



Minnesota State Representative Gene Pelowski

'Anything you want Legislature' needs limits

A Civic Caucus Review of Minnesota's Public Policy Process Interview

September 29, 2017

Present

John Adams, Steve Anderson, Janis Clay (executive director), Pat Davies, Randy Johnson, Dana Schroeder (associate director), Clarence Shallbetter. By phone: Paul Gilje, Paul Ostrow (chair), Rep. Gene Pelowski.

Summary

Calling it the "anything-you-want Legislature," Minnesota State Rep. Gene Pelowski (DFL-Winona) believes the Minnesota Legislature needs a number of limits if the legislative process is to be improved. He discusses various limits the House Government Operations and Reform Committee, which he chaired, recommended in an August 2008 report to the House. While two of the recommendations have been adopted into House Rules, others have not.

Pelowski says technically, there are no limits on legislators at all. There are no limits on the number of bills legislators can introduce, deadlines are not adhered to, policy committees and fiscal committees meet after their deadlines, there is no drop-dead day to get the budget completed, the single-subject rule—the State Constitutional requirement that no legislative bill can include more than one subject—is ignored, the Legislature and its committees can and do meet past midnight, and working conference committees are almost nonexistent.

He's concerned that committee members don't understand the impacts of bills they are hearing and are willing to send on bills that are not in the right shape for the next committee or the House floor. He says nobody is willing to say in a committee, on the House floor or as Speaker that there are going to be limits. The Legislature has completely lost track of the word "No," he says.

Pelowski believes the Legislature is sending the governor bills that are poorly crafted in most cases. He says the Legislature is not in the position where it's improving things for Minnesota, but may, in fact, be doing just the opposite by some of the things it's passing. The citizens of Minnesota and groups like the Civic Caucus must push for legislative reforms, he says.

Biography

Rep. Gene Pelowski, Jr., (DFL-Winona) represents District 28A in the Minnesota House. His district includes Winona County in southeastern Minnesota. He was first elected in 1986 and has been re-elected every two years since. He represented the old District 34B prior to the 1992 legislative redistricting and the old District 32A prior to the 2002 legislative redistricting.

Pelowski currently serves on the Higher Education & Career Readiness Policy and Finance Committee, the Rules & Legislative Administration Committee and the Ways & Means Committee. He has also served on the Government Operations and Reform Committee. Pelowski was an assistant majority leader during the 2003-2004 legislative session.

He retired in 2012 from teaching at Winona Senior High School and continues to serve as an adjunct faculty member at Winona State University. For 42 years, he has run the Winona Model Legislature, involving approximately 130 students each year from seven to 10 area high schools. He was a golf pro for 20 years.

Pelowski is a graduate of Red Wing High School and earned a B.S. degree in social studies and an M.S. degree in education, both from Winona State University.

Background

Since September 2015, the Civic Caucus has been undertaking a review of the quality of Minnesota's past, present and future public-policy process for anticipating, defining and resolving major community problems. On Nov. 27, 2016, the Caucus issued its report based on that review,  *Looking Back, Thinking Ahead: Strengthening Minnesota's Public-Policy Process*. Continuing that review, the Civic Caucus interviewed State Rep. Gene Pelowski early in the fall of 2017 as part of an ongoing series of interviews on how well the current state legislative process is working and how that process could be improved.

2007-2008 House Government Operations and Reform Committee work on reforming

Minnesota's legislative process. As chair of this committee, State Rep. Gene Pelowski held eight hearings in 2007 and 2008 on reforming the state's legislative process. Working with a representative of the National Council of State Legislatures (NCSL) and exploring what is done in other states,  *the committee prepared a report for the House in August 2008*, with a series of recommendations for improving Minnesota's legislative process.

Two of the recommendations were adopted and included as part of the House Rules: (1) limiting floor debate on bills to prevent debate going into the late-evening or early-morning hours and (2) requiring that amendments to bills be filed and posted on the House website 24 hours in advance of a floor debate.

