

2. LEGISLATIVE ORGANIZATION

Opening Day of Session

Pomp and circumstance amidst a whirlwind of other activities describes the opening of a legislative session, especially following a general election. Who presides, who acts as clerk, and the order of business on the very first day are questions that come to mind when legislative chambers first assemble. But the modes of legislative organization are very different in their details. The following tables show how states transform a group of newly elected citizens into an official, organized legislature.

Who presides? Every assembly meets with the implied understanding that it will be governed and controlled. Typically, legislative chambers are led by their respective president of the senate or speaker of the house. On opening day, however, these individuals often have not been chosen. Someone must temporarily preside until the official selection is made. In 22 chambers, this person is the lieutenant governor. The secretary of state performs the function in 14 legislative bodies. The presiding officer from the previous session is called upon in 18 legislative assemblies, while the clerk or secretary of the preceding session presides temporarily in 19 chambers. Seniority plays a role in seven legislative bodies, where the longest-serving member acts as the temporary presiding officer. Table 96-2.1 illustrates in more detail to whom this honor is given by state legislatures.

Who acts as the clerk? Most state constitutions require legislatures to record the transaction of business, often specifying this as a duty of the clerk. But who is responsible for this very important task when the clerk or secretary has not yet been chosen by the body? More than 60 percent of the nation's legislative chambers have someone temporarily serve as the recording officer. As table 96-2.2 illustrates, most often the clerk or secretary from the preceding session takes on this duty. Three chambers—the New Hampshire House, the New York Assembly and the Wisconsin Assembly—ask the assistant clerk from the previous session to serve as the temporary recording officer. In eight chambers, a person is designated by the temporary presiding officer in eight chambers, while in the Indiana House, the Mississippi House and the Nebraska Senate, someone is selected by a vote of the body.

But not all legislative bodies have another person fill in for the official clerk or secretary. The following 29 chambers do not:

Alabama Senate and House	Oklahoma Senate and House
California Senate	Pennsylvania Senate and House
Colorado Senate	South Dakota Senate and House
Florida Senate and House	Texas Senate
Georgia House	Utah Senate and House
Maryland Senate and House	Vermont Senate and House
Montana Senate and House	Virginia Senate and House
New Hampshire Senate	West Virginia Senate and House
New Jersey General Assembly	Wisconsin Senate

What is the order of business? It is customary for each house of a legislature to follow an order of business, and opening day is no exception. The three essential parts of a legislature's organization are the qualification of the members, the choice of the presiding officers and the selection of recording officers, says noted parliamentarian Luther Cushing. Based on survey responses, the typical order of business for the first day of legislative session is:

1. Presentation of election certificates by the members-elect
2. Oath of office
3. Call of the roll
4. Election of the presiding officer
5. Election of a president pro tem or speaker pro tem
6. Selection of the secretary or clerk
7. Adoption of chamber rules
8. Notification of the other body that the chamber has organized

Tables 96-2.3 and 96-2.4 contain more detailed information about the orders of business for selected items on the opening day of the Senate and House, respectively.

The order in which official business must occur can affect the ability of a chamber to organize. In December 1994, for example, the California Assembly discovered just how important this is. California statute sets out the organizational process for the Assembly. It states:

At the day and hour appointed for the assembling of any regular session of the Legislature, the Chief Clerk of the Assembly, or in case of his absence or inability, the senior member elect present, shall take the chair, call the members elect to order, and call over the roll of counties in alphabetical order. As the counties are called the members elect shall present their certificates, take the constitutional

oath of office, and assume their seats. If there is more than one senior member elect present and the senior members are unable to agree as to who shall call the session to order, the attorney general or one of his deputies shall call the session to order.

If a quorum is present, the Assembly shall then elect its officers, and there shall be no other business, motion or resolution considered before the election of the Speaker, save and except a motion to adjourn or a motion for a call of the house.

When the California Assembly met to organize in early December 1994, there seemed to be no clear-cut political majority, and the possibility existed for a 40 Democrat-40 Republican tie. Also, by some election fluke, one legislator had been elected to both the Assembly and the Senate and had a strong interest in the speaker's election in the Assembly. He hoped that the exact timing of the Assembly and Senate organizations would allow him to be seated in the Assembly, vote during the speaker's election, resign his Assembly seat, and then be seated in the Senate. However, the incumbent speaker of the Assembly, who was not supported by the member in question, had other plans; he wanted to challenge the legality of the member's election, prevent the legislator from being seated in the Assembly, and thereby stop the lawmaker's participation in the speaker's election.

