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LEGISLATION

State Legislative Services: An Overview

I. INTRODUCTION

The growing complexity of American society has been accompanied by a centralization and expansion of governmental services, and while the center of gravity of this growth has been at the federal level, the states have also had to assume greater responsibilities and broader roles. In recent years 80,000 to 90,000 bills and resolutions have been introduced in the principal sessions of the fifty state legislatures, and each year approximately one-third of these are enacted into law.¹ All states have developed complex programs in the areas of health, education, public works and welfare, and as late as 1965 over seventy per cent of domestic expenditures were made at the state and local levels.² Although the federal government has expanded its activities in such areas as medicare, aid to education, and the war on poverty, state and local governments continue to bear a heavy burden of services which require increasing expenditures.³ Unfortunately, the state legislatures have not developed the procedures and facilities demanded by their expanding roles. Whereas the other coordinate branches of government are administered by full-time public servants, many of whom are experts in specialized fields, the average state legislator is able to spend only about fifty-three percent of his time

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1. Keefe, *The Functions and Powers of the State Legislatures*, in *STATE LEGISLATURE IN AMERICAN POLITICS* 37, 39 (A. Heard ed. 1966).

2. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1966 STATISTICAL ABSTRACT OF THE UNITED STATES 421 (Table No. 577). Domestic expenditure figures were arrived at by subtracting from total expenditures the subtotals covering national defense, international relations, and space research and technology.

3. Jacob, *Dimensions of State Politics*, in *STATE LEGISLATURES IN AMERICAN POLITICS* 5, 11 (A. Heard ed. 1966). The cost of state services increase, not only due to population expansion, but also because the marginal costs of many state and local programs expand with population shifts. For example, it is far more expensive to provide sewerage for five families in the suburbs than in the central city.

on the complicated task of law-making.⁴ In addition, generally one-third of each legislature is populated by first-termers.⁵ The average legislator is an amateur struggling against intense pressures and intricate problems. Short sessions, long agendas and limited sources of information make legislative life frustrating and hectic. Although the facilities of the executive and judicial departments of government have expanded rapidly as their duties have increased, the facilities available to the legislature have not; yet the major law-making authority continues to be vested within the legislative jurisdiction.

Increasing awareness of the critical needs of the state legislatures has stimulated a number of groups to study these needs and suggest reforms.⁶ As a result of these efforts, the problems in this area are well-defined. However, all too often the states have failed to take an overview of the needs of the legislative branch; instead most efforts in this area have been directed towards the solutions of specific problems. The result has been as follows: a specific service agency will be created in response to a felt need; subsequently the agency will assume additional duties under the force of circumstances, until finally it is attempting to provide a multiplicity of services which it is not structured to undertake. The result is an agency understaffed, overworked, and no longer able to meet even those demands for which it was formed.⁷ Recognizing the inadequacy of such an ad hoc problem-solving approach, this Note seeks to stimulate an overview of legislative needs.

In order to illustrate the needs of the legislative branch, this Note will present a functional analysis of the individual legislator's role in the law-making process. The end-product of the process is law, and the initial step is to tap the sources of ideas from which to formulate law. These ideas must be evaluated, and a decision made as to which the individual legislator will sponsor. The next step, effectuating a given proposal, involves the drafting of a bill to be submitted to the legislature. The final step in the process, enacting law, requires evaluating the proposals of others.

It should be observed that a thoroughgoing consideration of modernizing state legislatures must include such topics as rules of pro-

4. This figure is based upon an empirical study conducted in Wisconsin. See REPORT OF WIS. COMM. ON IMPROVED EXPENDITURE MANAGEMENT 2 (1966).

5. Lockard, *The State Legislator*, in STATE LEGISLATURES IN AMERICAN POLITICS 98, 104 (A. Heard ed. 1966).

6. Some of the more prominent groups undertaking such studies are: The American Assembly, Columbia University; American Political Science Association, Washington, D.C.; Citizens Conference on State Legislatures, Kansas City, Mo.; Committee on Economic Development; and National Legislative Conference of the Council of State Governments, Chicago.

7. Horack, *Can American Legislatures Keep Pace?*, 26 ROCKY MT. L. REV. 468, 471 (1954).

cedure, office space, personal staff for the legislator, time limitations upon sessions, legislative salaries and the committee system.⁸ Such problems, which indirectly bear upon the individual legislator's ability to perform his task and which directly affect the overall performance of the legislature, will not be discussed here. Rather, this Note will concentrate on those services which directly affect the legislator's ability to initiate, evaluate and effectuate changes in the law.

II. THE LAW-MAKING PROCESS

A. Sources of Ideas

The legislative process has been characterized as essentially a judicial proceeding in which the plaintiff must bear the burden of proof.⁹ This is perhaps an extreme statement, but the point implicit in it is well-taken: very little legislation originates with the legislature itself; instead, others, the "plaintiffs," come to the legislator seeking changes in the law. The premise of the characterization is that the individual legislator must be informed by others, but all too often he is forced to rely upon the state administration and the lobbyists as the sources of his information.¹⁰ These parties, the plaintiffs of the legislative process, have specific proposals, and understandably the information they proffer is presented in the light most favorable to their goals. In the absence of organized opposition to the proponents of a measure, the legislator is similar to a judge in an *ex parte* proceeding. The judicial analogy breaks down, however, when he is confronted with advocates promoting conflicting interests. The legislator has no safeguards comparable to those provided by the rules of evidence and canons of ethics to insure the reliability of the information received. With such unreliable sources of information

