

STAFF REPORT  
TO THE  
MICHIGAN JOINT LEGISLATIVE COMMITTEE  
ON  
REORGANIZATION OF STATE GOVERNMENT

THE LEGISLATURE

MICHIGAN JOINT LEGISLATIVE COMMITTEE ON  
REORGANIZATION OF STATE GOVERNMENT

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LETTER OF TRANSMITTAL

March 5, 1951

Rep. Robert M. Montgomery, Chairman  
Michigan Joint Legislative Committee  
on Reorganization of State Government  
Lansing, Michigan

Dear Rep. Montgomery

In accordance with the instructions of your Committee, I herewith submit to you a Staff Report on "The Legislature."

This report is offered in three separate parts, and logically they should be presented in the following order: legislative operations, a legislative auditor, and the legislative administrative rules committee. To facilitate consideration of the Report, this order has been altered so that, in general, proposed changes in the constitution, statutes, and legislative rules follow each other.

Part I, "A Proposal for a Legislative Auditor General" was prepared by Richard A. Ware, Assistant Director of the Bureau of Governmental Research, with the assistance of Ernest A. Mosher, one-time staff member at the Bureau, and Hrs. June Rampinelli, Research Assistant to the Joint Legislative Committee.

Part II, "Legislative Committee on Administrative Rules" was prepared by W. Ralph Michener of the staff of the Bureau of Governmental Research, with the consulting advice of Professor Spencer D. Parratt, specialist in administrative law at Syracuse University.

Part III, "Legislative Operations" was authored by Hubert W. Stone of the Connecticut Public Expenditure Council and one-time Assistant Research Director of the Connecticut Legislative Council. He was assisted by Eldon W. Sneeringer of the staff of the Bureau of Governmental Research.

Very truly yours

/s/ Loren B. Miller  
Director

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### Summary of Major Recommendations

(Detailed recommendations follow  
Parts I, II and III of the Report)

#### Part I

The following recommendations of Part One should be adopted to give the legislature the technical aid necessary to exercise its proper role of supervision over the expenditure of the funds it appropriates:

1. The existing position of the elected Auditor General should be abolished by constitutional amendment.
2. The constitutional position of Legislative Auditor General should be created, the incumbent to serve at the pleasure of a legislative committee, subject to the approval of the legislature.
3. The Legislative Auditor General should be required to conduct performance audits, as well as financial audits, of all state departments and agencies and to render technical assistance to the appropriation committees of the legislature.

#### Part II

In order to secure legislative control of the law-making involved in the administrative rule process, it is recommended that:

1. The Joint Legislative Committee on Administrative Rules review rules to see that they conform to the expectation of the legislature as expressed in the law on which they are based. Further, that the Committee restrict its activities to current review of new and amended rules.
2. The power of the Committee to suspend a rule be limited to suspension until the close of the next regular session of the legislature.
3. The Committee have power to operate whether or not the legislature is in session.
4. The Attorney General furnish legal advice and guidance on rule-making to administrative agencies, but that he not have power, as at present, to block the issuance of a rule.

#### Part III

These recommendations from Part Three will, if adopted, enable the legislature to perform its own functions more quickly and efficiently:

1. Adopt annual sessions unrestricted as to length and subject matter to be considered. (The Regular Session of the 1951 Legislature has placed such a proposal on the ballot for the 1951 Spring Election.)
2. Consolidate the standing committees of the House and Senate, extend the practice of having joint meetings, and schedule meetings regularly.
3. Expand the staff and functions of the Legislative Service Bureau, as well as furnish more staff assistance for standing committees to permit better administration of legislative business.

## FOREWORD

This report on "The Legislature" is not interested in how the legislature is formed. That is properly the subject of another study and other efforts. In this report the operations of the legislature are reviewed with an attempt to indicate how it can be made to work more effectively.

American government reflects American political theory and its emphasis upon a government operating in specified areas and under the control of the people. Among the means chosen to insure this have been the devices of a separation of powers among the executive, legislative, and judicial branches and a system of checks and balances. Under such a plan of organization, it is essential that no single branch be strengthened while the others are not.

This has not been always true. For many years predominant thought, emphasis, and attention have been given to the executive in both the federal and state governments. However, justifiable this may have been, one result has been a lessening in the stature and prestige accorded the legislative branch. And little has been done in recent years to reverse the trend and restore the balance to the system of checks and balances.

Students of government have spent much time in perfecting tools of administration, constructing theories of administration-- for the executive. Michigan offers no exception. As its state government has grown and the problems confronting it have multiplied in quantity and complexity, the executive has been strengthened. This process has been essential and must be carried further, if the executive is to have power commensurate with the responsibility for which he is held accountable by the people.

As this process is carried forward, it is essential to the preservation of a government controlled by the people that the legislature be able to balance, to cope with, and to hold accountable the strengthened executive. The legislature, too, must have adequate tools to perform its necessary role effectively. At the same time, it is important that the legislature not become submerged in a mass of administrative detail and lose the very control that is sought.

This report attempts to strengthen the legislature to the degree necessary to balance the already strengthened executive and to offset whatever additional strength is lodged in the executive office. Of immediate and pressing importance is the legislative need for information by which it can determine its appropriation policy and hold the executive responsible for the honest and efficient administration of policy. Second, executive agencies of the government must be subjected to restraint and review so that there is no conflict with the role of the legislature in the creation of law. Finally, the legislative operations themselves must be the most efficient and business-like possible if the legislature is to meet all of the problems it must consider and

still retain its share of the balance of power.

The plain fact is that if any semblance of balance between the legislature and the executive is to be retained, the Michigan legislature must be greatly strengthened in its operations. This is a need of first importance. And in meeting this need, as in searching for solutions to the many organizational and administrative problems confronting government, it is worth remembering that Lord Bryce called American state governments "laboratories for political experimentation." The beginning point is a willingness to acknowledge that all legislative operations are not now perfect. This acknowledgment should be accompanied by a willingness to consider change and to experiment with devices to accomplish better results. If representative, democratic government is to survive, the tendency to discredit the legislature must be stopped and reversed. This should and can be done not by de-emphasizing or weakening the executive branch but by equally emphasizing and strengthening the legislative branch.

This goal is deemed of first importance among all of those objectives that may emerge from this entire series of staff reports on Michigan's state government. This applies in particular to the legislative audit procedure outlined in the report.

PART I

A Proposal for a Legislative  
Auditor General

## I. Introduction

Within both government and private enterprise, the word "audit" has become popular and commonplace, but not always with a precise meaning. An audit generally connotes an examination of accounts by an independent agent to detect dishonesty or inaccuracy. Once accounts are audited, they are accepted as correct, and all concerned are presumed to have operated honestly. This concept is not incorrect, but auditing is more extensive and meaningful than is generally recognized outside of the administrative management profession.

In private enterprise the independent accounting audit is of comparatively modern origin. It is undertaken by professionally qualified accountants employed by the stockholders or board of directors. It consists of a verification of the accounting records of transactions that already have occurred during a given period of time.

Also in private business there are two other audits undertaken by the management in addition to that undertaken by an independent agent responsible to the board of directors or the stockholders. One of these is the pre-audit, performed by the staff members of the business firm itself. The pre-audit is "an examination of the propriety of proposed financial transactions, or of financial transactions which have already taken place but have not been recorded."\* The second is the "management audit" which reviews all operations (not only financial transactions) for the management and looks forward to the means by which operations may be improved.

Governmental auditing contains these same elements, although the problems are not always similar. Governmental organization creates situations not found in private enterprise. The separation of powers in government make it possible to have a "manager" (the governor) in conflict with the board of directors (the legislature). This situation does not occur in commerce or industry, or in a cabinet form of government where the executive is selected by the board of directors.

In government, auditing may be classified as follows:

### 1. Under the control of the executive

a. The pre-audit controls expenditures as to their legality and the availability of appropriation balances. It is part of the accounting process and furnishes the financial information on receipts and expenditures necessary for administrative purposes. It serves to control the departments and agencies on behalf of the executive.

b. The "management audit" reviews governmental operations with the hope of making them more efficient or economical. This activity is usually carried on by a staff under the fiscal officer

\* Chatters and Tenner, Municipal and Governmental Accounting, 1940, p. 24.

responsible for the pre-audit, or under the supervision of the executive's staff charged with the preparation of the government's budget or work program.

2. Under the control of the legislature

a. The financial post-audit provides the appropriating body with an independent check on the handling of funds by the executive. The legislature has the responsibility for a staff of its own to insure that the funds it appropriates are not stolen or abused.

b. Because the appropriation process involves the determination of policy, it is necessary that the legislature hold the executive responsible not only for the honest expenditure of all funds, but also for the efficient use of public money in accordance with policies prescribed by law. This is known as an "operational audit" or a "performance audit" and it too should be undertaken by a staff responsible to the legislature.

In Michigan's government these various audit functions are not so neatly divided, and responsibility is not easily fixed.

First, the pre-audit and accounting functions are carried on by the Accounting Division of the Department of Administration-- an agency directly responsible to the Governor. Although this Division pre-audits the voucher, the actual writing and signing of the warrant (in lieu of a check) is undertaken by the independently elected Auditor General who may inject himself into the pre-audit process. The warrant is redeemed by an elected State Treasurer.

Second, the management audit is assigned to the Department of Administration, an executive agency. This Department is also responsible for the budget function.

Third, the financial post-audit is not undertaken by an agent of the Legislature, but by the State Audit Division of the elected Auditor General's office. This office also undertakes various administrative tasks (i.e. collecting some revenues, writing warrants) and so must post-audit itself. Although the Auditor General issues reports to the Legislature, he is not the legislative servant, for he directly is responsible to the people. An auditor should be responsible to the board of directors, or the legislature. The people depend not upon audits but upon votes to control the government.

Fourth, operational or performance audits are not being undertaken. The Legislature has not provided itself with staff assistance to perform such audits and lacks full and detailed knowledge on the manner of performance by state departments and agencies. The Legislature has provided some staff assistance to itself for the purpose of budget review and the appropriation process.

The report will continue with (1) a brief history of post-auditing in government and an indication of the lessons taught by this history; (2) a description of the functions of the present elected Auditor General; (3) a review of Michigan's progress toward a legislative auditor; and (4) some conclusions and recommendations.

## II. The Post Audit in Government

The chief executive (where there is such an independently elected officer) and his departments, and all the departments of government, are subject to the periodic control of justifying requests for funds to the legislature. Usually the legislature lacks the necessary information to screen departmental requests or to hold the departments responsible for money appropriated to them. If this tendency is to be avoided, provision should be made for an inspection or audit by someone outside of the usual government departments. This "someone" may be; the agent of the people and elected by them; an agent of the legislative body; a representative of the courts (i.e., the French Court of Accounts); or an agent of the single political party (i.e., in the Union of Soviet Socialist Republics). In Anglo-Saxon countries, the first two alternatives generally have prevailed.

### In Other Countries:

Much of English political history surrounds the Parliamentary struggle for control of the purse, first, by making the Crown Come to Parliament for money; second, by empowering Parliament to say how the money was to be spent. Gladstone summed the problem

"It is undoubtedly the business of the House of Commons to be responsible, not only for the inception of all public expenditure, but also to follow money raised by taxation until the last farthing is accounted for."\*

In 1861 Gladstone established the Public Accounts Committee in the House of Commons, which discontinued an attempt to supervise every daily expenditure and resorted to the procedure of checking on how money had been spent. This scheme provided for an Exchequer and Audit Department headed by a Comptroller-Auditor General (a confusing title).\*\* This officer is appointed by the Crown for good behavior, but may be removed only upon petition of both the House of Commons and the House of Lords. He is, however, an officer of the House of Commons auditing accounts on behalf of the House and reporting directly to the House.

\* Quoted by A. E. Buck in The Budget in Governments of Today, p. 270.

\*\* As Comptroller he controls issues of public money.

The Comptroller-Auditor General is independent of all executive departments, and his findings cannot be suppressed or overridden. His salary is not dependent upon an annual grant from Parliament, and the office is not considered as a political reward. He performs a continuous post-audit, including an administrative audit or inquiry into any payment to discover inefficiency or waste. It is his duty to watch, search, inquire, and report to the Public Accounts Committee of the Commons, the chairman of which comes from the Opposition Party. This Committee is one of 15 that meets privately, reports to the Commons, and has the backing of Parliament. Every irregularity is examined, reported on, and subjected to public criticism.

Honesty in public administration emphasizes financial probity, and that has been obtained in Britain through the Comptroller-Auditor General. Some great statesmen (Burke, Pitt, Peel, Gladstone) owe their reputations to financial reforms. Others of lesser rank would be forgotten if they had not been administrative reformers.

The Scandinavian countries and Switzerland have developed similar offices, and so have the British Dominions.

In Canada the post of Auditor General was established in 1878, the incumbent being an officer of Parliament appointed by the Governor General to serve during good behavior with retirement mandatory at age 70. His salary is not subject to change. He may be removed from office only by the Governor General on address of both Houses of the Parliament. The Auditor General has free access to all accounting and records and may station his auditors in various offices. He is required to "satisfy himself that the revenues are being fully accounted for." It is interesting to note that prior to 1931 the Auditor General authorized expenditures in the role of controller and then conducted an audit of his actions.

The Auditor General reports to a standing committee-- the Public Accounts Committee of the Commons. This is a large, unwieldy group of 50, whose chairman and majority both are from the party in power. It meets infrequently and has little of the power of its British counterpart. It is too much a part of the government in power, and criticism by the Opposition is discouraged.

The Provincial Auditors illustrate a serious confusion between control and audit, because they generally are responsible for both the pre-audit and post-audit functions. They usually are appointed in the same manner as the national Auditor General, possess the same audit authority, and are responsible to a Public Accounts Committee of the lower house. The Committee is controlled by the government in power and is not an effective agent of criticism. The Provincial Auditors have not developed the strength or usefulness of their British counterpart.

In the United States Government:

The British Auditor General stimulated the creation of the United States Comptroller General in the Budget and Accounting Act of 1921. It was intended that he be the "watchdog of the Treasury" for the Congress. He is appointed by the President for a term of 15 years, subject to Congressional approval, and may be removed by a joint resolution of Congress or by impeachment.

Great powers were given the Comptroller General including authority: to settle and adjust claims; to prescribe accounting forms and procedures; to investigate all matters relating to the handling of public funds; and to report to each session of Congress every contract or expenditure violating the law. By implication, he interprets statutes affecting the handling of funds, approves contracts, and takes custody of documents supporting the validity of disbursements. In the creation of the Comptroller General with these powers the Congress believed that it provided itself with a critic of the executive use of public funds. In fact, however, the office stands as quite an independent agency and has done little to strengthen the Congress.

In 1937 the President's Committee on Administrative Management pointed to the Comptroller General's pre-audit and accounting control as being "necessary to the administration of the budget and therefore an executive duty." The Committee proposed that these duties be returned to the President, and that the office of Auditor General be created, separate from all administrative functions, with his activities confined to post-audits and financial investigations for Congress. "The functions of the present office of Comptroller General should be limited to those of an Auditor General as legislative agent, that is concerned primarily with the propriety and advisability of expenditures and fiscal operations, rather than their fidelity."

The Committee went on to say that the auditors should be assigned to the field to enable them "to currently audit the accounts ... and they should be required to certify ... exceptions ... to the offices whose account is involved, to the Auditor General; and to the Secretary of the Treasury. The auditing work would then proceed in a decentralized manner independent of, but practically simultaneous with, disbursement." Whenever the Treasury and the Auditor General failed to reach an agreement, the exception would be reported to the Congress under the proposal.

A subsequent study\* of the Comptroller General stressed the independence of the auditor from the executive as a necessary device for Congressional control.

\* Harvey C. Mansfield, The Comptroller General, 1939, p. 13.

"This calls for safe-guards at four points when his independence might be compromised: (1) His tenure should be such as to protect him from undue dependence on the appointing authority (long term, restrictions on removal, appointment by Congress, etc.).

(2) He should be in no way involved in responsibility for any of the transactions he may be called upon to review in his audit...

(3) He should have no responsibility for maintaining the records he is to audit ... (4) He should have staff of his own selection, and he should be allowed to defend his budget before Congress against any proposed executive revision of it."

Ten years later, the Task Force Report to the "Hoover Commission" on Fiscal Budgeting and Accounting pointed out the same problems and needs as the Report of the President's Committee. The Task Force also commented that one additional step necessary "to make the audit an effective instrument in establishing the accountability of the President for the execution of the budget ... is a provision for congressional review of the audit findings"---- a joint standing committee of 15 members empowered to meet between sessions and having sit with it a representative of the Auditor General and the Executive (central accounting office or budget bureau). The Hoover Commission did not accept the Task Force recommendations for a clear severance of administrative and post-auditing duties, although vigorous dissents were entered by several of the non-Congressional members of the Commission.