The chief clerk of the Assembly was placed in a difficult position. He was required, as the temporary presiding officer, to rule on any points of order. So, when the incumbent speaker moved to challenge the legislator's election, the chief clerk had to decide how to rule. Ultimately, his decision was based on the order of business set out by statute. The chief clerk ruled against the incumbent speaker's motion, stating that it was out of order because, "...there shall be no other business, motion or resolution considered before the election of the Speaker..."

Table 96-2.1 Who Presides over Opening Session

State (1)	Lieutenant governor	Secretary of state	President of the Senate from the preceding session	Speaker of the House from the preceding session	Longest-serving member or member-elect	Secretary of the Senate from the preceding session	Clerk of the House from the preceding session	Other
Alabama	S			H				
Alaska	B							
Arizona								2
Arkansas			S					3
California	S				S		H	
Colorado			S	H				
Connecticut		S		H				
Delaware					H			
Florida						S	H	
Georgia							H	
Hawaii								4
Idaho	S			H				
Illinois		H						5
Indiana	S	H						
Iowa			S					6
Kansas		B						
Kentucky			S	H				
Louisiana					H			7
Maine						S	H	
Maryland			S				H	
Massachusetts								
Michigan	S						H	
Minnesota	S	H						
Mississippi		H						
Missouri	S	H						
Montana					B			

Table 96-2.1 Who Presides over Opening Session, cont'd.

State (1)	Lieutenant governor	Secretary of state	President of the Senate from the preceding session	Speaker of the House from the preceding session	Longest-serving member or member-elect	Secretary of the Senate from the preceding session	Clerk of the House from the preceding session	Other
Nebraska	S							
Nevada	S	H						
New Hampshire						S	H	
New Jersey						S		8
New Mexico	S	H						
New York	S						H	
North Carolina							H	
North Dakota	S			H				
Ohio			S	H				
Oklahoma	S							9
Oregon			S		H			
Pennsylvania	S						H	
Rhode Island	S							
South Carolina							H	
South Dakota	S	H						
Tennessee			S	H				
Texas	S	H						
Utah								10
Vermont	S	H						
Virginia	S						H	
Washington	S						H	
West Virginia					S		H	
Wisconsin			S				H	
Wyoming		H	S					

Table 96-2.1 Who Presides over Opening Session, cont'd.**Key:**

S=Senate

H=House or Assembly

B=Both chambers

Notes:

1. The following chambers did not respond to the survey: Delaware Senate, Georgia Senate, Massachusetts Senate and House, Mississippi Senate, North Carolina Senate, Rhode Island House, South Carolina Senate; nor did any legislatures from the U.S. territories respond.
2. Arizona Senate and House: The oldest member or member-elect in the chamber presides temporarily.
3. Arkansas House: The House parliamentarian from the preceding session serves as the temporary presiding officer.
4. Hawaii Senate and House: In the Hawaii Legislature, the senator from the first senatorial district and the representative from the first house district act as the temporary presiding officers in their respective chamber.
5. Illinois Senate: The governor acts as the temporary presiding officer.
6. Iowa House: An incumbent member is selected to preside until the newly elected speaker is duly sworn.
7. Louisiana Senate: The person who presides varies; it has been the ranking officer from the preceding session, the oldest member, etc.
8. New Jersey General Assembly: The speaker-elect presides.
9. Oklahoma House: The majority caucus chair presides until a speaker of the House is elected.
10. Utah Senate and House: A supreme court justice serves as the temporary presiding officer in both legislative chambers.

Table 96-2.2 Who Acts as the Temporary Clerk

State (1)	Secretary of the Senate from the previous session	Clerk of the House from the previous session	Assistant clerk or secretary from the previous session	Person designated by the temporary presiding officer	Person selected by a vote of the members	Other
Alabama						
Alaska	S	H				
Arizona	S	H				
Arkansas	S	H				
California		H				
Colorado				H		
Connecticut						2
Delaware		H				
Florida						
Georgia						
Hawaii	S					3
Idaho	S	H				
Illinois				B		
Indiana	S				H	
Iowa						4
Kansas	S	H				
Kentucky	S	H				
Louisiana	S	H				
Maine	S	H				
Maryland						
Massachusetts						
Michigan	S	H				
Minnesota				H		5
Mississippi					H	
Missouri	S	H				
Montana						

Table 96-2.2 Who Acts as the Temporary Clerk, cont'd.

State (1)	Secretary of the Senate from the previous session	Clerk of the House from the previous session	Assistant clerk or secretary from the previous session	Person designated by the temporary presiding officer	Person selected by a vote of the members	Other
Nebraska					S	
Nevada	S			H		
New Hampshire			H			
New Jersey	S					
New Mexico	S	H				
New York	S		H			
North Carolina		H				
North Dakota	S	H				
Ohio	S			H		
Oklahoma						
Oregon						6
Pennsylvania						
Rhode Island	S					
South Carolina				H		
South Dakota						
Tennessee	S	H				
Texas				H		
Utah						
Vermont						
Virginia						
Washington	S	H				
West Virginia						
Wisconsin			H			
Wyoming	S	H				

Table 96-2.2 Who Acts as the Temporary Clerk, cont'd.

