee meeting regarding a bill(s) arriving just before the meeting starts, then the Rules meeting will be delayed for renegotiation of the time limits on the bill(s) in question until the Minority Leader has time to review the executive action taken on the bill(s) in question.
- 12) When taking up Senate bills that have not received an executive session, every effort will be made to also schedule the Assembly companion bill that at least has had a public hearing.
- 13) Every effort will be made to minimize the use of paper ballots in the Assembly Organization committee.
- 14) Every effort will be made to notice public hearings with bill numbers.
- 15) Every effort will be made to ensure that all people who attend a public hearing and wish to testify will be given the opportunity to do so.
- 16) Joint leadership will negotiate to identify two weeks for potential extraordinary session periods in the event they are needed after March 2016.
- 17) The Majority Leader and Minority Leader will consult before the final Rules notice is distributed regarding the time frame for debate on each bill.

### **Memorandum of Understanding for the 2017–2018 Legislative Session**

This Memorandum of Understanding has been set forth by the leaders of the 103rd Wisconsin State Assembly in order to provide greater transparency of the legislative process to the citizens of the state of Wisconsin. This document has been arrived at through hours of civil discussions between the two party leaders and, hopefully, will

continue to set a bipartisan tone for the 2017–2018 legislative session. We, the Assembly leaders, believe that this signed document will establish the structure for a more productive debate. The beneficiaries of this memorandum are the people of Wisconsin. These changes will allow representatives to better serve their constituents and will provide for greater public participation in the legislative process.

- 1) Except under extenuating circumstances, debate will finish at a reasonable time.
- 2) The Majority Leader and Minority Leader will make every effort to minimize the number of contentious bills on any session day and will make every effort to spread out the bills over the course of a session week.
- 3) A list of potential amendments will be provided to the Majority Leader and Minority Leader by session start time. Except in extenuating circumstances, amendments presented on the floor that are not on the list will be drafted and submitted to the Assembly Chief Clerk prior to consideration of the bill. Amendments submitted to the Assembly Chief Clerk by 10:30 am on a session day will receive priority consideration and shall be considered by each caucus.
- 4) The floor rules will be strictly enforced, including time limits. There will be objections to breaking for caucus, except under extenuating circumstances, and extending time limits for debate.
- 5) The time frame for debate on a bill will be defined by the point at which the Assembly Chief Clerk reads the bill to the point at which there is a vote on final passage. At the discretion of the Speaker Pro Tempore, every effort will be made to count the time for debate on a bill in a fair and equitable manner.
- 6) There will be a minimum of 30 minutes set aside for debate for each caucus on final passage of each bill, including after any pending amendments have been tabled en masse, unless agreed to by the Majority Leader and the Minority Leader.
- 7) The session start time published on the Rules notice will be strictly followed, except under extenuating circumstances.
- 8) If a Rules Committee meeting needs to be convened, any such break for the meeting will not count against the agreed upon time for debate on the bill under consideration.
- 9) Except in extenuating circumstances, 4 days' notice will be given before a committee meets for a public hearing, except for the last weeks of regular session.
- 10) Every effort will be made to have 48 hours between a committee hearing and executive session with the understanding that the last weeks of regular session may result in fewer than 48 hours. If an executive session takes place 24 hours or

less after a public hearing, the 24 hour rule for introduction of amendments is waived.

- 11) If the Majority Leader and Minority Leader do not have time to meet before the Rules committee meeting regarding a bill(s) arriving just before the meeting starts, then the Rules meeting will be delayed for renegotiation of the time limits on the bill(s) in question until the Minority Leader has time to review the executive action taken on the bill(s) in question.
- 12) When taking up Senate bills that have not received an executive session, every effort will be made to also schedule the Assembly companion bill that at least has had a public hearing.
- 13) Every effort will be made to minimize the use of paper ballots in the Assembly Organization committee.
- 14) Every effort will be made to notice public hearings with bill numbers.
- 15) Every effort will be made to ensure that all people who attend a public hearing and wish to testify will be given the opportunity to do so. If a hearing on a bill is expected to attract substantial public input, an effort will be made to approximate when invited testimony will end and public comment will begin.
- 16) Joint leadership will negotiate to identify two weeks for potential extraordinary session periods in the event they are needed after March 2018.
- 17) The Majority Leader and Minority Leader will consult before the final Rules notice is distributed regarding the time frame for debate on each bill.
- 18) The two party leadership teams will meet every 6 months to discuss the operation of the Assembly.
- 19) Committee chairs are encouraged to make every effort to recognize the ranking member in committee hearings to give them an opportunity to ask invited speakers questions immediately following the chairperson.