In State Government:

The use of the post-audit as a control in state governments has been retarded by the existence of post-audit officials who are independent of all other state offices, including the governor and legislature. Elective auditors, controllers, and treasurers are illustrations. In other instances, the independence of the post-audit official is destroyed either by his appointment by the governor, or by assigning him administrative duties. For several decades a clarification and strengthening of the post-audit has been recommended.

In 1930 in a survey of North Carolina, the Brookings Institute made a clear distinction between the functions and character of a controller and an auditor and stated that an auditors lacking administrative tasks, might well become an "eye" of the legislature and a constructive critic of the administration. "If duties of this character are definitely entrusted to the auditor, he becomes an exceedingly important officer, since, through his action not only will the legislature be given the means of securing a current, independent review of the operations of the government from a financial standpoint, but a powerful deterrent to careless or unwise action by administrative officers will be set up through the fact that such officers will know that all of their acts will be subject to scrutiny" (the North Carolina Report).

Similar conclusions were reached in surveys of Alabama, Iowa, Mississippi, and Oklahoma. Surveys by other management firms pointed out the same concepts in Kentucky, Maine, New-Jersey, and Texas. Numerous authorities concur, and many citations are possible. The Model State

Constitution, prepared by a Committee on State Government of the National Municipal League, provides that an auditor shall be appointed by a majority vote of the legislature and serve at its pleasure. His duties are limited to post-auditing and making such financial investigations as are required by the legislature or a special legislative committee. Findings and criticisms would be reported to the governor, the special committee, and the legislature.

All of the recommendations have not been in vain. In 1922, Massachusetts relieved the elective state auditor of all but his post-audit duties. Re-organization in Virginia, Maine, New Jersey, Kentucky, and Tennessee followed the Massachusetts plan. Today the post-auditor is appointed by the legislature in 11 states and by the people (election) in 18. Some states have unique variations. Connecticut, for example, has two auditors appointed for four year terms by the legislature, and they may not be of the same political party.

The trend has been toward an auditor appointed by the legislature so that the appointee will be responsible to the legislature. It is probable that a man of special skills is more apt to be selected by the legislature than by the people. The elective auditor may be obligated to the head of the state wide ticket (the governor) or may have political aspirations-- attitudes destroying the impartiality of his office.

It is interesting to note that several states have limited the administrative duties of the auditor. The State Auditor of Maine, elected by the legislature in joint session for a four year term, is prohibited from keeping accounts and "shall not serve in any ex-officio capacity on any administrative board ... or have any financial interest in the transactions of any department ... of the government. He shall not be responsible for the collection of any money belonging to the state, or for the handling or custody of any state funds." The Texas auditor is similarly restricted. The auditors of Florida, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, New Jersey, South Carolina, Tennessee, and Wisconsin have minor or no administrative duties.

Not all states provide their auditors with the necessary special legislative committee advocated at the federal level by the 1937 Committee and the "Hoover Commission" Task Force. The Model State Constitution also provides for such a committee to receive and study audit reports and report and recommend necessary action to the legislature. New Jersey has such a committee. In Texas, the committee appoints the state auditor (subject to Senate approval), receives reports, and exercises general supervision and direction over the auditor. Somewhat similar provisions are found in Tennessee.

Finally, operational auditing has been recommended to the states. The wording of the Model State Constitution is designed to permit the auditor to become a legislative staff agency. It provides that the auditor shall make "such additional reports to the legislature and the proper legislative committee, and conduct such investigation of the financial affairs of the state ... as either of such bodies may require."

The New Jersey Constitution contains similar provisions.

Included in the duties of the Maine auditor is the provision "to serve as a staff agency of the legislature, or any of its committees ... in making investigations of the state's finances." An identical provision is found in Tennessee for that state's auditor.

Texas has carried the idea further than most states. In addition to the usual auditing duties, staff' service, etc., the auditor, under the direction of the Legislative Audit Committee, is required by statute to examine departments in regard to their activities, duplication of effort between departments, and the quality of service performed.

He must report on the (a) efficiency of employees, (b) status of public funds, (c) duplication between departments, (d) expense of operation, (e) breaches of trust and duty, and (f) any change: for economy, reduction of the number of personnel, and the elimination of duplication and inefficiency. Reports must be filed with the department head concerned, elected state officers, the Audit Committee, and the Legislature. The Committee holds hearings with the department heads concerned. Any refusals by them to comply with changes requested by the Committee are reported to the Legislature.

In City Government:

Although many cities employ certified public accountants to conduct an annual audit, several have recently considered creation of an auditor general and one, Detroit, has had over a decade of successful experience with the office. The Detroit Auditor General is worthy of some consideration.

In 1937, following a large defalcation, Detroit pioneered in municipal government with the establishment of an Auditor General. He is appointed by a two-thirds vote of the Common Council for a 10 year term and is in-eligible for reappointment. He may be removed by the Council by the same vote, but only after the charges have been reduced to writing and after a public hearing. The Auditor General is required to audit every City agency annually; to make a full report to the Common Council and the Mayor; to recommend improvements in accounting methods; and to investigate the administration and operation of any City department upon request of the Common Council or the Mayor. To perform these functions, appropriations of \$194,920 were made in 1950-51 for a staff of 34 persons, all except two being auditors or accountants. With this staff and budget, total expenditures of \$216.5 million (1949-50) were audited. The Auditor General is prohibited from having jurisdiction over any funds, except petty cash.

The original Charter provisions have proven sound with but two exceptions. First, the Auditor General should not be dependent upon the Mayor for legal advice, which he now receives from the Corporation Counsel, but should have authority to contract for independent legal counsel when needed. Second, investigations of the administration and operation (operational audits) of any City department ought to be a continuing responsibility, and not undertaken solely upon request of the Council. And in any event, the Mayor should not be able to require the Auditor General's assistance.

The operational audit is a device that has not been thoroughly exploited by the Common Council on behalf of efficiency and economy in municipal government. Those who framed the plan hoped and inferred that the Auditor General would undertake to audit operations as well as accounts-- both legislative functions-- and become a real professional staff to the legislature on all fiscal and management problems, separate and distinct from the staff available to the Mayor.

The importance and need for operational auditing was stressed in 1923.\* These admonishments are still pertinent.

"1. A mere audit of money is no protection whatever against misuse of money and power; audit or field studies of results is needed.

2. The executive who spends the money and directs the use of delegated power ... cannot be trusted to seek and broadcast the truth, the whole truth and nothing but the truth about preventable waste of money and preventable misuse and underuse of power. If we really want this service, we must look for it to the office not responsible to our spenders" (not to the administrators, but to the appropriating body and its agent-- the auditor).

Summary:

Before describing the Michigan situation and recommending some improvements, a summary-- drawn from the history and experiences reviewed here--might establish some criteria for Michigan.

1. The legislative body alone is responsible to the people for appropriating funds for specific purposes; the executive is responsible for the actual spending of the funds for the purposes for which they were appropriated.
2. To fulfill its role adequately, the Legislature must have its own officer and staff responsible for checking on the honesty and efficiency of the spending by the executive (the post-audit); such an officer should report to the Legislature through a committee.
3. The legislative agent or auditor must:
  - a. be appointed and removable only by the Legislature;
  - b. have reasonable security to guarantee his independence in auditing; be non-political, objective, and competent;
  - c. have authority to audit both financial transactions and administrative operations;
  - d. have no administrative or fiscal authority, except over his own staff;

\* By Dr. William H. Allen in the National Municipal Review, February, 1923.

- e. have an adequate staff of fiscal and management technicians;
  - f. have a budget free from any control by the executive;
  - g. have authority, when necessary, to contract for legal counsel of his own choice.
4. The legislative committee must:
- a. be a permanent committee empowered to meet between legislative sessions;
  - b. be of a manageable size with its members free of other major committee assignments;
  - c. have the legislative auditor and by invitation a representative of the executive meet with it;
  - d. have authority to request compliance by department heads with the recommendations of its auditor and to report to the Legislature failures of department heads to follow these recommendations.

### III. The Michigan Auditor General

Since its inception as a state, Michigan has had a state official bearing the title of Auditor General. The Constitution of 1835 specified that the Auditor General should hold office for two years by appointment of the Governor by and with the advice and consent of the Senate. This provision was changed in 1849 and the Auditor General became a state officer elected at the general state election for a two year term. This provision was continued in the Constitution of 1908 and remains unchanged. The Auditor General has never been assigned constitutional duties, and he has performed duties assigned to him entirely by statute.

The duties assigned to the Auditor General are numerous and varied; many of which have little to do with auditing. This has led some to ask "when is he the Auditor General of Michigan?" The relationship of his duties has occasionally become so confused that he has compared favorably with the situation of Pooh-Bah in "The Mikado." He held so many conflicting offices and identities that, for example, "as Paymaster-General I could so cook the accounts, that as Lord High Auditor, I should never discover the fraud."

In accordance with statutes, the Auditor General is a member of the following boards:

State Administrative Board and, by virtue of this, also a member of the Emergency State Military Board.  
State Board of Equalization.

Corporation Privilege Tax Appeal Board (Secretary).  
Municipal Finance Commission.  
State Employees Retirement Board.  
Board of Review of State Police Pension Fund.  
County Pension Plan Committee.  
Board of State Canvassers (alternate when needed to make a quorum).  
Board of State Auditors (alternate member in case a settlement with the State Treasurer is involved.)  
(Board of Fund Commissioners-- statute of 1848 provided a different composition than did the 1908 Constitution; the constitution does not include the auditor general.)\*

The statutes also assign the Auditor General the following specific duties, most of which have some relationship to his auditing title and function. Those prescribed duties that are part of or related to his proper function are:

1. Examine the books, accounts, etc., of all state agencies to insure compliance with proper accounting standards, to determine whether funds have been received and disbursed according to law, and to report findings to the Governor and Legislature.
2. Audit funds and accounts of county retirement plans.
3. Prescribe uniform annual financial report forms for all state agencies and prepare and publish an annual volume of statistics.
4. Examine monthly or more frequently the State Treasurer's accounts, countersign receipts, and report irregularities or deficiencies to the Governor.
5. Submit to the Legislature a statement of funds of the state, revenues, expenditures for the year preceding, aid make recommendations for improvement of the financial system.
6. Comply with any request by the Attorney General for help in investigating books, records, and accounts of any township, school district, or public officer,
7. Supervise uniform system of accounting in the counties and audit their records.

Generally, these duties properly rest with the Auditor General and should remain as a part of his duties even as an agent of the Legislature. There are exceptions, however. The Auditor General should not have the responsibility for auditing county governments. (See numbers 2 and 7 above.) This is more properly the duty of a department or di-

\* The 1848 statute should be repealed as inoperative. Also by an 1846 statute the Auditor General is a member of the Board of Escheats. This conflicts with the present Constitution and the statute should be repealed.

vision concerned entirely with local government-- as recommended in Staff Report No. 6 on Revenue Administration."\*\*

The following duties are executive or administrative in nature and conflict with the proper role of a post-auditor. In fact he is often forced to post-audit his own activities. In addition, the assignment of most of these duties to the auditor (whether an elected or legislative officer) destroys the executive or administrative process by dispersing responsibility.

1. Draw and issue all warrants upon the state treasury for the disbursement of funds.
2. Pay to county treasurers the amount due to counties from the school aid fund, motor vehicle weight taxes, gasoline taxes, liquor license fees, sales tax division funds, intangible property tax proceeds; as well as veterans' property tax reimbursements, old age assistance, aid to blind and dependent children benefits, and other state aids.
3. Make special investigations of conditions and accounts of any state institution or disbursing office at the request of the governor. (NOTE: The governor ought to depend on his own staff and not the post-auditing officer's.)
4. Investigate reports concerning state prisoners for the purpose of seeking reimbursements for the expense of caring for such prisoners.
5. Audit and check books and receipts of persons conducting racing meetings at request of Racing Commissioner.
6. Maintain court orders of changes in personal rates of reimbursements of state and counties for the expense and care of persons in mental institutions.
7. Sell or lease with approval of the Administrative Board real estate vested in the State in payment for state hospital treatment.
8. Examine and approve plats of local units before they can be recorded by register of deeds.
9. Maintain files and records of the incorporation of villages or changes of boundaries.
10. Make available transcripts of any papers or records on file in his office for specified fees.

\*\* This does not imply that the various agencies of the state government, both executive and legislative, should not check upon the administration of state grants to local governments for specific purposes, i.e., direct relief, highways, etc.

11. Hold moneys collected by the Director of Conservation from permits issued for the propagation of frogs.
12. File receipts of fees collected by the Board of Chiropractic Examiners.
13. File copies of resolutions regarding medium of payment of certain municipal and assessment district obligations.
14. Approve and record surety bonds of Secretary of State and Commissioner of Insurance and the Racing Commission.
15. Transmit copies of all laws relative to the collection of state revenues to the officers concerned.
16. Prepare instructions for the government of officers concerned with the collection of revenue in the premises.
17. Have printed sufficient copies of the general property tax act. Approve all forms and records made necessary by the act and prescribe uniform practices, forms, and methods to be used by county treasurers in carrying out the property tax law.
18. Make available to any county a complete abstract of all lands sold for taxes and unredeemed in such county.
19. Bill and collect fees from insurance companies in payment for audits made by the Department of Insurance.
20. Exercise general administration and supervision over delinquent taxes and tax delinquent lands, although many of these duties can be delegated to county treasurers.

These numerous administrative duties are destructive of the independence of the Auditor General and are a principal reason why he never fully accomplishes his most important statutory duty of auditing state agencies.\* These duties should be transferred to the various administrative or executive departments, i.e. the Department of Administration, the Revenue Department, the State Treasurer, etc.

The Auditor General's Office is organized functionally into three divisions: general administration, county auditing, and state auditing. The appropriations for each in 1950-51 were \$340,850, \$137,885, and \$126,555, respectively, a total of \$605,290. It is to be noted that more is spent in terms of effort and money in performing administrative duties belonging to the executive department of government than to an independent post-auditor.\*

\* A detailed description of the activities and procedures of the Auditor General's Office may be found in Part III of the Staff Report on "Revenue Administration," and a recommended realignment of these duties is contained in Parts I and II of the same report.

#### IV. Steps Leading to a Legislative Auditor in Michigan

##### The Department of Administration

As the budget and fiscal problems of the state have grown in magnitude and complexity, the Legislature has found itself less equipped than the executive branch with a staff to meet these problems. For some years the Governor has had a small budget staff, and the Legislature possessed the intimate knowledge and long practical experience of senior members. These were sufficient a decade ago. Gradually, the Governor's budget staff was strengthened, culminating with the creation of the Department of Administration in 1948.

This reorganization of executive agencies or "tools of management" into an arm of the executive office effectively assisted the Governor in meeting his responsibilities. In addition the technical competence developed in the various state departments has tended to overwhelm the Legislature. The net result of these developments has been to leave the Legislature even more empty-handed. It had depended upon the budget bureau to service both it and the Governor. Placing the budget function in the new Department served to emphasize the responsibility of the budget division to the Governor. The Legislature was left with nothing. The normal reaction has been one of resentment toward the Department of Administration, although this attitude toward the staff agencies of the Governor was bound to fester in time as the gubernatorial power over fiscal affairs was increased. The sudden action creating the Department of Administration merely hastened and intensified the feeling of a void and helplessness on the part of the Legislature.

Some important by-products stemmed from the law that made the Department of Administration a reality. First, the accounting and pre-audit functions were separated from post-auditing, although some mixing of these two functions remains through assignment of warrant writing to the Auditor General. Prior to the Department of Administration, it will be recalled, the Auditor General post-audited himself. Under the new arrangement, accounting and pre-auditing, together with the power to formulate and control accounting systems, is a function of the Accounting Division of the Department of Administration, which also contains other service functions (purchasing, motor transportation, building management, etc.) and an enlarged budget office., Second, 'the post-audit function was emphasized and strengthened by the separation from pre-auditing.

The action of the Legislature in staffing the executive focused attention on the post-auditing activity and stimulated a groping toward a more adequate processing of the budget by the Legislature.

##### The State Audit Division

The statute that created the Department of Administration also provided that "the auditor general shall continue to exercise the powers vested in him by law relating to the audit of the accounting for the receipt and expenditures of every state ... agency" to ascer-

tain conformity to accounting standards, any irregularities in the handling of funds and in the use of funds for purposes for which provided. This section of the statute provided also that the Auditor General "shall report his findings thereon annually to the governor and legislature."

This was the second step toward creation of the legislative auditor, because it emphasized the role of the auditor at the same time relieving him of the pre-audit and accounting process-- the warrant writing was left with the Auditor General, although it should be transferred to an administrative agency. As a result, the operations of the State Audit Division were stimulated, expanded, and improved until there is now the real beginning of an auditing office. Most of the administrative agencies of the state government are being audited regularly, some of them for the first time. The Staff Report on "Revenue Administration" discusses the operations, organization, and audit procedures of the State Audit Division in detail and makes some important recommendations for its continued improvement.