<p>Key:</p> <ul style="list-style-type: none">S=SenateH=House or AssemblyB=Both chambers <p>Notes:</p> <ol style="list-style-type: none">1. The following chambers did not respond to the survey: Delaware Senate, Georgia Senate, Massachusetts Senate and House, Mississippi Senate, North Carolina Senate, Rhode Island House, South Carolina Senate; nor did any legislatures from the U.S. territories respond.2. Connecticut Senate and House: In both the Senate and House of Representatives, the permanent assistant clerk serves as the temporary clerk.3. Hawaii House: A person designated by the speaker-elect of the House serves as the temporary clerk.4. Iowa Senate and House: The person designated by the Rules and Administration Committee to be the secretary of the Senate acts as the temporary clerk. The chief clerk chosen by the majority party of the House serves in an "acting" capacity until duly sworn.5. Minnesota Senate: This person is selected by the majority party; it often is the president pro tem from the previous session.6. Oregon Senate and House: In the Senate, the temporary clerk is a person selected by the president-elect of the Senate. In the House, the temporary clerk is the individual whose name will be placed in nomination and elected as the chief clerk.
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Table 96-2.3 Order of Business for Selected Items on Opening Day of the Senate

State	Presentation of election certificates	Challenge over the election or seating of member	Oath of office	Call of the roll of members and members-elect	Selection of seats by members	Election of the Senate president	Election of the president pro tem or vice president	Election or appointment of the secretary of the Senate	Election of the assistant secretary of the Senate	Adoption of temporary chamber rules	Adoption of permanent chamber rules	Notify the House that the Senate has organized	Notify the governor that the Senate has organized	Call to order	Prayer
Alabama	1		2	3			4		5		6	7			
Alaska	4		5			7	6					9		1	2
Arizona	2		3	1		5		4		6		9			
Arkansas	2		3	1			9	8			5	10			
California	2		3	1			4	5		7		6			
Colorado	1		2	3		4	5	6		7		8			
Connecticut			2	1			3	4	5		6	11			
Delaware															
Florida	1		2	3		4	5	6			8	9			
Georgia															
Hawaii	1		2	3		4	6	5	5		7				
Idaho	1		3	2	6		4	5		7					
Illinois	1		3	2	9	4		5	6		8	7			
Indiana			5	4,6			8							1	2
Iowa	2	3	4		8	5	6			1	9	7	7		
Kansas			2	1	7	3	4	5				6			
Kentucky	1		2	3		5	6	7	7	4					

Table 96-2.3 Order of Business for Selected Items on Opening Day of the Senate, cont'd.

State	Presentation of election certificates	Challenge over the election or seating of member	Oath of office	Call of the roll of members and members-elect	Selection of seats by members	Election of the Senate president	Election of the president pro tem or vice president	Election or appointment of the secretary of the Senate	Election of the assistant secretary of the Senate	Adoption of temporary chamber rules	Adoption of permanent chamber rules	Notify the House that the Senate has organized	Notify the governor that the Senate has organized	Call to order	Prayer
Louisiana	2	3	4	1		5	6	7							
Maine	1	2	4	3		5		6	7			8		1	
Maryland			6	2		7	4								3
Massachusetts															
Michigan	1	2	4	3			5	6		7	8	9			
Minnesota	3		4	2		5		6	7	9					
Mississippi															
Missouri	2		3	4			5	6		1		7			
Montana			4	3,5		7	7			6					2
Nebraska	4	5	6	2		9		7	8	3					
Nevada	5	7	6	4			8	9							1
New Hampshire	2	2	3	1		4		5	6	7		8			
New Jersey	1		2	3		4	5	6		7	8	9			
New Mexico			3	2			6	7		4					
New York															
North Carolina															
North Dakota	3	4	5	6				7						1	

Table 96-2.3 Order of Business for Selected Items on Opening Day of the Senate, cont'd.