8. For discussions of these problems *see generally*, COMM. FOR ECONOMIC DEVELOPMENT, MODERNIZING STATE GOVERNMENT (1967); COUNCIL OF STATE GOVERNMENTS, AMERICAN STATE LEGISLATURES IN MID-TWENTIETH CENTURY (1961); COUNCIL OF STATE GOVERNMENTS, MR. PRESIDENT . . . , MR. SPEAKER (1963); M. JEWELL, THE STATE LEGISLATURE: POLITICS AND PRACTICE (1962); W. KEEFE & M. OGUL, THE AMERICAN LEGISLATIVE PROCESS: CONGRESS AND THE STATES (1964); J. SANDERS, SELECTED FACTORS AFFECTING LEGISLATIVE SERVICE IN NORTH CAROLINA, REP. TO THE LEGISLATIVE RESEARCH COMM'N (1966); STATE LEGISLATURES IN AMERICAN POLITICS (A. Heard ed. 1966); B. ZELLER, AMERICAN STATE LEGISLATURES, REP. OF THE COMM. ON AMERICAN LEGISLATURES IN MID-TWENTIETH CENTURY (1954).

9. Moffat, *The Legislative Process*, 24 CORNELL L.Q. 223, 228-29 (1939).

10. *See* B. ZELLER, *supra* note 8, at 214. The use of the terms administration and lobbyists is not meant to suggest that either the administration or lobbyists are monolithic in nature. For an excellent discussion of the various types of lobbyists and the techniques they employ *see* W. KEEFE & M. OGUL, *supra* note 8, at 298-371. Although the administration's influence on the legislative process is most often directed from the governor's office, *see id.* at 372-98; Keefe, *supra* note 1, at 57-61, various state agencies may and often do exert independent pressures on the legislature. *North Carolina Interview*.

an inexperienced legislator can become the unwitting pawn of others.¹¹

Impartially conceived proposals evaluated in light of reliable information are necessary for successful legislative performance, a need that has stimulated over eighty per cent of the states to form legislative councils.¹² Two major reasons often given for the establishment of legislative councils are: (1) that the intermittent nature of legislative sessions makes it impossible for the legislature to give continuous attention to major areas of state law, and (2) that the absence of its own research facilities makes it unable to obtain reliable information.¹³ The form of the legislative council varies in the several states, but essentially it may be considered as a joint committee of the legislature assisted by a full-time staff, with many states requiring that both major political parties be represented.¹⁴ Although some states assign varied functions to their councils,¹⁵ the common function served by all is applied research. Some councils merely transmit factual reports to the legislature,¹⁶ but most are empowered to submit recommendations with their reports.¹⁷

The director of the highly successful Wisconsin legislative council envisions it as a "joint enterprise . . . between the policy-maker and the technical professional research staff."¹⁸ The Wisconsin council is essentially a steering committee which appoints study committees to deal with specific projects.¹⁹ The members of these committees in effect participate in the research by holding committee meetings with the research staff, hearing progress reports of researchers, and directing them into areas of specific concern. The research staff makes no effort to control the adopted solution, but constantly operates under the principle that the decisions should be made by the elected policy-

11. Lockard, *supra* note 5, at 98, 123.

12. C. CLARK, *A SURVEY OF LEGISLATIVE SERVICES IN THE FIFTY STATES* 5 (1967).

13. C. BALL, *LEGISLATIVE RESEARCH AGENCIES IN THE UNITED STATES* 1 (1961).
See also, B. ZELLER, *supra* note 8, at 125.

14. *See, e.g.*, MASS. ANN. LAWS ch. 3, § 56 (1966) (equal party representation required); TENN. CODE ANN. § 3-401 (1955) (at least three minority party representatives required); WIS. STAT. ANN. § 13.81 (Supp. 1967) (at least four minority party members required). *See also* C. BALL, *supra* note 13, at 1.

15. *See, e.g.*, TENN. CODE ANN. § 3-404 (1955) (assigning duties to council including analyzing state revenues and expenditures).

16. *See, e.g.*, ILL. ANN. STAT. ch. 63, § 34 (Smith-Hurd 1962) (authorizing council to submit recommendations) and F. CULD, *LEGISLATIVE COUNCILS AFTER THIRTY YEARS* 3-4 (1964) (noting that Illinois council decided not to submit recommendations). As in Illinois, often these councils are empowered to make recommendations, but are fearful that their colleagues may begin to view them as a super-legislature. The fear was apparently well-founded in Kentucky for the original council was abolished in 1938 and replaced by the Legislative Research Commission, which as of 1954, had never made a recommendation. C. BALL, *supra* note 13, at 2.

17. *Id.*

18. *Wisconsin Interview*.

19. WIS. STAT. ANN. § 13.82 (Supp. 1967).

makers.²⁰ The committees are not composed solely of council members, although an effort is made to include at least one council member on each committee.²¹ It is standard practice to include public members in an effort to gain the aid of special knowledge which may be unavailable in the membership of the legislature.²² In addition, if the committee staff is fairly representative of the different interest groups which will be affected by the legislation, the end product stands a better chance of acceptance.²³

It should be noted that the legislative council technique is not the only possible solution to the problem of providing long-term extensive research. At least two states rely heavily upon university personnel for professional research services,²⁴ and several states, most notably New York, have established law revision commissions to undertake extensive research activities.²⁵ As generally conceived, these commissions consist of legal scholars vested with the responsibility of suggesting needed revisions in light of modern conditions. This particular device has an advantage of continuity not available to the

20. *Wisconsin Interview*.