It should be emphasized here, as it has been emphasized in the reports of some of the firms of certified public accountants who have audited various agencies for the Audit Division, that the Division must be expanded in order "to afford reasonable assurance in all cases that effective internal control is employed in accounting for revenue.

The Legislative Committee on Audit and Appropriation Investigation  
Just as important as the failure or inability of the Auditor General to perform more adequately than he has in the past is the apparent failure of the legislature to make full use of his findings. No special legislative committee has been established to review regularly the reports and recommendations of the Auditor General. In fact, no mechanism is provided by the executive branch for utilizing the audit reports and making the corrections indicated as necessary. The newly created Joint Legislative Committee on Audit and Appropriation Investigation was an attempt toward supplying this need and was the third step toward creation of a legislative auditor in Michigan. This Committee could well become the legislative device for supervision of an expanded legislative auditing staff.

The Committee on Audit and Appropriation Investigation is relatively new and has a short history. For several years the Michigan Legislature has felt that it has not received sufficient information relative to the financial operations of the state government and its agencies. Also, it has felt that it should have a staff of its own to provide it with such information, independent of the executive and administrative agencies. In the regular session of 1947, a bill was introduced in the Senate providing for the creation of an accounting division of the Legislative Service Bureau. While this measure was approved by the Senate, it failed to receive favorable action by the House.

The bill sought to establish an Accounting Committee to consist of four members of the Senate, four members of the House of Representa-

tives, the President Pro Tempore of the Senate, and the Speaker of the House. This Committee was to meet quarterly to receive and discuss reports, select the legislative accountant (who would serve at its pleasure), advise the accountant in the conduct of his duties, and determine the policies of the accounting division. The accountant was to have the power to appoint and fix the salaries of such assistants as he deemed necessary-- subject to the Committee's approval.

The measure would have charged the legislative accountant with the following responsibilities:

1. Assist the Legislature by providing information with respect to the accounts and financial records of all disbursing and spending agencies of the state;
2. Furnish information with respect to the need for additional appropriations, reducing appropriations already made, and the appropriations necessary to meet the obligations of government. In this connection he was to report as to whether the executive departments and the disbursing and spending agencies were providing the necessary financial, controls to see 'that income and expenditures conform to authorizations and requirements laid down by the Legislature, to the end that public money is spent for the purposes for which it was collected and within the appropriations made,
3. Make continuing examinations of all general accounts and financial records maintained by the Auditor General, State Treasurer, Budget Director, etc.
4. Periodically study revenue collections to determine if all money due the state is being collected.
5. Investigate the means provided for accounting for, controlling, and insuring the safe custody of all property of the state
6. Examine statements of financial condition and operation of state government issued by any state agency.
7. Examine estimates of resources available for appropriations and the estimates of receipts that are prepared for inclusion in the executive budget.
8. Examine the expenditures made from any fund or account exceeding its resources.
9. Make reports through the accounting committee to the Governor and the Legislature.

This, therefore, was the first attempt by the Legislature to establish an agency of its own to check on the spending of state agencies and to provide it with financial information relative to appropriation needs. Also, it was to serve as a means of eliminating or reducing deficit fi-

nancing, as well as a means of insuring that monies appropriated were spent in accordance with legislative intent.

The House, in failing to approve the creation of the Accounting Committee responded to the request of the then Governor to create a joint interim committee to work with the executive in studying revenues, expenditure: financial records, etc. The creation of such a committee was authorized in the regular 1947 legislative session, and four members of each house were selected to serve on the Committee.

In establishing the Legislative Budgetary Committee, several reasons were cited as to the need for such a committee:-- (a) increased problems connected with finance and appropriation matters; (b) necessity for the Legislature to have personal, accurate, and reliable information respecting the composite financial needs of the state boards, commissions, and various agencies of government; (c) a large increase in the number of state employees; (d) the Legislature's handicap in the consideration of budgetary matters, resulting from not having all the information necessary to fully understand and consider the budgetary needs of the state; and (e) the need for studies of: overlapping agencies and non-essential programs and activities of the state, the abolition of unnecessary services, boards, agencies, and commissions and the consolidation of such wherever possible, and the elimination of unnecessary programs, reports, activities, and personnel.

While this Committee was not intended to serve as an agency to conduct independent post-audits of the expenditures of the various spending agencies of the state government, it was organized as a unit to secure financial information for the use of the Legislature in its budgetary deliberations. During the course of its existence, no committee meetings were held with either the Governor or his budget director, nor was any report made to the Legislature, as the resolution required.

The first two attempts by the Legislature to obtain information relative to the financial operations of the state and supporting data to aid it in its budgetary decisions failed. Nevertheless, some members of the Legislature felt the need for such services and sought to obtain some type of organization responsible to the Legislature.

In the regular legislative session of 1949, a concurrent resolution was introduced providing for establishment of a Joint Committee on Audit and Appropriation Investigation. The resolution was approved and the position of Legislative Comptroller created.

The preface to the resolution is indicative of the reason for the resolution:

"Whereas, The legislature is required by the constitution to appropriate for all expenditures made by the state ...; and

"Whereas, Appropriation requests and recommendations as embodied in the budget are prepared by and for the executive branch of the gov-

ernment which also is charged with the spending and accounting for money appropriated by the legislature; and

"Whereas, The legislature has found through the years that requests and recommendations for appropriations as represented in the budget reflect almost exclusively the viewpoint of the executive and administrative agencies; and

"Whereas, Such a method of preparing estimates of needs for appropriations does not result in proper checks and balances and does result in the legislature not being factually informed of all possible methods of saving expenditures; and

"Whereas, The legislature should have available an independent check on the budget estimates on revenues and on expenditures made from appropriations and an independent source of information prior to consideration of the budget; now therefore be it

"Resolved by the Senate (The House of Representatives concurring), That a joint committee to be known as the Joint Committee on Audit and Appropriation is hereby created."

The Committee, as it is now organized, consists of the Chairman of the Senate Committee on Finance and Appropriations and two members of that Committee appointed by the Chairman, the Chairman of the House Ways and Means Committee, and two members of that Committee appointed by the Chairman. The Joint Committee was authorized to sit during the sessions and in the interim between sessions, and was to report to the Legislature at any time with regard to its work and the results of its audits and investigations. The Committee members receive no compensation other than expenses. They are empowered to select a Legislative Comptroller to serve at their pleasure. The Comptroller in turn was authorized to appoint and fix the salaries of such assistants as he deemed necessary-- subject to Committee approval.

The resolution assigns the following duties to the Committee:

"It shall be the duty of the committee through the legislative comptroller to make a periodic post audit of the accounts, records, transactions, and affairs of any department and agency selected by the committee not less than once in each fiscal year. There shall also be made periodic audits or checks of all general accounts and financial records maintained by the auditor general, the state treasurer, and any other officer charged by law with any duties in relation to accounting, ... The legislative comptroller shall make such special audits and investigations as may be authorized by the committee, and shall audit periodically the revenue collections of all kinds accruing to the state, to ascertain whether the revenue due and owing to the state is being properly and completely collected."

The Legislative Comptroller was given the powers and authority to secure the necessary information and to otherwise carry out the as-

signed functions. To carry on all of these duties, \$15,000 was authorized. A technician was employed as Comptroller, together with a secretary-stenographer.

Some observations are pertinent after almost two years of operation by this Committee.\*

1. It is not a permanent Committee and does not have the continuing responsibility and prestige of a standing committee.
2. The composition of the Committee is such that it is actually a sub-committee of the appropriations committees so that the work performed by the Comptroller is in the nature of staff assistance on appropriations matters. This does not mean that such staff assistance should not be available to appropriations committees, but it should not be at the expense of the executive branch's accountability to the Legislature for the funds expended under appropriations.
3. One professional staff person cannot perform all of the complex and extensive auditing functions assigned to the Committee, even though outside accounting firms are occasionally engaged.
4. The Comptroller has been forced to rely more and more upon the staff work performed by the State Audit Division and upon the published or unpublished reports of the Budget Division and operating state agencies.

The Audit and Appropriation Investigation Committee was created in recognition of the fact that the Governor's chief fiscal officer (The Controller) and his staff could not fulfill a dual role. They could not serve two masters-- the Governor and the Legislature. Just as the governor must depend upon his own staff for advice on fiscal policy, so must the Legislature have its own staff. The Legislative comptroller is a position created to fill this role, but a staff has not been provided to supply the information upon which the incumbent of the position must base his advice. Instead he must rely upon the Governor's staff or the independent Auditor General.

The remedy for this situation is not to handicap or weaken the executive process by abolishing or dismembering the Department of Administration. Neither is the remedy to be found in creating a staff of technicians for the Joint Audit and Appropriation Investigation Committee or for the Appropriation Committees of the two houses of the Legislature. Instead, it is recommended that the Joint Audit and Appropriation Investigation Committee, as it is now constituted, be abolished and that its place be taken by the Legislative Audit Committee recommended later in this report. The staff assistance to the Legislature and its Appropriations Committee would be rendered by the staff of the

\* Further appraisal of the Committee and its activities will be found in Staff Report #10 on "Fiscal Policy Administration."

proposed Legislative Auditor General. This staff will have firsthand information on the operations of all the departments and agencies of the government and will be in a position to furnish Independent information and advice without depending on the Governor's staff agencies.

Although the creation of the Joint Audit and Appropriation Investigation Committee was a step forward in meeting the Legislature's need for its own staff assistance, the framework and the size of the staff\* provided have not been adequate to secure the desired results. It is anticipated that a staff of auditors, management analysts, and investigators under the supervision of an appointee of the Legislature will provide for a strengthened legislative process and check on the executive.

Arguments will be advanced that such staffing of the Legislature constitutes an interference with the Governor and the administration of the state government. There are two answers to this criticism. First, it is agreed that appropriations should be made by the Legislature. Logically, then, those who make the appropriations are entitled to adequate information on how appropriations are spent and on the validity of appropriation requests from other than those who spend or supervise the spending of these appropriations. Second, the Constitution (Article IX, Section 7) states: "The governor shall have power and it shall be his duty, except at such time as the legislature may be in session, to examine into the condition and administration of any public office and the acts of any public officer, elective or appointive..." By implication, these powers are the constitutional duty of the Legislature, when it is in session, since the Governor cannot exercise them at such times.

#### Conclusions and Recommendations

There are several alternative recommendations possible, but they do not all have equal merit.

First, the most easy, and perhaps the most simple, is to assign to the present elected Auditor General only the functions of conducting post audits of state agencies. This can be done entirely by statute. This also will require stripping the Auditor General of all except auditing duties and reassigning the other duties to existing or proposed state agencies that are part of the executive branch. Finally, it will re-

\* Some indication of the staff requirements may be gained by reference to the staff of the Joint Legislative Budget Committee in California. This staff consists of its director, three senior administrative analysts, four associate administrative analysts, one senior budget analyst, one principal systems accountant, one senior accountant, one assistant financial research technician, one senior research technician, five special research assistants, and one senate auditor-- Accountant-- a total of 19. This staff must review and make recommendations on the state budget. Its report on the proposed 1950-51 budget covers 592 printed pages. Post-audit reports by a Division of Audits form the basis for many of the studies made by the Legislative Auditor.

quire removing the Auditor General from all the administrative boards on which he serves, generally by statute. Critical and objective auditing is handicapped when the head of a department being audited is a bed-fellow of the auditor on a board or commission.

This proposal has the merit of being simple to understand and can be accomplished entirely by the legislature. It divorces post-auditing from pre-auditing (writing and signing warrants) and other administrative duties. It does not, however, furnish the Legislature with its own auditor and deprives it of an officer of its choice in whom it can have complete confidence. The legislative auditor must have the same relationship with the Legislature as the Governor's chief fiscal officer has to him. Such a plan contributes nothing to a strengthening of the Legislature through furnishing it adequate staff assistance to hold the executive branch accountable for its stewardship over appropriations. An elected post-auditor is not recommended.

Another alternative is the creation by statute of a legislative auditor with full post-auditing responsibilities and an adequate staff, leaving with the existing Auditor General all except the post-audit duties. This is not recommended because it will not assign the administrative duties now exercised by the elected Auditor General to the proper executive departments under the control of the Governor, because it will tend to create a duplication in work and a confusion in people's minds of the proper functions of the two officers, and because the post of legislative auditor will not be given the prestige and stability that it needs by simple legislative enactment. The post auditor is a key official in a constitutional government operating under a system of "checks and balances" and it is as important that he be a constitutional officer as it is that the Governor occupy a constitutional position.

The third alternative is a constitutional amendment providing that the Auditor General be selected by and responsible to the Legislature. Before outlining the recommendation in greater detail there are some questions concerning selection and tenure to be reviewed.

It is obvious that the Auditor General must be selected by the Legislature and not by the electors or the Governor, if he is to serve the Legislature and be an independent critic of the executive process. Because the Legislature is a body composed of two houses and 132 members, the method of selecting the Auditor General is made more difficult than if he were appointed by the Governor or elected by the people.

In the eleven states in which the post-auditor is appointed by the legislature, the method varies. In one state (Virginia) the auditor is elected by the general assembly; in three states (including New Jersey) he is selected by joint convention of the two houses; in two states by a joint legislative committee, followed, by Senatorial confirmation. Joint resolutions and appointment by the presiding officers, followed by legislative confirmation are also accepted procedures.

It seems most logical to have the auditor appointed by the committee to which he is to report and which must act on his recommendations. Appointment by a joint audit committee, subject to a majority approval of each house (voting separately) will result in selection of a responsible and presumably qualified individual. A simple majority vote of each house, voting separately, is recommended. It is felt that the check offered by the two houses will protect the position from removals for mere whim or caprice. If the incumbent lacks the confidence of a majority, he will not fulfill the role assigned to him. Removal should be by the same process, except for the requirement of a public hearing.

The desirable tenure is difficult to prescribe. The most extended term should not exceed 15 years and might be as low as 10 or 12 years. If the auditor is to be responsible to the Legislature, if he is to be sensitive to their wishes, and if he is to enjoy their confidence and have their faith in him, tenure might well be indefinite, but not to exceed 15 years.

On the basis of the criteria set forth earlier in this report and the discussions immediately preceding, the following constitutional and statutory changes or provisions are recommended for Michigan:

A. Constitutional:

1. The existing position of the elected Auditor General should be abolished. In his place there should be a Legislative Auditor General appointed by a joint Legislative Audit Committee with approval of a majority vote of each house of the Legislature, voting separately, who should serve at the pleasure of the Legislature for not longer than 15 years. He should be subject to removal by the same process as he was appointed, but only after public hearing.
2. It should be the duty of the Legislative Auditor General to conduct post-audits of all transactions or accounts of all agencies of the state, to report to the Audit Committee as required, and to conduct such investigations of the financial affairs, administration, and performance of any state agency as may appear necessary or as required. He should have no administrative or other duties beyond the operations of his own activity.

B. Statutory:

1. Provisions should be made for a report once each five years by an independent firm of certified public accountants for an audit of the state's financial position and the cash transactions of the departments and agencies; this report should include a review of the scope and program of the Legislative Auditor General's audits.

2. The frequency of audits should be determined by the Legislative Audit Committee, and the Legislative Auditor General granted access to the records of all departments and agencies.
3. Two audit divisions within the Legislative Auditor General's office should be established; one to conduct fiscal audits and one to conduct performance or operations audits. When required, these divisions should render staff assistance to the legislature and any of its committees, especially during legislative consideration of the budget. The requirements for the personnel to man these divisions obviously are different.
4. Provisions should be made for the budget of the Legislative Auditor General to remain as free from executive control as possible. The funds for the operation of the Auditor General should be part of the legislature's own budget and appropriation, although all staff personnel (except for the Auditor General, the deputy auditor general, and the heads of the two divisions, the contractual legal counsel, and special staff employed for not more than six months) should be included in the state's civil service system.
5. The Legislative Auditor General should have the authority to contract for legal services as they may be necessary.
6. Joint Legislative Audit Committee should be established, consisting of from five to seven members, with authority to meet both between and during legislative sessions and to request state departments and agencies to comply with the recommendations of the Legislative Auditor General. It should be required that the Legislative Auditor General be in attendance at all committee meetings unless specifically excluded by the Committee, and that, when invited, a representative of the Governor also be in attendance. The Committee must have the usual power of subpoena, etc. When a state department or agency fails to follow a recommendation of the Legislative Auditor General, approved by the Committee, it should be required that such failure be reported to both the Governor and the Legislature.
7. The existing statutes assigning duties to the Legislative Auditor General should be amended to transfer all responsibilities, except post-auditing, to the departments of the executive branch.