The following were the other recommendations:

- Limiting the number of bills a legislator can introduce;
- Stopping the introduction of bills at a certain point, such as after committee hearings cease;
- Setting funding and budget targets as early as possible;
- Limiting the number of committees on which legislators serve—NCSL recommended no more than three; and
- Requiring that the Legislature and its committees not meet past midnight and that this be a rule that cannot be suspended.

Discussion

The overall problem with the Legislature now is the extraordinary turnover of legislators. State Rep. Gene Pelowski made that statement and said, "You have so many people who've never served that they're now learning how to be legislators in a process that's broken. Very few senior members, such as myself, are left in the Legislature. The younger this Legislature is, the less experienced it is, the more the legislators want to follow leadership." He described the two-day orientation for new legislators as "pretty slim."

There are technically no limits on legislators at all. Pelowski made that remark and said there are no limits on the number of bills and no limits on legislators doing what they want to do. "The Ways & Means Committee is supposed to do one thing: check the numbers," he said. "We've turned it into the Ways and Everything Committee. Put policy in; put whatever else you want to put in. Fine. Deadlines are not adhered to. And you don't have people who are willing to say in a committee or on the House floor or as the Speaker that we are going to have limits."

Legislators must be able to understand the consequences of what they're doing. Pelowski made that remark and said, "That takes work—a lot of work. You're prepping your committee members to make sure they understand the consequences of the bills that will eventually be heard and will be incorporated into the omnibus bills. We can't continue to hear bills when we don't understand the impacts of them."

Historically, things have been worked out in legislative committees. An interviewer made that remark and said that in earlier days, the rest of the legislative body was prepared to accept that the committee had done its homework. "But that system seems to have broken down," the interviewer said. "Instead of resolving some of these things in committee, they end up being debated again with the whole body. Why has that evolved in that dysfunctional way?"

"It evolved because people do not know the meaning of the word 'No,'" Pelowski responded. When he was committee chair, his policy was "No bill is going to leave this committee unless it's in the shape it needs to be for the next committee or the floor. I would get pushback from people saying, 'We'll fix it in the next committee or on the floor.' 'No,' I said, 'it will be fixed here.'"

"The word 'No' we've lost track of completely," he said.

The single-subject rule is basic constitutional oversight of the Legislature. Pelowski gave that response to a question about the rule. (The Minnesota State Constitution requires that each legislative bill be restricted to one subject.) Pelowski said limiting bills to a single subject is "one of the core things we should do." As with the Legislature's own rules, he said, if you don't enforce it, then it doesn't matter. "That's become the problem with the single subject," he said.

Every now and then the Legislature has been sued over the single-subject rule, he noted, and ultimately, the courts could enforce it. In September 2017, [the Civic Caucus joined the Minnesota ACLU and other organizations and individuals as *amicus* on the single-subject rule portion of a lawsuit](#) filed by State Auditor Rebecca Otto. The Minnesota Supreme Court's decision in the case is pending.

Within the Legislature, Pelowski said, committees could enforce the single-subject rule. But, he pointed out, the power of interpreting what a single subject is rests with the majority party. "The public itself should say this is how it should be done," he said.

"Unless you abide by your own rules and are forced to abide by those rules," he said, "you can literally do anything you want. And we've been more the anything-you-want Legislature."

When asked whether changing the language of the single-subject requirement would help, Pelowski responded, "It doesn't do any good to change the language if you're not going to enforce it. There's literally nothing that stops us from doing whatever we think we want."

Which legislatures are doing better in terms of their processes? An interviewer asked that question and Pelowski responded that some states have limitations on the number of bills members can put in. "That's a marvelous way of ratcheting things down," he said. "Lobbyists hate this."

"The Legislatures that abide by their firm guidelines are not going to have policy committees meeting after the policy committee deadline," he continued. "They're not going to have fiscal committees meeting after the fiscal committee deadline. There is a drop-dead day to get the budget completed. Those are the ones that tend to do better. Unfortunately, the vast majority of Legislatures are having the same problems we are."

"We are a part-time Legislature. You cannot put an infinite number of items into a process and expect anything other than it will crash. And we've crashed. There have to be limits."