21. *Id.* See also, WIS. STAT. ANN. § 13.82 (Supp. 1967) (makes council member ex officio member of each committee).

22. *Wisconsin Interview*.

23. Approximately two-thirds of the existing legislative councils are multi-purpose joint committees performing many tasks in addition to the research function. See F. GULD, *supra* note 16, at 3. There are of course alternative organizational schemes for fulfilling the research function itself. For example the North Carolina Research Commission utilizes exclusively the North Carolina Institute of Government to conduct its studies. *North Carolina Interview*.

24. The states are North Carolina and Hawaii. *North Carolina Interview*. See also COMM. ON LIAISON WITH OTHER RESEARCH ORGANIZATIONS, NAT'L LEGISLATIVE COUNCIL, LEGISLATIVE RESEARCH AGENCY RELATIONS WITH UNIVERSITIES I (1967). In relation to the General Assembly, the Institute of Government of the University of North Carolina provides all staff services for the Legislative Research Commission and consults with other commissions and committees. In addition, the Institute maintains a staff in the Legislative Office Building during sessions and provides daily, weekly and session bulletins on the work of the General Assembly which are distributed to legislators and local government officials. This arrangement has been of immeasurable benefit to the North Carolina General Assembly by providing access to specialists at the Institute which could not be obtained elsewhere for such a reasonable cost. Over the years the staff of the Institute has developed expertise in various areas, which is an invaluable asset of the legislature. However, it should be noted that John L. Sanders, Director of the Institute, doubts the feasibility of the arrangement in other states. He views the present structure as the fortunate product of a unique relationship between the university and the people of the state. For this relationship to arise, there must be a disposition on the part of the university to be concerned with everyday operations of government, and there must be a disposition on the part of the people to look to the university for assistance in matters other than teaching. Mr. Sanders suggests that it may be more fruitful for other states to concentrate on direct staffing of the legislature. *North Carolina Interview*.

25. N.Y. LEGIS. LAW §§ 70, 72 (McKinney 1952). The commission is composed of two ex officio members, the chairmen of the judiciary committees of the separate houses of the legislature, and five members appointed by the governor for five-year terms.

legislative council, which is composed of elected officials. On the other hand, the legislative council has a more direct relationship with the deliberative body which must finally accept or reject the proposals, and thus it may be able to serve as a more successful advocate of proposed statutes.²⁶

The idea of a law revision commission is not inconsistent with the legislative council device. Two major advantages are presented by the former: continuity, and the existence of an agency which can tap the resources of talented experts in dealing with highly technical problems. To a certain extent this latter advantage can be obtained by the legislative council through appointment of experts from university faculties and elsewhere to the committees of the council. Even so, an advantage may be gained from having both a council and a commission. Since the initial impetus for the first law revision commission centered around a felt need for a body of experts to continually study and improve the administration of justice,²⁷ it might be advisable to establish a law revision commission with prime responsibility for the organization of the judiciary, matters of administrative practice, and other technical problems in the administration of justice. Furthermore, it would be appropriate for this body to undertake studies and submit proposals for the modernization of those statutes involving technical legal considerations such as the commercial code, probate law, and corporation law. The legislative council could assume primary responsibility for other areas such as welfare, education, conservation, highways and urban problems.

B. *Evaluation of a Given Proposal*

It should be apparent from the description of the legislative council that its structure is best adapted for the major research project. In order to meet the informational needs of the individual legislator a reference library containing materials of legislative interest should be provided, along with a staff capable of collecting, indexing and

26. It is true that some members of law revision commissions may be appointed from the legislature, e.g., N.Y. LEGIS. LAW §§ 70, 72 (McKinney 1952), but to the extent that greater legislative representation is obtained, the advantage of continuity may be sacrificed.

27. See MacDonald, *Legal Research Translated Into Legislative Action: The New York Law Revision Commission 1934-1963*, 48 CORNELL L.Q. 401 (1963). In 1921 Judge Benjamin N. Cardozo, in an address to the Association of the Bar of the City of New York, proposed a Ministry of Justice. "The duty must be cast on some man or group of men to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged." Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113, 114 (1921). Two years later the legislature responded and by 1934 the Law Revision Commission had evolved. 1934 N.Y. Session Laws ch. 597 (now N.Y. LEGIS. LAW § 70 (McKinney 1952)).

digesting relevant materials upon his request. Many states have established legislative reference bureaus to perform this service.²⁸ These bureaus maintain a pamphlet library containing relevant materials in the social sciences, reports of legislative commissions of both its state and others, special reports, studies and other documents in the field of state government.²⁹ In addition, such a bureau should keep a file of current bills and resolutions and copies of previous years' documents. If properly indexed, this material will be readily available to legislators interested in what has been proposed in the past and will enable him to profit from the experience of sister jurisdictions.