C. Other:

Certain recommendations pertaining to the existing Joint Audit and Appropriation Investigation Committee are listed on pages 22 and 23.

Part II

The Legislative Committee on  
Administrative Rules

The Legislative Committee on Administrative Rules

Knowledge of Required Conduct: An Individual Right

One of the individual rights asserted in this country is the right to know the standards of required conduct that are embodied in law. Citizens have insisted that the government recognize this right by clearly declaring the laws, rules, and regulations to be observed.

In other words, before an individual can be held responsible for violating a law, it must have been possible for him to have known of its 'existence. This section of the report on legislative operations will show the efforts of the Michigan state government to observe this elementary principle of good government. It will also stress the legislative character of the role of the administrative rules committee.

In the early days of the United States simple publication of a law was all that was necessary. These first laws were few in number, of simple content, and seldom changed. For the most part they dealt with protection of persons and property from gross attacks and provided court systems for the settlement of private controversies. Government undertook no detailed regulation of such matters as sanitation, limitations on the use of private property, safety standards, or working conditions.

Today there are hundreds of laws on thousands of complex subjects. Even additional laws, however, have proved inadequate and they are amplified through the device of administrative rules which have the effect of law but are in a much more flexible form.

The range of subjects and the extent to which they are regulated requires more detailed information than legislators can be expected to have. Obviously, it would be overburdening for the legislature to concern itself with such varied and involved subjects as a uniform system of accounts for electric utilities, specifications for fire prevention and protection of persons and property in public meeting places, installation and construction of tubular and spiral slide fire escapes, kerosene inspection, designation of communicable diseases, and the manufacture, importation, and sale of wine. The state has regulations covering all of these subjects and many more, but they are in the form of administrative rules, not statutory laws.

Not only would passing laws on all these subjects be undesirable from the standpoint of the legislative burden, but it also would be unwise to place detailed regulations in a fixed statutory form. Details must be changed to accommodate technological advances, which often are rapid. For example, standards of safety for elevators should not be frozen in statutes lest the statutory standard become a lawful minimum that is well below reasonably attainable safety standards. Agencies dealing with the subjects on a day -to-day basis are better acquainted with the intricacies and problems involved and hence are in a better position than the legislature to formulate regulations in the necessary detail.

From this discussion, it can be seen that simple publication of laws passed by the legislature is inadequate to make known the required standards of conduct.

#### Laws and Elected Representatives

In addition to knowledge of the standards required of individuals, participation by citizens in the process of making laws is necessary to responsible government. A fundamental belief of the American people is that those governed should have a voice in their government. This principle underlies the elected legislatures. And yet the complexity of subjects dealt with by today's legislatures challenges this principle of participation, in addition to challenging the individual's right to knowledge of the existing law.

These challenges have not been met by the common development of delegation of rule-making powers to administrative bodies. Briefly, this has been the pattern of delegation:

The legislature sets forth in a law the general program and indicates the purpose to be served and the policy and the limits to be observed by the department or agency charged with carrying out the provisions of the law. Within this framework the agency establishes regulations to cover in detail the various aspects of the subject. These administrative rules and regulations are as much a part of the required standard of conduct as the law on which they are based.

It should be noted that in the described process of making a rule there is no participation by the legislature. The citizen's control of rule-making through his elected representatives is present only insofar as the limits and guides stated in the law are recognized by the department or agency making the regulations.

#### Knowledge of Administrative Rules

Increasing concern over the vast body of rules that are not readily ascertainable, although they have the effect of law, has led to the establishment of formal requirements for filing and publication of the rules and regulations. Publication requirements, however, are not uniform. The federal government publishes the Federal Register daily, in which rules of federal agencies must appear before they can become effective. Some, on the other hand, provide for publication of administrative rules and regulations only at irregular intervals.

While daily publication on a state level does not seem feasible, issuance of rules usually cannot be made to coincide with the occasional publication of rules. One solution, used by California, Minnesota, New York, Wisconsin, and others, is to provide for the filing of new rules with the secretary of state to be published at a later date in a code, compilation, or a supplement thereto.

In Michigan approval of rules by the attorney general is required prior to their being filed with the secretary of state. The secretary of

state, in turn, is responsible for the publication of rules in the administrative code or in supplements.

Other states use still different procedures. Indiana requires the approval of not only the attorney general but also the governor before a rule can be filed with the secretary of state. In North Dakota the attorney general is required to approve each rule as to legality. Then the rule and the opinion of the attorney general are filed in the office of the attorney general and in the office of the clerk of the district court of each county. Ohio makes no provision for the central publication of rules but each executive agency is required to compile and publish its rules and regulations of genera application in book or pamphlet form.

The various provisions for filing and publication outlined above are intended to give a person subject to a rule, knowledge of the standards of future action required of him. These provisions are made in recognition of the individual's right to knowledge and are at least a partial answer to the present day challenge to that right.

#### Joint Legislative Committee on Administrative Rules

Unanswered for the most part is the other challenge, the challenge to the control of law-making by elected legislators. Though largely unrecognized as such, Michigan has in operation an answer to this second challenge in the joint legislative committee on administrative rules. The secretary of state is required to send copies of the rules filed with his office to both houses of the legislature. These rules are referred to the joint committee when the legislature is not in session. The joint committee has power to review and approve or suspend until the next session of the legislature the operation of any administrative rule, except for certain specified types.

#### Events Leading to Creation of the Committee

A problem common to many states led to creation of the administrative rules committee in Michigan; namely the disregard by an administrative agency of the expressed desires of the legislature. The following case is generally cited as an illustration of the problem in Michigan.

In 1943 changes in the child labor laws were proposed in the legislative session. The legislature after consideration rejected the proposed changes. Upon adjournment of the session, the labor department adopted the rejected changes as part of its administrative rules and regulations. This gave them the same force and effect they would have had had the legislature adopted instead of rejected the changes. The labor department effectively ignored and overruled the expressed intent of the legislature.

#### The 1945 Proposal to Control Administrative Rules

Legislators at the next session were determined to prevent recurrence of such administrative disregard of legislative desires. A tentative draft for a bill was written inserting additional sections in the

Michigan administrative code act.\* These sections embodied an idea entirely new to the code, which then provided simply for the filing and publication of administrative rules and regulations.

The draft provided that the specified administrative rules and regulations should be transmitted to both houses of the legislature at the opening of each regular session. Those rules promulgated since the final adjournment of the last regular session were to be referred to the respective committees of each house in the same manner as bills are referred. Rules promulgated during a regular session were to be similarly submitted. This draft provided that the rules and regulations were to be valid unless expressly disapproved by the legislature.

The sponsors of the bill decided they wanted the provision on validity changed to provide that rules and regulations submitted to the legislature should be invalid subject to express approval by that body. The bill, as passed, required affirmative action by concurrent resolutions of the legislature before a rule would be valid.

Governor Kelly vetoed the bill. He also employed his political strength to insure that the legislature would sustain the veto.

In his veto message of May 3, 1945, the Governor commented that governmental complexity is such that the legislature must delegate certain powers to the administrative agency. He did not specify what powers should be delegated. He also stated that he had no objection to administrative accountability but that this act was not a proper answer to that problem. Commenting that other states had decided against such committees, he gave four specific reasons why the bill should not be enacted:

- "1. Instead of an orderly method of legislative condemnation of improper rules and regulations, the act decrees automatic death for all rules which have not met with legislative approval at the time of the short adjournment.
2. The legislative burden of technical detail, already excessive, would be increased tremendously.
3. Legislative attention would be diverted from major issues of public policy.
4. A legislative review of administrative rules, as provided in this act, is doubtful from a constitutional viewpoint. The Attorney General of Michigan shares my opinion in this regard."

\* The code covers every rule or regulation and changes thereto "made by any state agency, except a rule regulation, or order which: (a) relates only to the organization or internal management of the state agency; (b) establishes or fixes rates or tariffs; (c) pertains to game and fish; or (d) relates to the use of public works, including streets and highways, under the jurisdiction of any state agency, when the effect of such order is indicated to the public by means of signs or signals."

Senator G. Elwood Bonine replied to the veto message as follows:

"What could be a more orderly method than that set up by the act? It provides that at each regular session all rules and regulations promulgated by the state agencies, not previously approved, shall be presented to the various committees of the legislature for approval,

"The act is flexible in that the state agencies will have up to two full years to use a rule before submitting it for approval. You as a legislator would have ample time to observe its effects on your constituents. If, after this period of observation, the state agency promulgating the rule is unable to convince the legislature that it should be approved, then surely that rule is unworthy and should be discarded.

'....It certainly is not unconstitutional for the legislature to restrict, limit or take away the right of promulgating rules and regulations, if it is not unconstitutional for the legislature to give that right to state agencies."

The legislature did not override the veto, but in the next session (1947) the present law was enacted.

Law Providing for the Legislative Committee on Administrative Rules  
Act 35, P. A. of 1947, provides for the referral of all rules and regulations subject to exceptions noted earlier, promulgated since the adjournment of the last regular session to the respective committees of each house. During a regular session all rules submitted to the secretary of state for publication in the administrative code are to be submitted by him to both houses of the legislature. Rules so submitted are referred to the appropriate committees. The act provides that the legislature by a concurrent resolution may abrogate a rule. If such action is taken, the department issuing the rule may not again promulgate that rule or another rule embodying similar provisions without submitting a proposal for the rule to the legislature for prior approval. This approval must be in the form of a concurrent resolution.

In addition to these features (which parallel the vetoed bill of two years before except for the change to the requirement of disapproval rather than approval) the act provides that the legislature may establish by concurrent resolution a joint committee composed of members of both houses to which rules might be referred while the legislature is not in session. This committee was granted power to consider and approve the operation of any rule or to suspend until the next regular session of the legislature the operation of any rule that it should find to be not in conformity with the statute under which it was promulgated. The committee was established in 1947 and has been in operation since the close of that session with the exception of the periods of the succeeding sessions. The committee is composed of three senators and four representatives; the change in the membership of the legislature from session to session has been reflected in the change of individuals serving on the committee.

#### Rules Subject to Committee Review

Thirty-eight Michigan administrative agencies have issued rules and regulations that are subject to the provisions of the administrative code act. One of the initial acts of the committee was to send a request to all agencies that they submit a set of their rules and regulations to the committee. This request broadened the scope of committee activity from the primary activity originally envisioned. Those who drafted the act expected a regularized submission of all new rules and regulations to the committee.

In deciding on activities the committee members, at the 1947 organizational meeting, decided to ask the attorney general what the intent of the legislature was as expressed in the act creating the committee. Their first question was: "What rules and regulations promulgated by any state agency can legally be considered by the committee appointed under section 8e of the act?"

In answer the attorney general wrote: "The relevant powers and duties of such a joint committee are confined to such rules heretofore or hereinafter authorized or promulgated as have not heretofore (theretofore) been considered by the legislature. Obviously, '13 includes all the administrative rules which have not been considered by the legislature as a law-making body."

Their second question sought to determine what constituted legislative consideration of a rule in accordance with the act. The attorney general held this to mean action either favorable or unfavorable by a concurrent resolution of the legislature.

The committee in one of its early sessions decided that new rulings of the various agencies would be studied as they were adopted but that no action would be taken on them. Efforts of the committee were to be concentrated on rules and regulations deemed not to be operating to the best interests of the people involved.

#### Committee Activity

In its early sessions the committee was deliberately cautious. The chairman selected a subject for the first hearing on which the committee could avoid trouble. This happened to be a ruling of the apiary division of the Department of Agriculture. Representatives of the division were called to the committee meeting and required to answer the complaints which the committee had received. They also were asked to discuss the ruling in general. This first hearing started a pattern of complaint and answer which has characterized the later meetings of the committee. It is reported that the issues in the early hearings often were difficult to isolate.

Gradually, but increasingly, the committee hearings took the form of adversary proceedings. In other words, the pattern of the hearings has come to resemble court procedure. It became a requirement that the complaining party submit his complaint in writing, identifying the action and the particular rule to which he objected. Upon receipt of the complaint, the committee sends a copy of the letter to the department or agency involved in the charge.

At first, the departments appeared at the early committee hearings prepared to reply informally to the complaint. A more detailed answer pattern evolved as the committee continued its operations. Instead of simply appearing and presenting their viewpoint orally, departments increasingly came to the hearings with prepared, written findings supporting the need for the rule under challenge.

During the first half year of the committee's existence the governor sent a legal representative to some of the meetings. The governor used the committee as a channel for processing complaints which he received in regard to rules of administrative agencies, particularly in cases of the licensing and examining boards. This intrusion into the activities of the committee perhaps was a result of the lack of gubernatorial power and control over administrative agencies.

The committee, in its hearings, has considered the fairness, reasonableness, arbitrariness, or injury caused to specific parties by the rule being criticized. Only occasionally has the committee's attention been turned to the procedure used in the adoption of the rule or regulation under consideration.

This concern with determination of the rights of a specific party or parties is not properly a legislative activity. Determination of the rights of a party subject to administrative regulation should be a function of the courts once it has gone beyond the area of an administrative agency's adjustment. The role which the committee has assumed unnecessarily disrupts the administrative process.

Twenty-seven formal meetings of the committee have been held since its organization in June of 1947. Since the legislature stayed in continuous session throughout 1950, all possibility of formal meetings of the committee during that year was eliminated.

The following agencies have been present for hearings: Department of Agriculture; the Board of Examiners of Barbers; the Basic Science Board; the Board of Chiropractic Examiners; the Crippled Children's Commission; the Board of Cosmetology; the Department of Health; the Department of Insurance; the Liquor Control Commission; the Board of Optometry; the Superintendent of Public Instruction; the Public Service Commission; the Board of Registration in Medicine; the Department of Revenue; the State Police; the Fire Protection Division of the State Police; the Board of Registration for Architects, Professional Engineers and Surveyors; and the Plumbing Board.

The committee has attempted to secure modification of some rules of which it disapproved without formally suspending their operation. The procedure has been to notify a department that a particular rule was in danger of being suspended and, at the same time, to indicate what it would consider a suitable alternative provision. In most instances the agency involved has submitted a draft of a new rule. Such new rulings generally are discussed with the committee prior to their formal adoption by the agency. In only four instances has the committee suspended a rule.

#### The Committee's 1949-50 Rules of Procedure

The rules of procedure for 1949-1950 were quite formal. The extent of the formalism of these rules can be judged from provisions such as the following: (a) ten copies of the written complaint must be filed with the committee secretary, (b) "The complaint shall be dated and state the name of the administrative agency against, which said complaint is directed.", (c) "The complaint shall specifically set forth the rule or rules, and/or policies promulgated by the agency and upon which the complaint is based.", (d) "The complaint shall specifically set forth the statute under which it is claimed that the rule, rules and/or policies do not conform.", (e) "The complaint shall set forth clearly the claims upon which the complainant relies.", (f) "The complaint shall set forth a request for a ruling by the committee.", (g) ten days are allowed in which the agency charged may prepare and file its answer (ten copies) with the committee secretary, (h) "The cause being at issue, the committee shall proceed as follows..."; and (i) Complainant may refute claims made in defense of the rule, rules and/or policies or may waive refutation."

#### Short-Comings of Committee Operations

Full realization of the potentialities of the committee has been blocked by the development of the contested case pattern of operations. Additional blocks exist in two provisions of the law authorizing establishment of the committee.

One is in the provision relating to the process of making and publishing administrative rules and regulations. The law specifies that rules and regulations must be approved by the attorney general before they are submitted to the committee.

The other is in the definition and limitation of rules and regulations that are covered by the administrative code act. The act excludes from its coverage rules relating to the organization or internal management of a state agency. This loophole enables an agency to evade review by the legislature and/or the committee on administrative rules of the extension and amplification of statutory provisions. In the case of the Liquor Control Commission, for example, many of their rules having application directly upon the licenses are embodied, not in formal rules, but in inter-office letters and communications purporting to relate only to internal management. This type of correspondence, under the present law, is not subject to: the attention of either the full legislature or the committee on administrative rules. It also should be noted that the absence of formal rules makes possible favoritism in treatment of parties subject to regulation by an agency.

The Public Service Commission is another agency that has not put all of its rules and operating guides in a form that can be reviewed by the committee; its rate orders are expressly excluded from coverage by the administrative code act. If review by the committee was all that was involved, exception might not be taken; but this absence of stated rules and policies directly affects those subject to regulation by the Public Service Commission.

Fairness demands that they be afforded knowledge of the general regulations and procedures of the agency. They have a right to know what is expected of them and how the Commission with which they must deal operates.

The attitude of the Public Service Commission is indicated by its reply to a legislative committee request for a set of the rules, regulations, and policies: "We.... feel that it is consistent with good administration to refrain from having in written form such matter which, by its very nature, is constantly subject to revision. Therefore, we wish to advise your committee that we are unable to comply with that portion of your resolution."