Conference committees are almost nonexistent now. Pelowski made that remark and said, "Conference committees are assigned, but they hardly ever meet and they do what they're told by leadership. Hammering out differences in an open meeting and then resolving the differences in the bill and understanding what the final conference committee report will do is a very rare occurrence now. Conference committees used to meet several times a week. We understood what we were doing and the public did, too. Now, the final bills are hammered out by leadership."

He said the most egregious example was in 2016, when the House passed the billion dollar bonding bill with only 20 minutes left in the legislative session. "There was no conference committee," he said. "There was no public input. The bill was on the floor. We had to get it over to the Senate."

Pelowski said Rep. Paul Torkelson (R-Hanska) offered a four-line amendment, which was tacked onto the bill. But a decimal point was missing on one line and a zero on another, making the bill off by \$824.7 million. Time ran out for the bill to pass the Senate. But if it had passed, the governor would have had to veto it, Pelowski said. "For this process to work, you have to understand what you're doing."

The governor's role with the Legislature has not changed all that much. Pelowski made that statement and said that the governor submits the budget to the Legislature, which deals with it in whatever way it wants to. "The bad thing that's happened with the governor is that he's being given things that are so poorly crafted in most cases," Pelowski said. "If you sign it, there are going to be some problems. That's not the governor's fault. That's our fault."

What is the impact on the Legislature of the concentration of power in the legislative leadership and the concentration of campaign financing in the caucuses? An interviewer asked that question and Pelowski responded, "I don't have any trouble telling leadership where to go. I represent this district, I represent the state, I represent this nation and the fourth thing, pretty grudgingly, is party."

"People who are elected now are elected as Republicans or Democrats," he continued. "They play only to the base. I'm not sure it's funding that's the issue as much as it's whether they can survive the endorsing convention or the primary. That's more of the curse. There you get the hardliners and they're not going to endorse you and you're not going to be able to run. Financing is part of it, but it's playing to those bases."

The number of lobbyists has proliferated in the last 30 years. Pelowski gave that response to an interviewer's question about the role of lobbyists. "It's almost impossible to count them all," he said. He said it's become almost commonplace now for lobbyists to encourage legislators to put a bill in not only during one session, but also in a second session, even though the bill is still pending from the first session. That way, he said, the lobbyist gets paid twice.

A capital investment bill would be the best thing the Legislature could do in the 2018 session. Pelowski gave that response to an interviewer's question about what the priorities should be for the coming session. He said the bill should include targeted investments in the areas of transportation and perhaps education and some others. "There would be very little else that would need to be done," he said. "However, that's not going to stop us from putting hundreds or even thousands of bills in."

Pelowski said he'd like to see the second session of the legislative biennium used to take things off the books that don't work, much like Gov. Mark Dayton's "unsession" of 2014. "Let's make sure we refine things to a point where they work the way they should," he said. "We should look at what we've done, refine it or get rid of it."

There's no significant policy passed that doesn't have a fiscal impact. Pelowski gave that response to an interviewer's question about whether there should be separate or combined policy and finance committees in various areas. "I don't mind them being separate as long as the finance

committee chair works with the policy committee chair," he said. He doesn't have a problem, either, with finance and policy being combined in one committee. "It helps focus the members on what the totality will be," he said.

An interviewer asked if there is always tension between the policy and finance divisions at the Legislature. "It depends on who the chairs are primarily," Pelowski said. He said he's served on the Higher Education Committee, which includes both policy and finance. He's also served on the K-12 Education Committee, which has separate policy and finance divisions. "They're quite often at loggerheads," he said.

Pelowski noted that according to the State Constitution, the Legislature has to pass a balanced budget. "As important as policy is, we have to have a fiscal bill that works and is balanced," he said.

The pension system should be looked at and has to be fixed. Pelowski gave that response when an interviewer asked what the Legislature can do to fix the teachers' pension system, which the interviewer said has excessive benefits and inadequate funding.