It should be noted that this bureau will be quite useful to the other legislative service agencies. The council staff can utilize the resources in its research, and draftsmen will profit greatly from the well indexed files of past bills and other legal materials. Perhaps the greatest service which the bureau could perform is that undertaken in such states as Wisconsin and Ohio. These reference bureaus maintain a staff of research personnel providing spot research aids upon request of the legislator. In Wisconsin the bureau supplies basically four types of reports: (1) one-page fact sheets; (2) three-page briefs; (3) ten-page informational bulletins; and (4) thirty-page research papers. The researcher decides the type of report to prepare on the basis of the nature of the request and the scope of the problem. In addition, informational bulletins and other reports are prepared in anticipation of requests.³⁰ If the bureau succeeds in establishing a reputation for competence and neutrality, it can help to free the legislator from what may be a feeling of helplessness and allow him to evaluate intelligently proposals urged upon him by constituents, lobbyists and bureaucrats. The individual legislator armed with independent and efficient research assistance may and should be stimulated to perform his duties more thoroughly and conscientiously.³¹

28. Clark reports that 85 service agencies provide general legislative reference or research, C. CLARK, *supra* note 12, at 12, and 82 of these provide spot research services for the individual legislator. *Id.* Table 1, at 9-11. A number of these agencies take the form of the Wisconsin Legislative Reference Bureau discussed *infra* notes 29-31 and accompanying text. See C. CLARK, *supra* note 12, at 59-189 for brief descriptions of the functions of the various agencies in each of the states.

29. *Wisconsin Interview*; Schwartz, *The Ohio Legislative Reference Bureau And Its Place in The Legislative Process*, 11 OHIO ST. L.J. 436, 443-45 (1950).

30. *Wisconsin Interview*. See Schwartz, *supra* note 29.

31. Obviously, qualified personnel are required to effectuate the legislative reference bureau concept. The hiring and maintenance of such employees is complicated by the fluctuations in man-power needs resulting from the limited sessions of most state legislatures. Although this is a problem affecting most legislative service agencies, it is submitted that the director of legislative services provided for in the conclusion to this Note will serve to mitigate the problem. The full-time director will be in a position both to recruit qualified personnel, and to coordinate effective use of staff between the various legislative service organizations.

C. Effectuating a Given Proposal

Once a legislator has chosen a concept which he wishes to have enacted into law, that idea must be incorporated in the form of a bill for consideration by the legislature. Due to the combination of skills required in drafting a bill,³² and the severe limitations upon the legislator's time, he is in most cases unable adequately to draft his own bills. Recognizing this problem, forty-nine states now provide legislators some type of bill drafting service.³³ In some states bill drafting is primarily the function of the legislative council,³⁴ while in others it is provided by the legislative reference bureau,³⁵ the attorney general's office, the state library, or by combinations of these agencies.³⁶

Although nearly every state provides a drafting service, many have failed to fully satisfy the needs of their legislators. Some of these shortcomings have resulted from the failure to employ a sufficient number of qualified draftsmen.³⁷ Problems have also arisen in some

32. "[T]he professional bill drafter must do six important things: 1. He must master the subject matter; that is, he must know the statutes and court decisions on the subject. 2. He must consider whether the desired proposal may be adequately dealt with by amendment to existing law or whether it requires a new law. 3. He must carefully examine administrative precedents and methods of enforcement as disclosed by the statutes of other states and as reported by successful administrators. 4. He must consider who will be affected by the measure. He must determine whether any principle of law will be affected, beyond the statute to be amended. 5. He must carefully consider constitutional requirements such as whether the proposed act includes only one subject. 6. He must also consider whether all appropriate details have been inserted into a bill that affects administrative organization and procedure." EAGLETON INSTITUTE OF POLITICS, *THE RHODE ISLAND LEGISLATURE* 3/1-2 (1967) [hereinafter cited as *EAGLETON INST. REP.*]. See also C. CLARK, *supra* note 12, at 24-28; COUNCIL OF STATE GOVERNMENTS, *MR. PRESIDENT . . . , MR. SPEAKER* 42 (1963); Schwartz, *supra* note 29, at 436.

33. C. CLARK, *supra* note 12, at 28. In 1963 Wyoming abolished its legislative council which provided the bill drafting service. *Id.*

34. Thirteen states administer their bill drafting service through the legislative council. *Id.* at 25-27.

35. In Wisconsin one of the primary functions of the legislative reference bureau is bill drafting. During the session the bureau employs a staff of five attorneys to draft bills upon request of a legislator, an officer, an agency, a department of state, or certain other statewide groups such as the State Employees and the Municipal League. *Wisconsin Interview*.

36. According to Clark, in eighteen states the bill drafting function is performed by the legislative reference bureau, and in an additional eighteen the service is administered by legal service agencies such as the attorney general's office as in Colorado, Mississippi, and North Carolina. C. CLARK, *supra* note 12, at 28.