The Civil Service Commission, (which is not subject to the provisions of the administrative code because its powers stem not from legislation but from the civil service amendment to the constitution) is another agency that favors unstated interpretations and rules. The last revision of their printed rules and regulations for general circulation was published six years ago. There is reason to conclude that the Civil Service Commission does not want its rules known to state employees.

The practice of non-formulation of administrative rules is not limited to the few agencies just mentioned. Following is a comparison between the number of administrative rules adopted and the number of statutes enacted in recent years.

Year	Number of Public Acts	Administrative Code Publication		
		Number of Rules (New & Changes)	Number of Orders	** Total
1945	345	28	62	90
1946	33*	41	27	68
1947	360	48	11	59
1948	62*	30	—	30
1949	317	18	—	18
1950	35*	18	—	18

\* indicates special sessions

\*\* These orders for the most part were issued by the Department of Conservation for fish & game conservation and were to be effective for periods of one to five years.

This avenue of evasion by failure to formulate written rules should be closed. The committee should be given power to review communications, memoranda and the informal policy understandings of an agency to determine that rules properly subject to consideration by the full legislature or by the committee are put in written form and submitted as the law intends. The committee would need staff assistance to make such reviews; the recommended legislative auditor (see Part I ) would provide such staff aid.

The second short-coming mentioned involves the requirement of approval of rules by the attorney general. The administrative code act provides that a rule promulgated by an administrative agency shall, before becoming

effective, be submitted to the office of the attorney general for approval as to form and legality. After this approval has been given, the agency must confirm and formally adopt the rule which is then sent to the secretary of state for inclusion and publication in the administrative code. The secretary of state in turn sends the rules and regulations to the secretary of the senate and the clerk of the house for reference to members of the legislature and its committees. Thus, although the process of making a rule (a legislative activity) is not completed until the legislature has had an opportunity to consider it, the attorney general is required to pass on the form and legality of the rule before completion of legislative activity.

The attorney general should be a source of legal assistance and guidance, not a hurdle in the rule-making process. His office is one place in the state government where a central unit or division on rule-making might be located. Such a unit would work cooperatively with administrative agencies in the formulation of their rules. A central unit would facilitate the development of uniform principles for administrative rule-making throughout the state government. It should give attention to the consistent use of language in the rules, to the inclusion of illustrative and explanatory comments with the published rules, and to the development of general principles of rule-making and their application to the particular aspects of the separate agencies. Location in the attorney general's office for this unit is suggested to permit integration of legal assistance, guidance for the hearing process, and guidance in rule-making. The hearing process is involved in the rule-making process.\*

#### The Lawn Seed Ruling

In one instance the power of the attorney general to refuse approval of a rule resulted in a stalemate for the Department of Agriculture in the administration of its duties.

The Department of Agriculture established a rule pertaining to grades of lawn seed after holding a public hearing as required by law. Notice of the hearing was published in trade journals circulating within the state and was mailed to seed companies located in Michigan. After the rule had been put into effect the Scott Seed Company of Ohio protested that they had received no notice prior to the hearing and therefore had not been able to participate therein. They claimed that this, as well as the ruling itself, was detrimental to their interests. The protest was filed with the committee.

A hearing of representatives of the seed company and the Department of Agriculture was held by the committee. The committee members felt that the seed company should have been given a chance to present its views prior to the promulgation of the rule. The members indicated that it would be advisable for the Department to repeat the entire hearing and rule-making process insofar as this rule was concerned. The Department

\* (The matter of services and legal assistance to the administrative agencies in rule-making will be considered in the staff report covering legal counsel in the state government.)

in conference with the committee agreed to this course of action and, as a first step toward it, the committee suspended the recently promulgated seed rule.

The Department of Agriculture then proceeded to send the necessary notices for another hearing and to hold that hearing. Following this, the Department made a new rule containing provisions similar to those in the suspended rule. It should be recalled that the administrative rules committee had not objected to the content of the rule but only to the procedure preceding its adoption. The new rule was routinely submitted to the attorney general's office for approval. The attorney general refused approval. He based his refusal on the law that once a rule has been suspended by the committee the agency cannot promulgate that rule or a similar rule until the legislature has by affirmative action authorized the new rule.

The administrative code act, as noted earlier, requires the attorney general's approval of a rule prior to its submission to the secretary of state and to the legislatures. Hence, this refusal of the attorney general left the administrative rules committee without the new rule before it. The committee members said they could not act until the new rule was submitted to them. The attorney general said that he could not act until the legislature acted. The result was that the Department of Agriculture was unable to establish the wanted rules for seed grades.

This mix-up and others like it are unnecessary. A simple remedy would be to provide that approval by the attorney general as to the form and legality of a rule is not necessary to adoption of the rule. The attorney general's function in rule-making should consist of providing legal service and advice to the administrative agencies. It is worth noting that California administrative procedure legislation does not provide for any systematic review of administrative rules by the attorney general.

#### Function of the Committee

The committee, composed of members of both the senate and the house, provides direct legislative supervision of the final stages of law making, i.e., the promulgation of rules and regulations by a department or other administrative agency of the state government. Through the activity of this committee control of the making of laws can be fully re-established in the hands of the elected law makers.

Additionally the committee can require the departments to include explanatory information and examples with the published rules which will show clearly a rule's application to the public. When this method is fully developed, it will insure the presentation of information to which each individual is entitled in words, terms, and examples that are simple and easy to understand. Then each citizen who so desires can learn how the law applies to him.

#### Stating the Laws in Clear and Simple Language

The process of law making is one of reducing to definite written form the agreement of the community as to what standards and limitations are to apply in the future. Laws generally are stated in terms of categories and

classifications of actions and persons. In all but the simplest of subjects a law must describe only the general class or group rather than detailing each act, item, and situation covered. As a result, many laws-- such as those dealing with safety standards, agriculture, regulation of occupations, and the conduct of business-- do not indicate to an individual upon a normal reading their personal application.

Fairness on the part of the government requires that the laws be finally stated in terms and examples that are understandable to the public. Until that clear statement is made the obligations of the government to respect the individual's right of knowledge of standards required of him has not been met.

Serving as an extension of the legislature, the committee on administrative rules can supervise the final stage of lawmaking-- the promulgation of detailed rules and regulations by operating departments. The committee can require that rules be coupled with examples and explanation of their application. This procedure retains the advantages of both control of law-making by elected representatives and actual formulation of detailed rules and regulations by agencies of the government which have greater familiarity with the intricacies and problems of a particular subject than the legislature can hope to have.

The committee should see not only that such extensions to administrative rules are made but also, and this is of more importance, that the administrative rules and regulations are consistent with the expressed legislative intent of the law of which they are to be an extension.

#### The Duty of the Legislature

The legislature is charged with the duty of making laws for the state. In fulfilling that duty it should do no less than to see that the intent of legislation is followed in all stages of the process of law-making. The activity of the committee on administrative rules is in simple fulfillment of the legislature's duty, exercising supervision and control of the final stages of law-making.

#### Findings and Recommendations

1. The committee now hears "cases" of private parties aggrieved by administrative rules and/or their applications. This activity is essentially judicial.

It is recommended

- (a) that the committee cease to hear cases on this basis,
- (b) that the committee should restrict its activities to a current review of new rules to determine whether (1) they are within the legislative expectancy of the law they amplify, and (2) whether the language used makes the rule and its application clear, and
- (c) that the law authorizing the creation of the committee establish a limited period (perhaps 90 or 120 days) from the date of submission in which the committee might consider a rule.

The action of the committee then will be a review of the final formulation in the law-making process; the review will be on the point whether the new rule falls within the legislative expectancy of the law it amplifies.

2. The current session of the legislature has increased the power of the committee. By the change the suspension of a rule is made effective until the legislature acts by concurrent resolution to remove it. It is felt that this is an unnecessarily dangerous grant of power as it frees the committee from any regularized review of its actions by the legislature. It is recommended that the committee should have power to suspend a rule only until the adjournment of the next regular session of the legislature when it finds that the rule is not within the legislative expectancy. If the legislature is in session, the suspension should be reported when made and should be effective until adjournment.

The former provision (which is the one recommended) that a suspension was effective until the next session of the legislature had two advantages. First, any rule deemed not to conform to the law could be effectively and immediately suspended. The power of the committee was adequate for its task. Second, those actions of the committee which checked an administrative agency had to come before the full legislature for review. This review is a restraint on meddling by the committee in the administrative affairs of the executive agencies.

3. The law authorizing creation of the administrative rules committee prohibits its meeting while the legislature is in session. The experience of the committee and its members with the problems inherent in administrative rule-making should be available to the state at all times.

It is recommended that the law be changed to permit the committee to meet throughout the full year, whether or not the legislature is in session.

4. Many of the operating rules and regulations of administrative agencies are not kept in written form. Only 18 rules and regulations were promulgated, or changed, and published in supplements to the administrative code in each of the years 1949 and 1950. The number is small in comparison to either the number of rules issued in earlier years or the number of public acts passed in the corresponding years: 317 in 1949 and 35 in 1950 (special session).

It is recommended, if the proposal for a legislative auditor is adopted, that his staff, as part of their operational audits, review the written rules and regulations of each agency to see that they embody the standards employed by the agency. This will provide a means for discovering informal memoranda and office understandings being used as substitutes for written rules and regulations.

5. Approval by the attorney general as to form and legality of administrative rules is now required before they can become effective. This provision should be eliminated since it makes it possible for the attorney general to block the issuance of any rule the substance of which he may find objectionable; rather he should provide advice and guidance as to

form and legality in the rule-making process. When a difference which does not involve questions of legality exists between a department or agency and the attorney general, the agency, if it feels the attorney general's position should not be followed, should have the right to promulgate those rules it judges desirable.

It is recommended that the routine review of the attorney general occur after the legislative process is completed. The review as to legality should be limited to securing consistency in the use of language and to insuring that the rules and regulations are within the competency of the agency to make and are enforceable. The attorney general's office should not use its power of review to effect its views on the sufficiency and adequacy of the policy choices involved in the rules under review.

Part III

Legislative Operations

## Legislative Operations

A neat and precise compartmentalization of government in three great magistracies, the executive, the legislative, and the judicial, is useful for textbook purposes, but is wholly inadequate as being descriptive of the way government operates. To be sure, the legislature enacts laws, but the governor, with his authority to convene special sessions and to prescribe in his call what matters may be considered, moves out of the executive field and into the legislative. Through the exercise of the veto power, the governor further participates directly in the legislative process.

Nor is the legislature content only to enact laws. By means of special investigatory committees and agencies of its own creation, it seeks to maintain a check on the fidelity with which the laws are carried out by administrative departments. The legislature again crosses the line which separates the legislative and executive branches when it grants or with-holds confirmation of the governor's appointments to forty-five state departments, boards and commissions.

In the judicial field, the legislature retains important controls by virtue of its constitutional authority to impeach judges. Finally, the people themselves possess extensive legislative powers which they exercise through the initiation of constitutional amendments and statutory changes, and through approval by referendum vote of acts of the legislature. These are examples of the necessary and desirable inter-relations that exist among the three major divisions of government with a substantial residuum of power being retained by the people.

This report is concerned with increasing the effectiveness of the legislative branch functioning (1) as the state's lawmaking and policy-making body, and (2) as a check on the executive or administrative branch.

### Size of Legislature

Michigan, having a legislature composed of 32 senators and 100 representatives, a total of 132, elected biennially from districts, is one of 20 states in which the legislative bodies range in size from 100 to 158.

Senates range in membership from 17 in Nevada to 67 in Minnesota. Delaware, with 35 members, has the smallest lower house, while New Hampshire has the largest, with 399 members.

### Terms of Office

Michigan is among the fifteen states whose senators are elected for two-year terms, the remaining thirty-two states providing four-year terms. Nebraska elects its unicameral legislature for a two-year term. There are only four states, Arizona, Louisiana, Maryland, and Mississippi, in which members of the lower house are elected for four-year terms while in all the others the term is two years

### Salaries

There are twenty-one states which pay their legislators a fixed annual or biennial salary and these salaries range in amount from \$300 per year in Connecticut to an annual salary of \$5,000 in New York. The other states pay either on a per diem or per session basis. Of those which pay annual salaries, New York (\$5,000), California (\$3,600), Illinois (\$3,000), and New Jersey (\$3,000) pay more than Michigan's annual amount of \$2,400. The salary of the Wisconsin legislator is the same as that of Michigan. The legislator's rate of pay is \$3,000 per session in Pennsylvania and \$2,750 per session in Massachusetts.

### Occupations

An occupational classification of membership of Michigan's 1949 legislature shows the following distribution:

Senate <u>Occupation</u>	House of Representatives					
	<u>Number</u>	<u>Per Cent</u>	<u>Number</u>	<u>Per Cent</u>		
Attorneys	7	21.90	13	13		
Agriculture	4	12.50	15	15		
Insurance and real estate	2	6.25	12	12		
Labor, trades and crafts	-	-	8	8		
Manufacture and management	3	9.40	2	2		
Merchants, retailers, wholesalers	4	12.50	12	12		
Other professions	4	12.50	5	5		
Other public office	-	-	8	8		
Sales	2	6.25	3	3		
Union officers	-	-	6	6		
Retired	-	-	4	4		
Unclassified	<u>6</u>	<u>18.70</u>	<u>12</u>	<u>12</u>		
Total	<u>32</u>	<u>100.00</u>	<u>100</u>	<u>100</u>		

### Years of Service

In terms of service, it is apparent from the following tabulation that 60 per cent of the senate membership had, at the beginning of the 1949 session, less than six years of service while 71 per cent of the house of representatives was in this category.

Years of Service		Senate	House
Prior to 1949 Session			
0		12	39
1		-	2
2		4	16
4		4	14
6		3	11
8		5	3
10		-	5
12		1	3
13		-	1
14		2	4
16		1	-
20		-	1
24		-	1
Total		<u>32</u>	<u>100</u>

Michigan has the custom which is followed in many other states of rotating the selection of senators among the political subdivisions which make up a senatorial district. This custom has the advantage of creating an opportunity for a larger number to take their turn at serving in the senate and the further advantage of bringing new blood into the upper chamber. But offsetting and, in some cases, outweighing these advantages is the loss of seasoned, competent legislative leadership.\* There have been instances when the custom has been violated and there should be more of such instances where the choice lies between the selection of legislators of outstanding ability and those of lesser capabilities.

#### Presiding Officers and Legislative Personnel

The presiding officer of the senate is the lieutenant governor, elected by the voters of the state for a two-year term. It is the exception rather than the rule when a lieutenant governor is elected for more than one term. To preside efficiently over this legislative body requires a thorough knowledge of parliamentary procedure as well as a familiarity with the constitution, state law, and the rules of the senate.

The secretary of the senate, who is chosen by that body, is responsible for the preparation of the official records of the senate, the printing of bills and other legislative documents, and other such housekeeping details as preparation of payrolls, payment of mileage allowances, and supervision of clerks and stenographers. The competent handling of these technical and detailed operations requires an intimate knowledge which can only be obtained by experience. The present secretary first held this position in 19313 was replaced in 1933, but

\* In some countries, notably Great Britain, members of Parliament may represent any district in which they choose to stand for election. Legislative leaders remain in Parliament by selecting a district in which they can be elected, thus insuring continuity of leadership.

has served continuously since 1935 and, undoubtedly, has contributed substantially to a more efficient operation of the state's upper house. The secretary, on duty the year-round, receives an annual salary of \$8,250.

The presiding officer of the house of representatives is the speaker, who is elected by that body at the beginning of each regular session. There has been greater continuity in the office of speaker than in that of the lieutenant governor, the one preceding the present speaker having served for four consecutive terms while the incumbent is serving his second consecutive term. With trained and experienced speakers, there is not the same urgent need for a skilled parliamentarian to help in conducting the deliberations of the house as is the case in the senate. Nevertheless, a clerk of the house who is familiar with parliamentary procedure and the details of legislative routine is an important factor in expediting its operations. The present clerk of the house, elected by that body, is serving his third consecutive term. Maintaining an office on a full-time basis, the clerk, like the secretary of the senate, receives an annual salary of \$8,250.

Each house has its staff of employees. During the 1949 regular session, they numbered fifty in the senate including its full-time secretary. The number in the house was fifty-six including the clerk. This personnel included the law clerks for the senate and house judiciary committees, the statistician for the house ways and means committee, other committee clerics, stenographers, the sergeant-at-arms and his assistants, messengers and pages. The manner in which these employees are selected varies. Some are chosen by the senate or the house, others are appointed by the presiding officer. Those requiring special legislative skills, like the journal clerks, are selected by the secretary of the senate or the clerk of the house. A complete listing of the legislative employees for the 1949 regular session in each of the houses may be found in the appendix, Tables I and II.