The pension system, Pelowski said, is in a "spiral of disrepair." Part of the funding for the system comes from the school districts and some of them cannot afford the pension contributions, he said. "Whoever is in the Legislature will have to make very hard choices," he said. "Nobody's going to like those choices. But you can't keep going with the pension system as it is, particularly with the volatility of the market. These are tough choices. 'No' is going to have to be employed here at some point."

Legislators must prepare in advance, have a goal and be able to carry it out. Pelowski made that remark and said when he took over as chair of the Higher Education Committee in 2013, he spent six weeks preparing the committee for hearings. He had set out two priority issues for the committee: (1) tuition and student debt and (2) oversight of administration in higher education.

He has also chaired the Government Operations Committee and he said in both committees, he refused to hear any bill that was "half-baked." He said he responded to a criticism that his committee was not holding enough hearings on bills by saying, "Send me a bill that's worth hearing and I'll have one."

Legislators want respect, he said. "If you're fair, people will respect you and the process."

As a committee chair, Pelowski did not use subcommittees. " Absolutely not—no way!" Pelowski said in response to a question about whether he used subcommittees. "We don't need to have more committees inside a process that already has too many committees," he said. "I wanted every member of the committee to have the ability to understand what we were doing. The totality of what we're doing must be understood by the full committee. There may be a need for a subcommittee in some rare cases, but I did not have those rare cases."

Pelowski does not think having the House or Senate operate as the Committee of the Whole is a solution. "The House or Senate shouldn't really have to operate as the Committee of the Whole if we've done our work in committee," he said. He believes it's dangerous if the House or the Senate operates as a Committee of the Whole with no public input and with amendments that have not been vetted "in any way, shape or form."

"I would prefer that the public has input and that amendments be posted far in advance, so we can understand the totality of an amendment," he said.

Nothing good happens after midnight. Pelowski made that comment and said he considers the "midnight rule" an important recommendation of the committee on reforming the legislative process. "It's almost impossible to be coherent after you've been on the floor for 24 hours," he said. "Staff is abused when you're pressing them to that limit."

"There have to be limits," he continued. "Everybody works on limits." He said no one thing is going to work to change the legislative process. "But a series of these things would certainly produce a better product and a more understandable and, hopefully, workable product for the people of Minnesota. Groups like yours have to start hammering on us to make sure we do it."

Creative ideas usually come to the Legislature through some type of massive failure. Pelowski made that statement and pointed to the major flooding in southeastern Minnesota in 2007. "That was a disaster so large and so complex and our Special Session bill was so bad that we had to have a process in law to deal with these disasters," he said. "I think something like that is the impetus toward hopefully making something that works for the people of Minnesota."

Following the 2007 flooding, the Legislature put in place Minnesota Statutes Chapters 12A and 12B, so people would know what help to expect from the state in the event of a disaster. It took 12 meetings to put together the law, including a meeting with the governor and all 13 state commissioners. It passed both the House and Senate and Pelowski said it has worked "flawlessly." "Those are the types of things we need to do, but it takes consistent work, real work, not throwing in bills by the hundreds," he said.

"Do a limited number of bills and understand what you're doing," he continued. "We have great staff at the Legislature and staff in the departments and commissions. Use them to the best of their abilities. They're capable of doing extraordinary things. We should be using them much better than we have."

Pelowski said the Legislature does get a lot of creative ideas from outside groups—probably too many ideas. "The Legislature is not the solution to every problem that exists in Minnesota or the country," he said. "Yet most people think it is. It should be a place of last resort, not usually first resort."

Hopefully, we can follow through on trying to make sure we do reform the legislative process. Pelowski concluded with that statement, adding that the Legislature is not in the position where it's improving things for Minnesota. In fact, he said, it may be doing just the opposite by some of the things it's passing.

He suggested Rep. Paul Marquardt (DFL-Dilworth), describing him as a moderate, as a possible follow-up speaker on improving the legislative process. "If we're going to fix this, it will come from the moderates in the center," Pelowski said. "That's where I think the people of Minnesota would respond. They're certainly not responding to the extremes