37. *North Carolina Interview*; EAGLETON INST. REP. 3/5. Most states employ a particular number of bill draftsmen on a permanent basis, and attempt to employ additional draftsmen during sessions. For instance, in Wisconsin, two permanent draftsmen are employed and are supplemented by an additional three during sessions. *Wisconsin Interview*. A 1960 survey revealed that Illinois employed three permanent draftsmen and that Pennsylvania employed five. During sessions, these states employed an additional six and three draftsmen, respectively. COUNCIL OF STATE GOVERNMENTS, *LEGISLATIVE REFERENCE BUREAUS AND LIBRARY SERVICES* 6-10 (1960). See also C. CLARK,

states from the lack of a proper relationship between the bill drafting agency and the legislature.³⁸ To obtain the respect of the legislature, and insure that its members make use of its services, the bill drafting agency should accept requests of legislators in strict confidence.³⁹ A legislator who has originated an idea wishes to be the first to introduce it, and so far as the bill drafting agency is concerned, every attempt should be made to refrain from prematurely revealing that idea.⁴⁰ Another requisite of a proper relationship with the members of the legislature is the non-involvement of the bill drafter in policy matters.⁴¹ It is the legislator's role to determine policy questions regarding his proposal.⁴² If a problem arises with respect to a bill, it is the draftsman's roll to make an objective presentation of the facts and legal questions involved so that the legislator may make the policy determination.⁴³ In furtherance of this principle of objectivity, the bill drafting agency should remain non-partisan in administering its services. The function of this agency is to serve all the members of the legislature in the most effective manner possible. Unfortunately, some drafting agencies have failed to develop a spirit of objectivity, and have diminished their value as service agencies by alienating various members of the legislature.⁴⁴

Many of the problems which have already been mentioned could be eliminated by better administration of the bill drafting service. First, it would appear preferable to administer this service through a single agency.⁴⁵ Not only would this consolidate the administrative

supra note 12, at 30-31, for the composition of the staff, expenditures, and scope of the bill drafting agencies in the states.

38. See generally Schwartz, *supra* note 29, at 436.

39. Wisconsin Interview.

40. "Legislators being human, often take pride in being the first to initiate a brand-new idea on the floor of the legislative halls. Their thoughts and observations and suggested solutions of legislative problems must be guarded with utmost secrecy while the bill is in the process of preparation and until he, and he alone, cares to divulge it." Schwartz, *supra* note 29, at 441.

41. *Id.* One writer has suggested that the involvement in policy matters of non-members of the legislature is a danger inherent in the system of councils and bureaus. To prevent this danger from becoming a reality, it is urged that steps be taken to insure that the staff of these agencies are "as unbiased as possible and . . . never advocate legislation, no matter how good, or oppose any, regardless of how reprehensible it may be." Weiss, *The Legislative Council and Reference Bureau*, 25 FLA. L.J. 57, 59 (1951).

42. Horaek, *supra* note 7, at 468.

43. Schwartz, *supra* note 29, at 441.

44. A study of the Rhode Island bill drafting service revealed "strong partisan overtones" in the theoretically non-partisan agency. As a result of this atmosphere, "members of both parties . . . indicated a certain uneasiness in committing major or novel pieces of legislation to the [bill drafting service.]" EAGLETON INST. REP. 3/3.

45. Some states offer bill drafting services through more than one agency. See C. CLARK, *supra* note 12, at 25-27. As stated in the *Eagleton Institute Report*, "the [c]onsolidation of the bill drafting function within [one agency] would . . . serve to

expertise, but it would also lead to a higher degree of uniformity in the form of bills introduced. Perhaps the most workable system would be to administer the bill drafting service as a division of the legislative reference bureau,⁴⁶ since the bureau provides easy access for the members of the legislature and maintains the library and research facilities needed by the draftsmen. Furthermore, the bureau is in a better position to remain non-political than other agencies such as the attorney general's office, an executive department, or the legislative council, composed of elected members of the legislature.⁴⁷

D. *Evaluating the Ideas of Others*

Once an idea has been introduced in the form of a bill, each member of the legislature should examine it with a view toward casting an intelligent vote. However, with the large volume of bills introduced,⁴⁸ it is nearly impossible for a legislator even to read each bill which is being considered for enactment. In an attempt to solve this problem, one state, Wisconsin, requires that each

assign responsibility for commonality of style and legal sufficiency in one central agency," thus improving the effectiveness of the service. EAGLETON INST. REP. 3/5.

46. It should not be forgotten that this suggestion is an attempt to present the problem of legislative aids in a relatively simplified manner, and it may be that a proposal such as incorporating the bill drafting function into the legislative reference bureau may conflict with established practice in many states. In some instances, it would be more plausible to alter the suggested method in an effort to preserve favorable relationships which presently exist between various agencies. However, effective providing of service should not be sacrificed for convenience or existing favorable relationships. Thus, traditional methods of providing services should be judged only in terms of their existing or potential merit, and if deficient, tradition should be discarded for a more effective new method.

47. As a solution to the problem of partisan overtones in the legislative council's administration of the bill drafting service in Rhode Island, the *Eagleton Institute Report* recommended that the council staff director should have two bill drafting deputies, one approved by each party caucus. The number of drafters assigned to each party would be proportionate to the political composition of the general assembly. Members of each party would submit their requests to the drafting staff responsible to their caucus. EAGLETON INST. REP. 3/5-3/6. Although this solution would promote the policy of making services available to all members of the legislature regardless of political affiliation, it promotes inefficient administration of legislative services by providing two separate organizational schemes to administer the service. Furthermore, the suggestion seems to emphasize aid to the input of partisan units rather than aid to the output of the legislature as a whole. Finally, this solution would appear to create a significant practical problem. The proportioning of draftsmen according to party representation in the legislature would require an alteration in the number of draftsmen assigned to a party each time the political composition of the legislature changes. This would either require dismissal of a number of draftsmen who have to some extent acquired skill in discharging their function on the ground that they have become accustomed to incorporating and advancing a particular political viewpoint in drafting legislation; or it would require that draftsmen who may have in fact become so accustomed be transferred to another party. It would at least necessitate an alteration in organization which in itself is time consuming and disruptive.