Most of the legislative personnel is paid on a per diem basis and the rates range from \$7 for the pages to \$17 for the law clerks. By resolution adopted by the respective bodies, it is provided that the per diem compensation "shall be paid for seven days per week" beginning "when the respective employee reports for work and shall continue up to and including the day on which the legislature shall take the long adjournment prior to final adjournment." The secretary of the senate and the clerk of the house are empowered to continue in service those who may be required to complete the work of the session and to call back those who may be needed during extra sessions. Operating in accordance with the rule quoted above, all legislative employees receiving per diem were paid for 136 days during the 1949 session which began January 5 and recessed on May 20 even though the legislature was in session only 91 days. This means that stenographers, whose rate is \$11 per day, were paid \$1,496 while assistant sergeants-at-arms, with a per diem of \$9, received \$1,224. The relatively high rates received by legislative personnel employed on a per diem basis have been justified on the basis of the temporary nature of the work and what is

reported to be a high cost of living in the state's capital. Payment for a seven-day week is explained as a simple device by which to compensate employees for overtime work that is involved and to insure the availability of the staff on Saturdays and Sundays when, although the legislature is not in session, committees are at work.\*

Among the legislators interviewed, the opinion was that the clerical and stenographic personnel, on the whole, were competent even though selected on a patronage basis. It is the practice to retain the ablest ones as full-time employees, transferring them at the close of the session to the small permanent staffs of the secretary of the senate, the clerk of the house, and the legislative service bureau. By following this procedure there is always available a corps of legislative technicians who by training and experience are qualified for important committee assignments and for handling lawmaking details.

#### Volume of Legislation

Before proceeding to a further review of the operations of the legislature, some idea of the volume of work which confronts it may be gained by a summary of the number of bills which find their way into the legislative hopper. Omitting the seven special sessions held during the past five years, the score board for the three regular sessions looks like this:

	<u>1945</u>	<u>1947</u>	<u>1949</u>
Senate			
Bills introduced	362	398	341
Bills passed	159	161	120
House			
Bills introduced	443	547	547*
Bills passed	223	222	221*
Total			
Bills introduced	805	945	888*
Bills passed	382	383	341*
Bills becoming law			
Public Acts	345	360	317*
Local Acts	32	11	5

\* Includes one (1) initiatory petition

The legislative load as measured by the number of bills referred to standing committees varies greatly. A mere listing of the number of bills assigned to a committee overlooks the factor of the measure's complexity and also fails to take into account the fact that several bills may deal with the same subject matter. However, from the stand point of volume, there are six committees in each house which carry

\* See Appendix I (page ii) for additional information on legislative employees.

the bulk of the burden. During the 1949 regular session, one of the senate committees to which measures are referred was assigned seven bills, while all other committees were given thirteen or more. During the same session, there were fifteen house committees to which no bills were referred, while six others considered five measures or less. The distribution of bill assignments for the past three regular sessions and the average per session is shown on the following tabulation:

<u>SENATE</u>	1949	1947	1945	Total	Average
				Three Sessions	per Session
Judiciary	140	213	184	537	179
State Affairs	92	83	60	235	78
Municipalities	51	60	50	161	53
Finance and Appropriations	49	39	71	159	53
Taxation	48	52	42	142	47
Education	43	51	46	140	47
Conservation	32	40	34	106	35
Public Health and Social Aid	30	18	39	87	29
Elections	22	30	33	85	28
Labor	25	34	22	81	27
Highways	18	28	31	77	26
Agriculture	18	25	25	68	23
Banks and Corporations	15	25	19	59	20
Liquor Control	26	16	16	58	19
Insurance	17	20	15	52	17
Veteran & and Military Affairs	13	10	11	34	11
Public Utilities & Transportation	7	7	11	25	8
<u>HOUSE OF REPRESENTATIVES</u>				Total	Average
				Three Sessions	per Session
Judiciary	164	193	156	513	171
State Affairs	98	80	75	253	84
Ways and Means	66	80	75	221	77
Towns and Counties	51	47	83	181	60
Education	49	46	46	141	47
General Taxation	41	55	29	125	42
Conservation	24	31	28	83	28
Agriculture	29	24	23	76	25
Elections	19	29	18	66	22
Fish and Fisheries	19	24	11	54	18
Public Health	17	11	26	54	18
Liquor Control	19	21	11	51	17
Private Corporations	12	20	19	51	17
City Corporations	21	18	8	47	16

	<u>1949</u>	<u>1947</u>	<u>1945</u>	Total Three Sessions	Average per Session
Labor	14	21	9	44	15
Revision and Amendment of the Constitution	13	16	14	43	14
Roads and Bridges	17	15	9	41	14
Social Aid and Welfare	13	11	16	40	13
Military and Veterans Affairs	14	10	10	34	11
Insurance	0	18	12	30	10
Transportation	10	9	11	30	10
Metropolitan Affairs	7	11	3	21	7
Drainage	5	9	6	20	7
Public Safety	4	3	6	13	4
Public Utilities	9	3	0	12	4
Aeronautics	1	4	2	7	2
Religious & Benevolent Societies	3	0	0	3	1
Horticulture	0	1	1	2	1
Village Corporations	0	2	0	2	1
Revision & Amendment to the Statutes	1	0	0	1	0
State Capitol & Public Buildings	0	0	1	1	0
Aid to Handicapped	0	0	0	0	0
Apportionment	0	0	0	0	0
Educational Institutions	0	0	0	0	0
Federal Relations	0	0	0	0	0
Geological Survey	1	0	0	1	0
Juvenile Corrections	0	0	0	0	0
Local Taxation	0	0	0	0	0
Mental Hospitals	0	0	0	0	0
Michigan Veterans' Facility	0	0	0	0	0
Printing	0	0	0	0	0
Rules and Resolutions	-	-	-	-	-
State Library	0	0	0	0	0
State Prisons	0	0	0	0	0
Supplies and Expenditures	0	0	0	0	0
Tuberculosis Hospitals	0	0	0	0	0

The importance of the senate committees on finance and appropriations, judiciary, and state affairs is recognized by the senate's rule which prohibits a senator from being a member of more than one of the three committees, and further specifies that the ten members of the committee on finance and appropriations and the chairmen of the judiciary and state affairs committee may serve on only one other standing committee. None of the thirteen members of the house ways and means committee, which is responsible for handling the budget bills, has any other committee assignment. In the lower house, no member serves on more than five standing committees, and, in the upper house, no member serves on more than four.

Michigan does not go to the ridiculous extreme of having as many standing committees as there are members, thus enabling each member to hold a chairmanship for prestige purposes. However, except for such prestige as may be attached to membership on a committee having few or no measures referred to it, there is no reason for retaining the eighteen house committees which, during the past three regular sessions, were assigned an average of two bills or less. Of greater importance than discontinuing these committees, which neither add appreciably to the cost of legislative operations nor complicate the legislative machinery, is the need for improvements which will facilitate the work of the active standing committees.

One such improvement is a reduction in the number of these standing active committees. Efforts in this d:\_rccAlon have been made and have met with a measure of success in both houses. In 1945, there were 20 senate standing Committees and 69 in the house while, in 1949, there were 19 senate and 46 house committees. The most recent attempt to accomplish a further reduction and, at the same time, increase the efficiency of committee operations was proposed in the form of an amendment to Senate Rule 25 introduced during the latter part of the 1949 regular session. The amendment provided for four committee groups as follows:

1. Taxation, agriculture, conservation, elections and senate business;
2. Judiciary, labor, banking and insurance;
3. Finance, education, health, highways, and utilities;
4. State affairs, municipalities, liquor, and veterans' affairs.

Each of the four committee groups was to consist of eight senators, and there were to be eighteen committee chairmen, five in each of the first and third groups, and four in each of the second and fourth groups. It was contemplated that each group would meet as a unit and the chairmanship would rotate in accordance with the change of subject matter under consideration. The suggested amendment further included provision for regular scheduled meetings of the four committee groups at 9:00 a.m. each Tuesday. The proposal was not adopted and there is still some disagreement concerning certain of its details.. Among those interviewed, however, there was evidently a desire to reconsider the amendment and to secure, with modifications, its adoption.

The committee group arrangement has several important advantages. It would certainly conserve the time of the senators and would provide for each committee group strong legislative leadership, some of which is now wastefully dissipated through separate committees. The overlapping of committee assignments and the consideration of related subjects by different committees, both characteristic of the present committee structure, would be minimized if not eliminated. Furthermore, the functioning of the committee groups would afford an opportu-

nity for each of the eight members to broaden his interests as well as his knowledge of the problems with which the legislature has to deal. These are features which will contribute to the more effective operation of the upper chamber and, consequently, further enhance its prestige. It is, therefore, urgently recommended that the proposed committee reorganization, subject to such minor changes as may be desirable, be adopted.

It is recommended, with the same urgency, that a like plan, adapted to meet the differing requirements of the house of representatives, be developed for and be put into effect by that body. The need for maximum utilization of competent legislative leadership, for eliminating conflicts in committee meetings, and for avoiding overlapping -in committee assignments is as great in the lower house as in the upper.

#### Joint Committees

The rules under which the legislature functions make no provision for the operation of the standing committees in each house dealing with similar problems to meet and work together as joint committees. This does not mean, however, that such committees as the senate finance and appropriations committee and the house ways and means committee; the two state affairs committees and others do not meet jointly, consider important legislation in combination and hold hearings together. They do work together informally thus conserving their own time and that of department heads and interested citizens, eliminating much costly duplication of effort. Every possible encouragement should be given to joint committee operation. By such cooperation Michigan's bicameral legislature can achieve some of the important benefits which the advocates of the unicameral legislative body point out as being peculiar to a single lawmaking agency.

#### Public Hearings

To an observer who has been identified with a state legislature in which the rule is to hold public hearings on all bills, the absence of such a rule in Michigan seems singularly and unwisely neglectful of the public's interest in the legislative process. When interviewed, the chairmen of important committees pointed out that their committees functioned informally, with the doors being open to all interested citizens. In addition, it was not uncommon to invite the attendance of those most vitally affected by pending legislation and those who, from personal knowledge and experience, might be expected to make constructive suggestions.

One of the most serious handicaps to having any large number of people attend committee hearings is the lack of committee rooms sizeable enough to accommodate the public. Public hearings are held on major measures and when this procedure is followed either the senate or house chamber is used. A demand on the part of interested citizens and citizen groups for an opportunity to be heard by legislative committees could be met to a substantial degree by a regular scheduling of the place and time at which committees meet as was included in the suggested amendment changing the senate's committee structure referred to above. The Ohio senate provides such a schedule for its committee meetings.

Minutes are not kept of committee meetings but in the case of public hearings, a record is made and preserved by means of a wire recorder.

#### Legislative Congestion

The Michigan legislature, like the legislatures of other states, has the troublesome problem of a legislative jam near the close of the session. To help relieve this congestion, California adopted the "split" session plan. The legislature meets for a specified period, during which bills may be introduced; recessed for 30 days, giving the members an opportunity to sound out their constituents on proposed measures and to arrange committee hearing schedules; and then reconvenes to resume its work. In the second part of the split session a member may introduce not more than two bills and he may do that only with the permission of three-fourths of the membership. Other states fix a time limit within which bills may be introduced. Experience shows that human perversity in general is such that, without a substantial amount of forbearance and restraint, rules can be rendered inoperative. This generalization seems to hold true for legislators. It is, however, the thoughtful opinion of many of Michigan's legislative leaders that effective rules and procedures can be devised which will ameliorate if not solve the legislative log-jam problem. Appropriate action for dealing with this situation is recommended and, in addition to such action, vigorous and consistent support of the legislature's membership is urged.

#### Immediate Effect Provision

The constitution provides that no legislative act may become effective until ninety days after the close of the session at which it was passed except that the legislature may give immediate effect to acts making appropriations and acts immediately necessary for the preservation of the public peace, health or safety by a two-thirds vote of the members elected to each house." The purpose of this constitutional restriction was, according to a Supreme Court decision, to give the people time and opportunity to learn what changes were made in the law before these changes became operative. "Yet this century-old constitutional mandate is habitually disobeyed," the State Bar of Michigan charges in its 1947 study of the legislature. It points out that "in 1935, exactly two-thirds of all enactments and in 1937 sixty-three per cent were given immediate effect. Then, at the insistence of legislative leaders and the State Bar, more restraint was exhibited. The figure went down to thirty-four per cent in 1939 and thirty per cent in 1941. Now the trend is again upward. In 1943 the figure was fifty per cent. Of the 381 bills passed in 1945, 184 or forty-eight per cent were given immediate effect." Bringing these percentages up to date, it is gratifying to note that, in the 1947 regular session, forty per cent of the bills adopted were given immediate effect, dropping to thirty per cent in 1949. There still remains room for the exercise of that restraint recommended by the State Bar.

#### Legislative Service Bureau

Thirty-one states provide for the use of their legislators an agency in addition to the attorney general's office to assist them in drafting

legislation and to conduct research studies in fields falling within the purview of the legislature. Michigan is one of these states. The legislative service bureau, established in 1941 to replace the legislative reference and information department, is under the direction of an executive board consisting of the chairmen of the senate and house judiciary committees, the chairman of the committee on senate business, chairman of the house ways and means committee, secretary of the senate, clerk of the house of representatives, and the full-time director of the bureau. In addition, there is an advisory board which includes the membership of the executive board, the president and secretary of the judicial council of Michigan, and the dean of the University of Michigan's law school.

The annual salary of the director is \$8,150 and the three attorney members of the staff were receiving, as of January 1950, annual salaries of \$6,000, \$5,000, and \$3,480, respectively. The annual salary of the bill drafter is \$4,740 which is only a part of the total compensation, an additional amount of \$2,850 being paid for services rendered as legal counsel to the state police department.

In addition, there are three full-time members of the clerical staff who also assist in research work. During the past five complete fiscal years, the cost of the legislative service bureau has been as follows:

1944-45	\$22,365.24
1945-46	10,109.06
1946-47	31,823.57
1947-48	41,280.00
1948-49	59,240.90

From July 1, 1949 to April 30, 1950, the expenditures of the bureau totaled \$64,298.43 which included an unusual expense of \$12,212, most of which was incurred in connection with the binding of the 1948 Compiled Laws. The very substantial increase in the bureau's expenditures during the past three years is largely accounted for by additional staffing required to handle the compilation of the statutes and to afford technical assistance to the joint interim committee created to study and codify the public utility laws. The expenditures of the bureau, broken down into major categories, are shown on Table III of the appendix.

As a research agency, the legislative service bureau is charged with the duty of maintaining a legislative reference library and collecting pertinent information relative to legislation adopted in other states and by the federal government. Its bill drafting services encompass the preparation of bills at the request of the governor, department heads, and members of the legislature. The joint rules of the senate and house of representatives specify that "all bills introduced, substitute bills, and conference committee reports shall be approved as to form and section numbers by the legislative service bureau," a rule which, according to interviews, is meticulously observed. One other major function of the legislative service bureau remains to be noted, that of preparing and

presenting bills providing for the codification and clarification of the statutes and the elimination of obsolete material. At the time of this writing, the director of the bureau, with the assistance of the secretary of the senate and the clerk of the house:, is engaged in preparing the fifth volume of the 1948 Compiled Laws which includes the index. All are members of the compilation commission which began its work in 1941.

Designed to insure the non- or bipartisan operation of this important legislative agency, the law provides that the services of the bureau "shall be in a technical capacity only" and that the "staff shall neither oppose nor urge legislation." There are members of the legislature who state that the agency is understaffed and requires the addition of at least one skilled technician. The tendency in staffing legislative service bureaus is to recruit those whose training and background have been in the field of law. It is recommended that the executive board give serious consideration to the inclusion on the staff of one who by education and experience can bring to his work a broad knowledge of government as well as of economics and the other social sciences.

#### Committee Staffing

Although the legislative service bureau affords research assistance to as many standing senate and house committees as its resources permit, the efficient operation of the major committees could be measurably increased if more technical aid were made available to them. Increased committee efficiency would, in turn, be reflected in an improved legislative product. At present, special staff assistance is made available to the senate and house judiciary committees through the appointment of a law clerk for each, an obvious need in view of the volume as well as the complexity of the measures referred to these committees. The senate committee on finance and appropriations has the technical services of the legislative comptroller at its command, and the house ways and means committee is provided with the staff assistance of a statistician. The legislative comptroller, whose functions will be reviewed in a subsequent section of this report, is called upon by other standing committees for aid relative to fiscal matters. But such important committees as those dealing with state affairs and taxation are without staffs composed of technically qualified personnel. In the Congress, the need for full-time, skilled assistance has been accepted. With the insistent demand not only for more services, but also for more kinds of services, the need for equipping the state's important legislative committees with competent staff personnel becomes increasingly urgent. By adequate staffing, committee operations could be raised to a new level of performance, thus heightening the prestige of the legislature and the entire legislative process. In meeting this need, there will be economy with respect to the number and full utilization of such personnel if the practice of similar senate and house committees acting jointly is extended either informally or by the adoption of rules.