State	Presentation of election certificates	Challenge over the election or seating of member	Oath of office	Call of the roll of members and members-elect	Selection of seats by members	Election of the Senate president	Election of the president pro tem or vice president	Election or appointment of the secretary of the Senate	Election of the assistant secretary of the Senate	Adoption of temporary chamber rules	Adoption of permanent chamber rules	Notify the House that the Senate has organized	Notify the governor that the Senate has organized	Call to order	Prayer
Ohio	2		3	1		4	5	6				7			
Oklahoma		8	2	1	3	8	9	4		5	6	7			
Oregon			2	1		3	4	5		7		8			
Pennsylvania	1	2	3	4			5	6			7	8			
Rhode Island	1		2	3			6	4	5		7				
South Carolina															
South Dakota			2	1		3	4	5	6	7	9	8			
Tennessee	1	2	3	4		5	6	7	8	9					
Texas	1		3	2			5	4		6		7			
Utah	1		2	3		4				6		8	7		
Vermont			2	1			4	3	6	7		9	8		
Virginia	2		4	3			6	7			5			1	
Washington	2	3	5,7	1,4,6			8								
West Virginia	1		3	2		4		5				8	9		
Wisconsin	2		2	3		4	4	4			5	7			
Wyoming	2		3	1		4	5	6		7		8	9		

Table 96-2.4 Order of Business for Selected Items on Opening Day of the House

State	Presentation of election certificates	Challenge over the election or seating of member	Oath of office	Call of the roll of members and members-elect	Selection of seats by members	Election of the House speaker	Election of the speaker pro tem	Election of the clerk of the House	Election of the assistant clerk of the House	Adoption of temporary chamber rules	Adoption of permanent chamber rules	Notify the Senate that the House has organized	Notify the governor that House has organized	Call to order	Prayer
Alabama	1		2	3		4	5	6			8	7			
Alaska	4		5			7	6						9	1	2
Arizona	2		3	1		4		5		6	7	8			
Arkansas	2		4	3		5		7		1		9			
California	2		3	1	4	5	6	7		9		8			
Colorado	1	2	3	4		5		8		7		6			
Connecticut			3	2	1	4		5	6		7				
Delaware	7		9	6						3					4
Florida			2	1		3	4	5			7	6			
Georgia	1		2	3		4		5			6	7			
Hawaii	1		2			3		4	4			6			
Idaho	1	2	3	4	6	5				7		8			
Illinois			2	1		3		4	4		7	5	6		
Indiana	1	8	3	2		4		5		6		7			
Iowa	4		6	5		7		8				9			
Kansas	1		3	2	9	4	6	5				8			
Kentucky	1		2	3		4	5	6	7						

Table 96-2.4 Order of Business for Selected Items on Opening Day of the House, cont'd.

State	Presentation of election certificates	Challenge over the election or seating of member	Oath of office	Call of the roll of members and members-elect	Selection of seats by members	Election of the House speaker	Election of the speaker pro tem	Election of the clerk of the House	Election of the assistant clerk of the House	Adoption of temporary chamber rules	Adoption of permanent chamber rules	Notify the Senate that the House has organized	Notify the governor that House has organized	Call to order	Prayer
Louisiana		2	3	1		5	6	4				7			
Maine		2	3	1		4		5	6		7	8			
Maryland			1	2		4	3				5	7			
Massachusetts															
Michigan	1	2	4	3	5	6	7	9							
Minnesota	1		3	2		4		5	6	7		8			
Mississippi			2	1		5	6	7		4	9				
Missouri	1		3	2		5	6	8		7		9			
Montana			4	3,5		7	7			6					2
Nebraska															
Nevada	5		6	4		7	8	9							1
New Hampshire	2		3	1		4		5	6			8			
New Jersey	1		2	3		6	5	4			7				
New Mexico			2	1		3		5		4					
New York	1		2	3		4		5			9	6			
North Carolina			2	1		3	5	6		4		7			
North Dakota	3	4	5	6				7						1	

Table 96-2.4 Order of Business for Selected Items on Opening Day of the House, cont'd.

State	Presentation of election certificates	Challenge over the election or seating of member	Oath of office	Call of the roll of members and members-elect	Selection of seats by members	Election of the House speaker	Election of the speaker pro tem	Election of the clerk of the House	Election of the assistant clerk of the House	Adoption of temporary chamber rules	Adoption of permanent chamber rules	Notify the Senate that the House has organized	Notify the governor that House has organized	Call to order	Prayer
Ohio	1		5	4	2	6	7	8				9			
Oklahoma	4	5		6		8									2
Oregon	3	4	5	1		6	7	8							
Pennsylvania	2	4	5	3	1	6				7		9			
Rhode Island															
South Carolina	1		3	2		4	5	6							
South Dakota			2	1		3	4	5	6	7	9	8			
Tennessee			2	1		4	5	6		3		8	7		
Texas			3	2		5				4					
Utah	5		7	6		8		5		9					1
Vermont			4	1		2		3	5	6		7			
Virginia			5	4		6		7			9			1	2
Washington	1	2	4	3		6	7	8		5		9			
West Virginia	1		3	2		4		5			6	7			
Wisconsin			2	3		4	5	6	8						
Wyoming	2		3	1		4	5	6		7		8	9		