48. See note 1 *supra* and accompanying text.

bill, regardless of its source, be accompanied by a bill analysis,⁴⁹ prepared by the draftsmen, and briefly indicating the bill's effect upon the law. In addition, the Wisconsin Legislature now requires that each bill affecting the state revenues or expenditures be accompanied by a fiscal note prepared by the particular department to be affected and stating the predicted change in either state revenues or expenditures. If the legislator is dissatisfied with the fiscal note prepared by the affected agency, he may request the legislative budget staff to prepare another. Although the Wisconsin budget staff primarily serves the Joint Committee on Finance,⁵⁰ it also provides fiscal information on a bipartisan basis to enable the legislator to make intelligent decisions regarding fiscal matters.⁵¹

These services provide the legislator with only a brief summation of the legal effect, and in appropriate cases, the fiscal effect of bills; nevertheless, they would at least make it easier for the legislator to become aware of the proposals before him. In addition, they would provide him with a quick indication of whether he needs further information⁵² to make an intelligent evaluation of the merits of a particular bill. In sum, providing these services gives each legislator the opportunity to evaluate *every* bill.

III. OTHER SERVICES

A. Services to Committees

No consideration of legislative services would be complete without at least a brief discussion of committee staffing, *i.e.*, the providing of legislative personnel directly and solely responsible to specialized committees.⁵³ The United States Congress has had relative success with committee staffing for a number of years,⁵⁴ and a few of the larger states have undertaken substantial staffing of their committees.⁵⁵ The purpose of staffing has been to foster development of expertise

49. In addition to preparing a summary analysis of all bills introduced, the bill draftsmen in Wisconsin are required to review every bill, regardless of its source, for technical accuracy. *Wisconsin Interview*.

50. See note 59 *infra* and accompanying text.

51. The Wisconsin Legislative Audit Bureau, which performs post auditing, publishes reports of its findings which the legislator may also find useful in regard to fiscal matters. WIS. STAT. ANN. § 13.94 (Supp. 1967). See note 60 *infra* and accompanying text.

52. If further information is needed, he may utilize the facilities of the legislative bureau, or some other available source. See notes 28-31 *supra* and accompanying text.

53. See C. CLARK, *supra* note 12, at 50.

54. See W. KEEFE & M. OGUL, *supra* note 8, at 172-74, where the authors discuss the shortcomings and accomplishments of committee staffing in Congress.

55. New York is probably the leader in the area of committee staffing. However, California, Hawaii, Michigan, Minnesota, Ohio, and Texas also provide a significant number of committees with professional staff. See C. CLARK, *supra* note 12, at 50.

within the committee system and to entrust specialized committees with the primary responsibility for analyzing proposed legislation within their sphere of competence.⁵⁶ Perhaps the future of effective legislative services lies in this area. Full committee staffing is neither inconsistent with, nor an alternative to, the types of legislative services discussed above. As noted, the purpose of committee staffing is to improve the performance of the specialized committee system, whereas the types of centralized services with which this Note is concerned are directed primarily toward assisting the individual legislator to better perform his task. That these services can and ideally should co-exist is evidenced by the successful employment of both by the United States Congress.⁵⁷ Nonetheless, it is submitted that the centralized services should precede full committee staffing; and in those states where development of both structures would be an overly ambitious undertaking due to scarce resources, concentrated attention should first be given to the centralized program.

Several problems arise in an attempt by state legislatures to utilize full committee staffing: committee chairmen are frequently unable to employ staff efficiently; the committee staff technique is unsuited for tapping the resources of skilled members of the public; relatively high turnover in the legislature may lead to a lack of continuity in the direction of staff services; and such a decentralized structure may produce overlap and duplication of effort.⁵⁸ In addition, many legislatures in which these conditions exist may not have the size and resources to utilize full staffing of all committees. However, as these legislatures grow, they should attempt to make the gradual transition to the full committee staffing arrangement by first providing staff for the more important committees. A logical initial step in this process would be to provide these committees with clerical and stenographical personnel to maintain records of committee proceedings.

Furthermore, it is submitted that due to the complexity and importance of fiscal matters, all states should presently make an effort to provide professional staff to the committee in charge of finance. Wisconsin has provided its Joint Committee on Finance with a non-partisan staff of five full-time budget and fiscal analysts and various clerical personnel. The primary function of the staff is to serve the committee in analyzing the proposed state budget. The staff performs field research, makes comparisons of agency requests in other states, and provides other factual information to the committee. In addition, the staff will make recommendations to the

56. See W. KEEFE & M. OGUL, *supra* note 8, at 172-73.

57. See Horack, *supra* note 7, at 468.

58. *Wisconsin Interview*. See also W. KEEFE & M. OGUL, *supra* note 8, at 172-74.

finance committee in instances of controversial issues or extremely technical areas.⁵⁹ It is submitted that this service would enable the legislative branch to participate more fully in the system of checks and balances.