#### Interim Committees

Interim committees, those which function between sessions, perform significant and valuable services in two major areas with which the legislature is concerned. First, they serve as fact-finding agencies conducting

studies in specified fields, and so are in a position to furnish information essential to the formulation of legislation dealing with those fields. Second, interim committees, through their investigatory powers, are able to maintain a salutary check on the fidelity as well as the legality with which administrative departments and agencies carry out legislative policies as expressed in the laws. These are roles of such vital importance to the proper functioning of a state's legislative body that no effort should be spared to insure their maximum effectiveness.

During the term of the 1945 legislature, 14 interim committees were in operation, 26 during the next biennium, and 43 during the current biennium which began January 1949. Forty-three is an excessive number, an opinion shared by several members of the legislature. Such committees should deal with major problems and should not waste legislative time or the taxpayers' money, however small the amount, on inconsequential projects. Some of these committees are appointed jointly by the senate and the house of representatives, while others are the creation of one or the other chamber. In size, they range from thirteen, the membership of the joint legislative committee on reorganization of state government, to three-member senate or house committees. Expenditures which may be incurred by joint interim committees are limited by joint senate and house rules to \$1,000 "unless an additional amount is authorized in the resolution creating such committee." The house limits the expenditures of its interim committees to \$500 which may be exceeded only if an additional amount "is specifically authorized in the resolution creating such committee." The senate rules contain no limitation on the expenditures of senate interim committees.

Among the 29 interim committees created by the legislature during the 1949 regular session, the joint committee on reorganization has received appropriations totalling \$20,000; the joint committee on audit and appropriation was authorized to spend \$15,000 per annum; and five other committees were allotted amounts ranging from \$2,500 to \$3,500. Difficulty was encountered in obtaining detailed records of interim committee expenditures. Prior to 1949, an accurate distribution of expenses incurred by each committee could be secured only by an examination of the original vouchers. Since 1949, due largely to the increase in the number of committees, the financial clerks in the offices of the senate's secretary and the clerk of the house have maintained informal expenditure records. According to these records, interim committee expenditures during the current fiscal year up to June 20 show a total of nearly \$26,000, which does not include the salaries of the legislative comptroller (\$10,000) nor that of his staff assistant (\$3,600). To prevent expenditures exceeding the authorized amounts, formalized record keeping is recommended.

The magnitude of the jobs assigned to interim committees varies greatly. To the joint committees on state reorganization, audit and appropriations, and on administrative rules, to name only three, are assigned tasks of challenging proportions and of continuing importance. There are other committees whose assignments are of a temporary nature and limited in scope. Frequently, the less important interim committees do not file a report, but simply incorporate the results of their studies in proposed legislation.

In addition to holding the view that too many interim committees are created, some members of the legislature also point out that there is lacking adequate coordination of committee efforts, and that, as a consequence, the legislature and the people of the state which it represents fail to get the maximum return on the work, time, and money which have been invested in interim projects.

To provide the necessary coordination of the efforts of special committees and to furnish them with competent research assistance, legislative councils have been established in thirteen states. Michigan has had experience with such an agency, the 1939 legislature having repealed the 1933 act which established its legislative council. There is an understandable reluctance on the part of a legislature to re-create an agency which, after trial, one of its predecessors rejected.

This being the case, the attention of the committee on reorganization of state government is directed to the possibility of utilizing the legislative service bureau as a research and coordinating agency. No major changes in the present operation of the bureau would be required if this proposal were adopted. To all interim committees, the bill drafting facilities of the legislative service bureau are now available. Under the terms of the service bureau act, it is responsible for aiding and assisting legislators "by furnishing them with the fullest information upon all matters within the scope of the bureau" which is clearly a research function. With respect to research data, the act establishing the legislative service bureau vests in it the authority to maintain a legislative reference library including in it public documents, reports, memoranda, books, treatises, and other basic information "which may be of use in connection with the formulation of bills pending or likely to be pending." Further-more, the bureau's director; by law, is given "access to the law library and publications therein" and through the law library, he and his staff draw on the extensive informational resources of the state library. Thus the tools for making the legislative service bureau an effective research agency for interim committees are either already at hand or could easily be forged. The bureau's role as a coordinator of the interim committees' assignments would be a natural by-product of its research activities.

Relatively minor changes in the composition of the bureau's executive board and functions would be necessary to achieve the desired objective of coordinating and facilitating the work of the interim committees. To the present seven members of the executive board, there should be added representation from the minority party; and to the functions of the board should be added that of coordinating the work of the interim committees. The responsibility for preparing a legislative program need not be imposed upon the executive board. It is, however, conceivable that through the supervisory and staff services of the legislative service bureau, non-controversial and non-partisan elements of a constructive legislative pro-gram might emerge well in advance of a regular or special session. This would be a notable achievement productive of substantial savings in legislative time, energy, and money.

### Legislative Check on the Executive Branch

During the past 20 years there has been a much publicized trend, greatly accelerated in the war years, toward entrusting the executives of the states and the federal government and their administrative departments with greater powers covering a wider range of activities and services. This is the day of the strong executive. To those who have a pardonable distrust of the omniscience of public servants, many of whom become tainted by a corroding bureaucracy, the trend is frightening. Short of an about face on the part of the voting population who make and can enforce their demands for more governmental services, the only effective way to insure control over the executive branch is to provide the legislative branch with adequate instruments by which to exercise such control. Such devices exist in Michigan's governmental structure.

In some cases these devices-- these instruments of control-- are exclusively in the hands of Michigan's legislature. In other instances, legislative committees, whose function is to maintain a check on the executive, work cooperatively with the governor, an example of which is the operation of the emergency appropriations commission commonly referred to as the "little legislature." Consisting of the governor, lieutenant governor, speaker of the house, members of the senate committee, on finance and appropriations, and members of the house ways and means committee, it meets on the call of the governor, chairman of the commission. It has authority to release appropriations for emergency purposes and to make interdepartmental transfers. The commission may not make appropriations for any purposes which might have been anticipated by the legislature, or for any purpose that has been considered and denied: ')y. the legislature. The primary objective of this agency is to deal with major financial emergencies without resorting to the costly alternative of convening the legislature. In spite of efforts to abolish the commission, it has been continued.

Another control over the executive branch is the barrier erected by the legislature against the promulgation by any state agency of arbitrary and unreasonable rules and regulations affecting the rights of individuals, firms, or corporations. All such departmental rules and regulations, with a few specified exceptions, are subject to the review of the legislature and, if disapproved, are abrogated. Since rules may be promulgated between sessions, a joint interim committee composed of three members of the senate and four members of the house has been created to deal with them. The interim committee on administrative rules is discussed more fully in another section of this report. This committee has the power to consider and approve the operation of any rule and suspend, until the next regular session the operation of any such rule not in conformity with the statute under which it was promulgated. All rules considered by the interim committee are further controlled by the legislature, but in the case of suspension the determinations of the committee are final on matters of fact and are only reviewable as to law. It is inevitable that, with the growth in the number and the scope of the functions of state departments, there is a need for a large and reasonably flexible body of administrative rules and regulations. Many of these, by the authority vested in these administrative agencies, have the force of law. To prevent abuse of this authority and to afford a remedy when abuse occurs, it

is essential that the legislature reserve to itself the right to scrutinize and abrogate administrative rules and regulations.

There is no area in which an independent check by the legislative branch on the executive branch is more important than that involving the expenditure of public funds. Indeed, budgetary operations requiring the appropriation of funds by the legislature and their disbursement by state departments and agencies touch every phase of state government. The preparation of the budget is now generally recognized as being the function of the executive. The consideration and approval of the budget, the making of appropriations, is the responsibility of the legislature. The execution of the financial plan with all that it involves in the way of allotments, expenditure controls, financial record keeping and accounting again is the function of the executive branch. To discharge intelligently its responsibility for making appropriations, the legislature must have financial information upon which it can rely implicitly. The determination of whether the money which it appropriates is being spent for the specified purposes and whether it is being wisely expended requires competent and adequate staff facilities under the legislature's own jurisdiction.\*

It was to achieve these objectives that the 1949 legislature created the joint interim committee on audit and appropriation investigation consisting of the chairman and two members of the senate finance and appropriation committee and the chairman and two members of the house ways and means committee. The committee is empowered to employ a trained staff headed by a legislative comptroller who, in turn, may appoint such assistants as he deems necessary. An annual appropriation of \$15,000 is made to finance the work of the committee and both the committee and the legislative comptroller are given extensive powers with which to carry out the committee's functions. In operation a little more than a year, the committee has proven to be an important instrumentality for securing financial information independently, for appraising budgetary requests critically and maintaining a check on the expenditure of funds. Experience has also shown that the committee with its limited staff has shortcomings. What these are and how they are to be remedied are dealt with in another report.

#### Annual Sessions

Not since 1940 has a year passed without the legislature holding at least one session. In fact, in addition to the five regular sessions held during this decennial period, there have been eleven special sessions including the one which recently recessed to August 15, 1950. This is a situation not peculiar to Michigan; and, after noting the number of extra sessions held by legislatures throughout the country, A. E. Buck, in Modernizing Our State Legislatures (1936), declares, "In the face of these facts, the proposal for annual sessions of unlimited length, with members' compensation fixed on an annual rather than a per diem basis, would seem justified for all states." Michigan has, by constitutional amendment, provided an annual salary for the members of the legislature. The obvious next step is to provide similarly for annual sessions.

\* See Staff Report No. 10, "Fiscal Policy Administration" by A. E. Buck, pp. 14-17.

Immediately the question arises whether restrictions as to the length of the sessions held in the even-numbered years or the subject matters to be considered should be imposed. The report of Connecticut's commission on state government organization observes that "we are past the comfortable stage when the legislative business of the state can be disposed of in a few weeks each biennium," an observation which is equally true of Michigan. It is recommended, therefore, that no limitations or restrictions be placed on the proposed annual sessions.

Possible Economies in Legislative Operations

The cost of Michigan's legislative branch for five completed fiscal years and up to April 30, 1950, according to the records maintained by the department of administration, is as follows:

<u>Year</u>	<u>Senate</u>	<u>House of Representatives</u>	<u>Total</u>
1944-45	\$134,001.76	\$220,257.40	\$354,259.16
1945-46	83,124.52	159,784.32	242,908.84
1946-47	177,520.79	273,034.68	450,555.47
1947-48	119,579.92	223,254.79	342,834.71
1948-49	280,912.35	438,151.73	719,064.08
1949 to April 30, 1950	158,237.67	340,474.13	498,711.80

The full-time staffs of the senate and house have been on the alert to effect economies in the not inconsiderable cost of operating these legislative bodies. It is claimed that by eliminating the repetitive printing of the long title of bills at each of the more than a dozen stages through which measures pass on their way to enactment and the use of the long title only upon introduction and final passage has resulted in a saving of printing costs alone of between \$15,000 and \$20,000 for each regular session. There are, doubtless, other economies which could be made and no effort should be spared to bring them about wherever possible.

It is impossible to calculate the savings in both time and money which have resulted from the installation of the electrical voting equipment in the house. According to the estimate of the clerk of the house of representatives; the consumption of 50 hours formerly spent in calling rolls during regular sessions is eliminated by the use of the electrical device.

The largest single item in the legislature's expenditures, as will be noted in the breakdown shown in Appendix IV, is for personal services. It is not recommended that the salaries of the legislators be reduced. Fewer legislators, a reduction in the size of each house or the adoption of a smaller unicameral legislature, affords the only prospect of making any savings in the amount paid to members. Neither alternative has won significant support in either chamber.

In conclusion it may be observed that state reorganization programs in past decades have consistently emphasized the need for "streamlining" the admin-

istration of government. Less attention has been given to strengthening the legislative branch, enabling it to function with dignity, competence, and economy as the state's policy-determining, lawmaking body; as a democratic instrument for safeguarding the people against unwarranted encroachment by expanding administrative agencies on the area staked off and marked, "inalienable rights." In the foregoing report, those features which contribute to the strength of Michigan's legislature have been pointed out. Its weaknesses have been identified and recommendations made for correcting them. The legislators themselves must accept a major share of the responsibility for the adoption and implementation of these recommendations. But this responsibility is shared by the voters whom they represent. For those weaknesses which now appear and for those which may develop in the future, the only sure remedy lies in an awakened consciousness of the vital role which the state's legislative branch must play if those liberties, those freedoms, which the federal and state constitutions guarantee to all citizens, are to be preserved.

#### SUMMARY OF RECOMMENDATIONS

1. Reduction in the number of house committees and adoption of the principles incorporated in the senate's four-committee group proposal introduced in the 1949 regular session.
2. Extension of the practice of having similar senate and house committees meet jointly.
3. Regular scheduling of committee hearings to permit greater citizen participation.
4. Adoption and enforcement of rules to prevent the legislative log jam which occurs near the end of the regular sessions.
5. Restraint in invoking, the "immediate effect" clause of the constitution.
6. Staffing of important standing committees with qualified technicians.
7. Increased staff facilities for the legislative service bureau.
8. Additions to the legislative service bureau's executive board and expansion of its functions to enable the bureau to coordinate and assist in the work of interim committees.
9. Improved financial record keeping for interim committees.
10. Expansion of facilities by which the legislature secures fiscal data for use in appraising budgetary requests and in maintaining an independent check on the execution of the budget.
11. Adoption of annual sessions unrestricted as to length and subject matter to be considered.
12. Continued effort to effect every possible economy in the operation of the legislature.

MICHIGAN JOINT LEGISLATIVE COMMITTEE ON  
REORGANIZATION OF STATE GOVERNMENT

To: Robert M. Montgomery, Chairman

From: Loren B. Miller, Director

Subject: Supplementary Comments on Part III (Legislative Operations)  
of the Staff Report on "The Legislature."

1. The Staff Report urges the adoption of a group committee structure for the senate. This recommendation is concurred in. While the report offers one suggestion that has been advanced for such an arrangement, there are others that are feasible. One plan that has been advanced is worthy of serious consideration by the Committee and members of the senate. This plan would reorganize the present 18 senate committees into four groups as follows:

Group 1. Finance and Appropriations, Taxation, and Agriculture.

Group 2. Judiciary, Banks and Corporations, and Insurance.

Group 3. State Affairs Liquor Control, Elections, and Conservation.

Group 4. Education, Public Health and Social Aid, Highways, Labor, Municipalities, Public Utilities and Transportation, Veterans' and Military Affairs, and Senate Business and Rules.

Under this proposal it should be stressed that there would be no change in the number of committee chairmanships from those existing at the present time. There would still be 18 committee chairmen-- three for groups 1 and 2, four for group 3, and eight for group 4. Each group should consist of eight members and no member should be assigned to more than one group. Those serving on a committee group would consider all matters that are properly referred to that group-- e.g., in group 1, the members would consider appropriation matters, taxation measures and legislation affecting agriculture. One member would serve as chairman when it considered taxation, another for appropriations, etc.

The committee group structure has several advantages over the present committee organization. Some are cited in the report. Others include: greater equalization of the legislative workload; elimination of conflicts in the scheduling of committee meetings, thereby enabling a member to attend all sessions of his committee; utilizing more fully the services of the senators; and relieving the shortage of committee rooms. (At present, it appears that there is a shortage of meeting rooms and that committees find it difficult to find space to conduct deliberations.)

2. The Staff Report also urges a reduction in the standing committees in the house by adherence to a plan similar to that proposed for: the Senate. There is a less ambitious proposal for the committee structure of the house that will increase the efficiency of that body, as well as utilize more fully the energies of members who may have assignments to committees which consider few or no measures. It follows:

1. Judiciary
2. State Affairs
3. Ways and Means
4. Local Government (including the present committees for towns and counties, city corporations, metropolitan affairs, and village corporations)
5. Education (including the committee on education, educational institutions)
6. Taxation (including the present committees on taxation and local taxation)
7. Conservation (including the present committees on conservation, drainage, geological survey, fish and fisheries)
8. Agriculture (including the committees on agriculture and horticulture)
9. Elections
10. Public Health and Welfare (including the present committees on public health, social aid and welfare, mental hospitals, tuberculosis hospitals, aid to handicapped)
11. Liquor Control
12. Private Corporations
13. Labor
14. Roads and Bridges
15. Military and Veterans' Affairs (including the present committees on military and veterans' affairs and Michigan Veterans' Facility)
16. Insurance
17. Transportation and Public Utilities (including the present committees on transportation and public utilities)
18. Corrections and Public Safety (including the present committees on public safety, corrections, aeronautics, juvenile corrections, and state prisons)
19. House Business and Rules (including the present committees on printing, rules and resolutions, supplies and expenditures)
20. Federal Relations

The following standing committees could be abolished:

1. Revision and Amendment of the Statutes
2. Religious and Benevolent Societies
3. State Capitol and Public Buildings
4. Apportionment (this committee is active in only one or two years during a decade. Its functions-- i.e., establishing representative districts-- could be performed by the creation of a temporary special committee after the publication of the decennial census.)