B. *Post Auditing and Program Auditing*

It is important that the legislature be able to evaluate objectively the manner in which its appropriations are expended, and the effectiveness of its method of collecting revenues. To provide this opportunity to the legislature, it is necessary that the fiscal and budgetary processes of the state be subject to an examination by an agency loyal to the legislative branch.⁶⁰ This examination should include not only the normal post audit functions such as determining that vouchers match actual expenditures, but also program auditing which focuses on particular programs, comparing alternative means of reaching stated objectives and providing continuous comparisons of costs incurred with results achieved.⁶¹ Although in some states various degrees of these services are provided by a legislative audit bureau,⁶² it would appear desirable to combine these functions with those of the budget analysts in a single agency in order to facilitate an interchange of personnel.⁶³ By combining the post audit function and the function of budget analysts, there emerges a service agency whose essential role is that of enabling the legislative branch to view objectively all matters of fiscal policy and budgeting processes in the state.

C. *Records of the Process*

To be effective, law must be promulgated in a form which is accurate and understandable to those who must abide by it. Over the years many statutes are amended, repealed, declared unconstitutional, become antiquated, or otherwise undergo change. Recognizing the effects of this process and the importance of confronting the people of the state with a current and orderly compilation of the existing law,⁶⁴ many states have established legislative agencies

59. *Wisconsin Interview*. See also C. CLARK, *supra* note 12, at 39-42.

60. *Wisconsin Interview*. According to state Sen. Knowles of Wisconsin, the state legislatures' greatest shortcoming has been the failure to oversee the disbursement of their appropriations.

61. For a more detailed discussion of the program audit concept, see COMM. FOR ECONOMIC DEVELOPMENT, *BUDGETING FOR NATIONAL OBJECTIVES* (1966). Although this monograph discusses program auditing on the federal level, the principles stated are applicable to the states.

62. See C. CLARK, *supra* note 12, at 42-49.

63. See note 59 *supra* and accompanying text.

64. "Over the years the legislative output results in a mass of statutes, scattered through dozens of volumes of session laws in which the enactments of all different

which engage in statutory and code revision.⁶⁵ "A revision of statutes collects the laws according to subject matter and arranges them in a logical system of positive law; eliminates language and provisions that are unnecessary or inoperative; and restates the laws in uniform terminology, grammatical structure and punctuation."⁶⁶ It is the initial duty of a revision agency to make a bulk revision of the state statutes and code.⁶⁷ Once this task is accomplished, there is need for a constant policing of the statutes with a view toward the elimination of stylistic and minor substantive errors.⁶⁸ Upon discovering an error, the revision agency should prepare a corrective bill to be introduced in the legislature.

Many states do not presently engage in revision, and many of those that do have some type of revision do not engage in continuous revision.⁶⁹ Furthermore, some states which have a revision service have thrust this responsibility upon general research and reference

subjects appear with no order other than the sequence-of-act numbers or dates of enactment. A legislator, attorney, public official or citizen seeking to find the law on a single subject would have to examine each volume of session laws from first to last and relate all amendments to the original law. Unrevised session laws or obsolescent codes are likely to contain conflicting enactments, out-of-date provisions, and statutory provisions declared unconstitutional. They may also exhibit great variations in structure, form of expression, definitions, terms, and grammatical form." The COUNCIL OF STATE GOVERNMENTS, MR. PRESIDENT . . . , MR. SPEAKER 38 (1963).

65. There are presently 39 states which have agencies performing some type of statutory or code revision. C. CLARK, *supra* note 12, at 34.

66. *Id.* at 32; COUNCIL OF STATE GOVERNMENTS, MR. PRESIDENT . . . , MR. SPEAKER 38-39 (1963).

67. As stated in C. CLARK, *supra* note 12, at 33, the purposes of bulk revision are: "1. To determine what statutes are in effect by eliminating all obsolete, unconstitutional, and unnecessary sections of the law. A master file of the live law results. 2. To organize the live law according to subject matter into a logical classification system consisting of titles, chapters, and sections. 3. To restate the law in clear and simple language with uniformity of expression, capitalization, spelling, and punctuation. Redundancies are removed, misspelled words are corrected, ambiguities are resolved, poor grammar is reconstructed. Frequently used and critical terms are defined and consistently employed. 4. To establish a numbering system which provides immediate identification and access to the subject matter, and which is sufficiently flexible to accommodate future enactments."

68. Major revisions of the law should be undertaken by the legislative council. The revising agency should engage only in minor substantive revision which is necessary to "clean up" the laws. One recent Wisconsin example of minor substantive revision concerned the method of collection under the beer and liquor tax laws. Previously the tax on these beverages had been collected by the use of a stamp method. Subsequently, however, the method of collection on beer was changed by statute to a monthly reporting system. The statutes embodying the liquor law, which remained unaffected by the change in the beer law, continued to refer to the repealed stamp method of collection provided in the beer law as the method applicable to liquor collections. It was the revisor's task to reorganize these sections in a sensible manner, and to present that reorganization in the form of a bill to the legislature. *Wisconsin Interview.*

69. Nine states providing some revision service do not engage in continuous revision. C. CLARK, *supra* note 12, at 34.

agencies, which often view this task as a secondary function.⁷⁰ It would appear preferable to place responsibility for revision upon a single, independent agency and to provide that agency with sufficient staff to perform continuous revision.⁷¹