5. Revision and Amendment of the Constitution (this committee could be abolished and all proposed constitutional amendments referred to the standing committee having jurisdiction over the subject contained in the proposed amendment.

This suggestion would reduce the number of standing committees from 46 to 20 by the elimination of 5 committees and the consolidation of the remainder. By so doing, it is recognized that the number of committee assignments per representative will be reduced, but it will permit legislators to become specialists by acquiring a more thorough knowledge of those matters in which they might have a particular interest.

The reduction in the number of committees also reduces the possibility of conflict in scheduling committee meetings. A legislator having fewer committee assignments will be able to attend all meetings of those committees of which he is a member (provided care is exercised in the scheduling of such meetings) and presumably will make a greater contribution to the effectiveness of the legislative body.

With one exception (Corrections and Public Safety) the subject matter of the suggested committees would (or could be made) equivalent to the jurisdiction of the existing senate committees. The Heller Report\* and a report of the Council of State Governments\*\* cite the following as advantages for equivalent house and senate committees: (1) improve possibilities for coordinating the work of the two houses; (2) facilitate joint hearings; (3) establish a basis for joint research; and (4) simplify relations between the legislature and the executive branch.

3. The recommendation that the practice of similar senate and house committees meeting jointly be extended is approved. However, these should be confined largely to public hearings. This is not intended to exclude the use of joint committee meetings for other than public hearings. Joint public hearings are beneficial from the standpoint of both the legislator and the person or persons interested in a particular piece of legislation. It conserves the time and cost to those appearing before the committee and to the committee members themselves.

The establishment of formalized rules for joint public hearings covering all types of legislative situations would be most difficult. Such rules, however) could provide that legislation proposing a change or creation of basic public policy should be subjected to a joint public hearing. Also, when, in the opinion of the chairman or a majority of the members of a committee to which any bill has been referred, a joint public hearing is desirable, the equivalent committee of the other house could be asked to participate in the hearing. Any rule so developed would have to be flexible and would, to a large extent, depend upon close cooperation between the committees of the two houses.

\* Strengthening the Congress by Robert Heller, Planning Pamphlets, No. 39, National Planning Association, January, 1945.

\*\* Our State Legislatures, Council of State Governments, Revised Edition.

Joint committee hearings would no doubt be expedited by more extensive use of companion bills to expedite legislative business. Once a bill is in committee and a joint hearing is held, each committee could carry on its deliberation separately and report its decision to its respective house. The use of companion bills and joint hearings would not weaken the checks and balances of the bicameral system.

Joint committee meetings are desirable and feasible provided that such meetings are for discussion and that no action is taken that will bind either or both of the committees. To do so would destroy the checks and balances that are held as an 'advantage of the bicameral system.

4. The work of the legislative service bureau as it is now organized relates largely to the legal aspect of legislative activity, i.e., drafting bills, avoiding conflict between pending bills and laws or other pending bills, classifying and printing laws, and examining statutes, common law, etc., to discover defects. The statute does not provide for research activity or other types of services that would be of assistance to legislators in determining policy for the state or reviewing the effectiveness and administration of already determined policies.

Michigan has, in the past, attempted to secure needed information through a legislative council. This agency was assigned the tasks of preparing a legislative program, accumulating reference material, examining the administration and proposing changes, etc. The council was created in 1933, but the statute was repealed in 1939. Numerous reasons were cited for its failure.\* Among these are:

- (1) "The statute creating the council was weak in that the membership was appointed by the speaker acting for the house and the lieutenant governor for the senate. Thus, the council was open to the charge that it was a personal plaything of these two officials who could claim permanent seats on the council.
- (2) "No liaison was provided between the executive and the legislature; a faint possibility exists for the truth of the construction of this defect as being intended to cut the Michigan executive out of the picture, and thus to use the council as an anti-gubernatorial instrument.
- (3) "The lack of adequate funds.
- (4) "The failure to provide a continuing research agency.
- (5) "The requirement that the council might function only between sessions of the legislature.

\* Shull, Chas. W., National Municipal Review, July, 1939, pp. 470-1.

(6) "A ruling of the attorney-general during the Murphy administration that the legislative branches could not set up investigating committees to operate between sessions.

(7) "Gubernatorial opposition to the council."

Perhaps another criticism that could be leveled at the Michigan council is the fact that it was assigned the job of preparing a legislative program. This in itself might expedite the business of the legislature, but places too much power or authority in one small group of legislators. In view of Michigan's past history with a legislative council, it is doubtful if such a legislative aid can be recreated; even though experience in other states has proven its value.

5. A device used in Michigan to secure information concerning the carrying out of legislative policy and information relative to prospective policy is that of interim committees. Such a device serves a useful purpose in that needed information is collected and legislators are able to become more familiar with state activities.

In studying the activities of interim committees, it was difficult to determine if committee meetings were held, if expenditures were made; if reports were made; or if legislation was introduced. It is apparent, there-fore, that there is a need for coordination and record keeping for interim committee activities. The Staff Report's recommendation that such be done by the legislative service bureau is concurred in.

6. It is apparent from the use of interim committees that the legislature feels the need for research efforts. Consequently, it is recommended that the functions of the legislative Service bureau be enlarged to include re-search in fields other than legal. The staff of the bureau should include persons trained in the social studies and research methods, who could gather the necessary factual information either at the request of an interim committee or at the request of the legislature as expressed in a resolution. The board responsible for the operations of the bureau would have to determine whether time and staff are available to undertake the requested studies.

If the position of Legislative auditor general is created, as recommended in one section of this report, much information would be available, relative to the operations of state agencies through the. "operation audits." The staff of the legislative auditor general could be of great assistance to standing or special committees of the legislature concerning the adequacy, inadequacy or efficiency of present state programs and activities. The service bureau staff, on the other hand, could compile factual data relative to contemplated or new programs and otherwise service members of the legislature.

7. Appropriations for senate and house operations are made in one lump sum. At the same time, appropriations for other state agencies are made in detail, i.e., a maximum amount that can be expended for personal services (wages and salaries), materials and supplies, equipment, etc.

There appears to be no reason why the principles, that are applied to state agencies cannot be applied to the legislature. Although legislative costs possibly cannot be forecast with exact accuracy, nevertheless sufficient information is available as to prospective costs. Consequently, it is recommended that appropriations for legislative operations be made in detail, so that adequate budgetary controls can be exercised. The responsibility for detailed budget preparations should be placed in the secretary of the senate and the clerk of the house.

## APPENDIX I

SENATE EMPLOYEES  
1949 Regular Session

<u>Title</u>	<u>Number</u>	<u>Salary</u>	<u>Method of Appointment</u>
Secretary	1	\$687.50 per mo.*	Elected by Senate
Assistant Secretary and Financial Clerk	1	450.00 per mo.*	Appointed by Senate
Sergeant at Arms	1	11.00 per day	Elected by Senate
Law Clerk	1	17.00 per day	Nominated by Judiciary Committee; Appointed by Senate
Journal Clerk	1	13.00 per day	Appointed by Sec.
Assistant Journal Clerk	1	12.00 per day	Appointed by Sec.
Bill Clerk	1	13.00 per day	Appointed by Sec.
Assistant Bill Clerk	1	12.00 per day	Appointed by Sec.
Engrossing and Enrolling Clerk	1	13.00 per day	Appointed by Sec.
Assistant Engrossing and Enrolling Clerk	1	12.00 per day	Appointed by Sec.
Stenographer to Lieutenant Gov.	1	400.00 per mo.*	Appointed by Lt.Gov.
Stenographer to Secretary	1	11.00 per day	Appointed by Sec.
Stenographers	3	11.00 per day	Appointed by Senate
Clerks	10	12.00 per day	Appointed by Senate
Legislative Technician	1	416.66 per mo.*	Appointed by Concurrent Resolution (Senate & House)
Assistants to Sergeant at Arms	6	9.00 per day	Appointed by Senate
Sergeant at Arms Messenger	1	9.00 per day	Appointed by Senate
Chief, Document Room & Janitors	1	300.00 per mo.*	Appointed by Senate
Keepers of the Document Room	2	9.00 per day	Appointed by Senate
Postmaster	1	10.00 per day	Appointed by Senate
Mailing Clerk	1	9.00 per day	Appointed by Senate
Assistant Janitors	4	9.00 per day	Appointed by Senate
Keepers of the Cloak Room	2	9.00 per day	Appointed by Senate
Matron	1	9.00 per day	Appointed by Senate
Pages	5	7.00 per day	Appointed by Senate

Total Number of Senate Employees- 50

\* Full-time employees. Employees are appointed by Senate by means of resolution.

Resolution #4 (p. 60 Senate Journal) provides: Per diem compensation of employees shall be paid for seven days per week, shall begin when the respective employee reports for work and shall continue up to and including the day on which the legislature shall take the long adjournment prior to

APPENDIX I (continued)

final adjournment, unless his services shall be sooner terminated: Provided, That the Secretary may continue in service such of the employees on the Secretary's staff as may be required to complete the work of the session for such time as their services may be necessary.

Each officer and employee shall also be entitled to and shall receive as mileage 10 cents per mile and no more for one round trip to each regular or special session of the legislature by the usually traveled route.

SENATE EMPLOYEES  
1951 Regular Session

Note: Since the Staff Report was written, the compensation of senate employees has been increased. The house has retained the 1949 monthly and per diem rates for its employees. The 1951 senate compensation schedule follows:

<u>Title</u>	<u>Salary</u>
Secretary	\$750.00 per month*
Assistant Secretary and Financial Clerk	490.00 per month*
Sergeant at Arms	12.00 per day
Law Clerk	19.00 per day
Journal Clerk	14.50 per day
Assistant Journal Clerk	13.00 per day
Bill Clerk	14.50 per day
Assistant Bill Clerk	13.00 per day
Engrossing and Enrolling Clerk	14.50 per day
Assistant Engrossing and Enrolling Clerk	13.00 per day
Stenographer to Lieutenant Governor	416.66 per month*
Stenographer to Secretary	13.00 per day
Stenographers	12.00 per day
Clerks	13.00 per day
Legislative Technician	450.00 per month*
Assistant to Sergeant at Arms	10.00 per day
Chief, Document Room & Janitors	330.00 per month*
Keepers of the Document Room	10.00 per day
Postmaster	11.00 per day
Mailing Clerk	10.00 per day
Assistant Janitors	10.00 per day
Keepers of the Cloak Room	10.00 per day
Pages	8.00 per day
Appropriations Accountant Clerk	19.00 per day

\* Full-time employees.

Source: Resolution #20 (p. 99 Senate Journal).

## APPENDIX II

HOUSE OF REPRESENTATIVES EMPLOYEES  
1949 Regular Session

<u>Title</u>	<u>Number</u>	<u>Salary</u>	<u>Method of Appointment</u>
Clerk	1	\$687.50 per mo.*	Elected by House
Journal Clerk	1	13.00 per day	Appointed by Clerk
Bill Clerk	1	13.00 per day	Appointed by Clerk
Enrolling Clerk	1	400.00 per mo.*	Appointed by Clerk
Sergeant at Arms	1	10.00 per day	Elected by House
Legislative Postmasters	2	10.00 per day	Elected by House
Journal Clerk's Assistant	1	12.00 per day	Appointed by Clerk
Bill Clerk's Assistant	1	12.00 per day	Appointed by Clerk
Bill Clerk's Stenographer	1	11.00 per day	Appointed by Clerk
Enrolling Clerk's Assistant	1	12.00 per day	Appointed by Clerk
Index Clerk	1	11.00 per day	Appointed by Clerk
Speaker's Secretary	1	400.00 per mo.*	Appointed by Speaker
Clerk's Secretary	1	11.00 per day	Appointed by Clerk
Reading Clerk	1	50.00 per week	Appointed by Clerk
		(Session Hrs. only)	
Statistician (Ways and Means)	1	17.00 per day	Appointed by Speaker
Law Clerk (Judiciary Comm.)	1	17.00 per day	Appointed by Speaker
Stenographers	6	11.00 per day	Appointed by Speaker
Committee Clerks	6	12.00 per day	Appointed by Speaker
Chief Document Room Keeper	1	316.66 per mo.*	Appointed by Speaker
Document Room Worker	1	9.00 per day	Appointed by Speaker
Mailing Room Clerks	2	9.00 per day	Appointed by Clerk
Document Room Messenger	1	9.00 per day	Appointed by Clerk
Assistant Sergeants at Arms	5	9.00 per day	Appointed by Speaker
Janitors	5	9.00 per day	Appointed by Speaker
Gallery Janitress	1	9.00 per day	Appointed by Speaker
Cloak Room Keepers	2	9.00 per day	Appointed by Speaker
Speaker's Messenger	1	7.00 per day	Appointed by Speaker
Clerk's Messenger	1	8.00 per day	Appointed by Clerk
Press Room Messenger	1	9.00 per day	Appointed by Speaker
Pages	5	7.00 per day	Appointed by Speaker
Electrician	1	400.00 per mo.*	Appointed by Concurrent Resolution (Senate & House)

Total Number of House Employees-56

\* Full Time Employees

Per diem compensation of employees shall be paid for seven days per week, shall begin when the respective employee reports for work, and shall continue up to and including the day on which the legislature shall take the long adjournment prior to final adjournment, unless his services shall be sooner terminated: Provided, that the Speaker and Clerk may continue in

service such of the employees on the Clerk's staff as may be required to complete the work of the session for such time as their services may be necessary.

Each officer and employee shall also be entitled to and shall receive as mileage 10 cents per mile and no more for 1 round trip to each regular or special session of the legislature by the usually traveled route.

The resolution was referred to the Committee on Rules and Resolutions.

## APPENDIX III

## EXPENDITURES, LEGISLATIVE SERVICE BUREAU

(Source of Data: Records and Accounting Division,  
Department of Administration)

	<u>1949 to Apr. 30, 1950</u>	<u>1948-49</u>	<u>1947-48</u>	<u>1946-47</u>	<u>1945-46</u>	<u>1944-45</u>
Personal services	\$51,620.76	\$57,159.51	\$41,008.10	\$31,073.33	\$18,740.50	\$18,731.53
Contractual services	12,521.92	152.22	151.45	15.43	62.00	3,282.28
Supplies, materials	155.75	850.59	120.45	143.74	306.56	342.58
Equipment	-	<u>1,078.58</u>	-	<u>591.07</u>	-	<u>8.85</u>
Total	<u>\$64,298.43</u>	<u>\$59,240.90</u>	<u>\$41,280.00</u>	<u>\$31,823.57</u>	<u>\$19,109.06</u>	<u>\$22,365.24</u>

## APPENDIX IV

## EXPENDITURES, MICHIGAN STATE LEGISLATURE

(Source of data: Records and Accounting Division,  
Department of Administration)

SENATE		1949 to Apr. 30, 1950	1948-49	1947-48	1946-47	1945-46	1944-45
Personal services	\$111,926.46	\$159,018.71	\$79,836.70	\$127,537.76	\$66,852.22	\$94,631.08	
Contractual services	45,057.99	87,366.58	36,503.96	46,717.50	15,035.74	38,386.25	
Supplies, materials	1,150.19	14,879.97	1,311.25	2,805.46	722.31	984.43	
Equipment	103.03	19,647.09	1,928.01	460.07	514.25		
Total	\$158,237.67	\$280,912.35	\$119,579.92	\$177,520.79	\$83,124.52	\$134,001.76	
HOUSE OF REPRESENTATIVES							
Personal services	\$246,246.00	\$281,905.59	\$163,233.77	\$202,044.29	\$138,975.92	\$170,568.65	
Contractual services	90,369.11	138,641.65	51,459.72	63,213.17	18,283.85	48,347.06	
Supplies, materials	1,451.52	3,326.93	1,759.41	2,917.60	2,087.71	1,240.85	
Equipment	2,407.50	14,277.55	6,801.89	4,859.62	4,436.84	100.84	
Total	\$340,474.13	\$438,151.73	\$223,254.79	\$273,034.68	\$159,784.32	\$220,257.40	
Grand Total							
Personal services	\$358,172.46	\$440,924.30	\$243,070.47	\$329,582.05	\$205,828.14	\$265,199.73	
Contractual services	135,427.10	226,008.24	87,963.68	109,930.67	33,319.59	86,773.31	
Supplies, materials	2,601.71	18,206.90	3,070.66	5,723.06	2,810.02	2,225.28	
Equipment	2,510.53	33,924.64	8,729.90	5,319.69	951.09	100.84	
Total	\$498,711.80	\$719,064.08	\$342,834.71	\$450,555.47	\$242,908.84	\$354,259.16	