IV. CONCLUSION

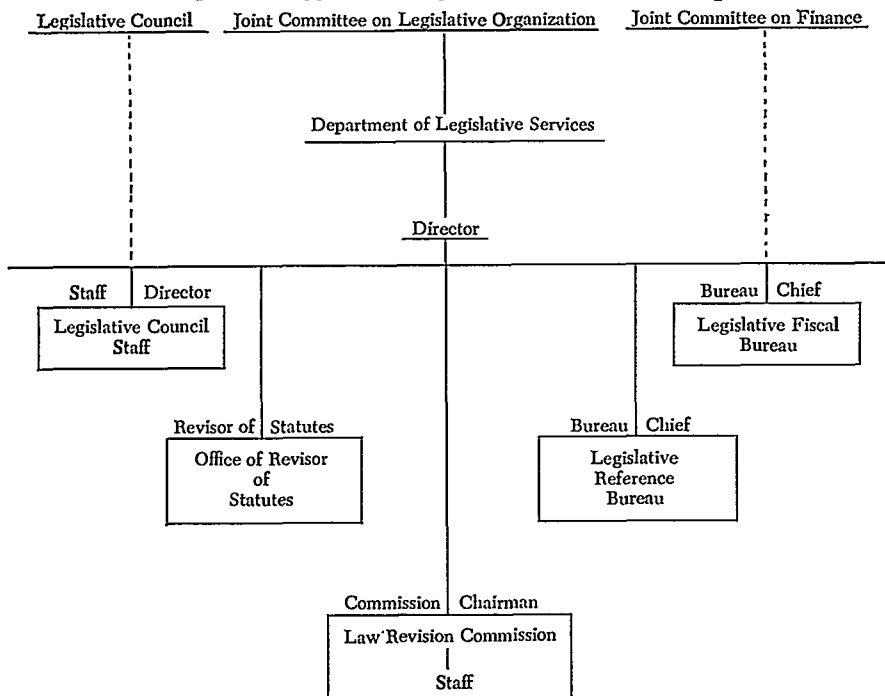
The increasing complexity of state legislative business and the relative inexperience of the average state law-maker demand that an integrated service organization, loyal to the legislature, be established to furnish technical and professional assistance to individual legislators. A functional analysis of the legislative process suggests that the needs could be met in the following manner.⁷²

1. The legislature should establish three permanent, joint, bi-partisan committees:

70. This situation exists with respect to nineteen of the legislative agencies providing revision. *Id.* It is stated by Clark that "[O]ne revisor replying to the [Citizens Conference Survey] questionnaire, explained one danger of this type of staff organization: 'Statute revision is a non-glamorous undertaking. Legislators and lawyers can get no favorable headlines from urging or doing a good job on revision and yet it is a very necessary operation. Consequently when the revision program is attached to and made a part of a legislative research program it is generally relegated to a secondary position. . . .'"

71. *See id.* at 35-36.

72. The following chart suggests the organizational format contemplated:



- (a) A Joint Committee on Legislative Services charged with the general supervision of all legislative service agencies and personnel.
- (b) A Joint Legislative Council charged with the duty of preparing long-term studies on important problems, and empowered to appoint committees, including public members, to undertake these studies. The Council should submit reports for the consideration of the legislature, and from time to time make recommendations for specific legislation.
- (c) A Joint Committee on Finance charged with the primary task of overseeing general state fiscal matters, including reporting the executive budget to the legislature.

2. Under the Joint Committee on Legislative Services, a Department of Legislative Services should be created and a full-time director appointed by the Committee. The director should be charged with the duty of supervising and coordinating all staff services to the legislature. Specifically, he should be charged with ultimate responsibility for hiring, discharging, and determining matters of compensation for legislative service staff. Furthermore, the director should insure that the legislative staff is at all times allocated to the various service agencies in proportion to manpower needs.

3. A director of Legislative Council Staff should be appointed by the director of the Department of Legislative Services, and charged with the duty of supervising such staff as is assigned to the Legislative Council by the director of the Department of Legislative Services.

4. A Legislative Fiscal Bureau should be created within the jurisdiction of the Department of Legislative Services. The Bureau should assist the Joint Committee on Finance in the performance of its duties. Specifically, the Bureau should perform the functions of budget analysis, post audit, and program audit. To the extent practicable the Bureau should be available to assist individual legislators on matters of state fiscal policy. The Bureau should be supervised by a bureau chief appointed by the director of the Department of Legislative Services.

5. A Legislative Reference Bureau should be created within the jurisdiction of the Department of Legislative Services. The Bureau should maintain an adequately indexed reference library, containing materials of legislative interest, and providing a bill drafting service for the legislature. A bureau chief should be appointed by the director.

6. An Office of Revisor of Statutes should be created within the

jurisdiction of the Department of Legislative Services. The Office of Revisor should be charged with the duty of maintaining an orderly and accurate compilation of state statutes in force, and of introducing bills to amend the statutes for the purpose of correcting minor substantive or stylistic errors and repealing archaic or unconstitutional provisions. A Revisor of Statutes should be appointed by the director of the Department of Legislative Services.

7. A Law Revision Commission should be created within the jurisdiction of the Department of Legislative Services. The Commission should have the prime responsibility for the continual study of the organization of the judiciary, matters of administrative practice, and other technical problems in the administration of justice. In addition, the Commission should undertake such studies as are referred to it by either house of the legislature. The membership of the Commission should consist of five members of the bar nominated by the Chief Justice of the Supreme Court, and approved and appointed by the upper house of the legislature.