INVESTIGATIVE PROCESS

HOW DOES MICHIGAN MEASURE UP

by

Vivian L. VanNorwick

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Reader Albert C. Price

ABSTRACT

This paper considers legislative investigatory process in Michigan. Specifically, a description of how that process operates on a day-to-day basis is provided through an historical perspective of state government and five legislative investigatory case studies. A framework for understanding this process is provided by an initial look at Congressional investigatory process. By comparing Michigan's investigatory process to that operating federally, one can see that Michigan's investigatory activity is pursued less vigorously, is more political, and is more informal than its Congressional counterpart.

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OVERVIEW

What was the extent of organized crime in the United States in the 1950's? Who killed John F. Kennedy and why; was it the work of one deranged person or was it the result of a conspiracy? Was the National Guard acting responsibly during the Kent State Anti-War Demonstration which resulted in student deaths? Who knew what and when did they know the details about the Watergate break-in and subsequent cover-up? Did Gerald Ford possess the expertise and commitment to openness and honesty necessary to be appointed President of the United States? What was the extent and nature of Billy Carter's involvement with the Libyans or Richard Allen's entanglement with the Japanese? Providing answers to such weighty questions has been the responsibility of the United States Congress.

Congress performs this function through its investigatory powers. However, from what source is authority for such investigations initiated? How are they financed? What procedures are utilized in carrying out investigations? What are the possible outcomes? What are the benefits and drawbacks inherent in the process? Several hours in the library can provide one with at least cursory answers on how Congressional investigatory process operates. However, if one were to ask the same operational questions concerning the investigatory process utilized by a state legislature the answers would be scarce. Scarcer still would be answers pertaining to the operationalization of that process in one's home state.

Yet states engage in that process and often have the responsibility of answering questions just as crucial to the welfare and good management of their domain as is done Federally.

Thus when pursuing the who's, how's, outcome's, and utility of investigatory process for the state of Michigan the initial result of research was unanswered questions. There was no state equivalent of the Congressional Record through which legislative investigatory action could be traced. There existed no formal description of how investigatory process worked. What was found to exist was a conglomeration of informal and poorly documented formal investigative proceedings. Only by studying a sampling of such investigations, interviewing actors involved in the investigatory process, and observing that process firsthand could information be gleaned. It was through a combination of such methods that the information concerning the Michigan legislature's investigatory process set forth in this paper was gathered. By describing and documenting the Congressional process it was possible to have a framework within which to examine the primary information gathered about legislative investigations in Michigan. The result is a description of how the legislative investigatory process currently operates in the state of Michigan.

METHODOLOGY

In an era marked by inflation, reduced governmental spending, an unbalanced budget, and criticism of government and the politicians and the bureaucrats who run it, it is timely to explore the mechanism by which government investigates its own workings. Due to Michigan's severe problems such a study is particularly timely here. In seeking to explore this topic, literature searches revealed that little information existed which described how states carried on legislative investigations. Such information consisted basically of recommendations for improvement and standardization of process rather than an explanation of what really existed. Much of this data was also outdated. This area was clearly underexplored.

In an attempt to look specifically at the Michigan legislature's investigatory process there existed no standardized resources. Consequently it became necessary to pursue data through new channels. First Congressional investigatory process was studied to provide background and a framework within which legislative process could be explored. Secondly, specific Michigan investigatory information was gathered through the use of interviews, case studies, and direct observation.

The case studies included are representative of the types of investigations in which the legislature engages. By comparing and contrasting them it is possible to make some generalizations regarding the investigatory process itself. It is the objective of this study to use

such generalizations to describe the legislative investigatory process as it currently operates in Michigan. The process is largely informal and highly politicized. It is dependent on the interrelationship of many individual actors each operating out of his/her own political base. Since the body of this paper rests on primary research done in the late spring and summer of 1982 when the political climate, governing party, and many of the primary actors in Michigan's government were different than those existing currently, there may prove to be significant differences in the types, purposes, and scope of investigation in the ensuing years from those observations, case studies, and trends outlined here.

These differences do not invalidate the research which follows. They do, however, provide the perspective from which this research must be viewed. This research provides some historical documentation of the legislative investigatory process in the state of Michigan which can act as a touchstone for examining the future evolution of the state's investigatory process. The starting point for beginning to understand the Michigan process now or in the future is, however, the model provided by examining Congressional investigatory process.

THE CONGRESSIONAL MODEL

The first step in understanding the Congressional investigatory process is to define what investigation is. One source defines investigation as any inquiry by any Congressional committee or subcommittee that uses investigative procedures. The investigative procedures referred to include such things as formal examinations of records and calling and examining of witnesses.[1] Investigations could be done for the purpose of: 1) fact finding for special and/or remedial legislation, 2) fulfillment of the Congressional watchdog function, 3) informing the public, and/or 4) resolving questions of conduct of an election or fitness of a member or other government official.[2] Such a definition excludes legislative staff inquiries and is confined to the actions of the legislature itself. Another source states that "the truth of the matter is that investigation in essence is a process not a single definable instrument."[3] This definition accounts for the fact that the process varies situationally. Some investigations are done by standing committees and some by special committees. Some investigatory activity is done as an adjunct of regular committee work and is seen as a routine part of Congress' lawmaking function. Other investigations pursue some special knowledge and are carried on via formal resolution. Some investigations are marked by hearings and formal subpoenas power others are not.[4] "It (investigatory power) is highly adaptable in the details

of its rituals. It is a most useful tool."[5] These definitions provide the description for a process which has no clear mandate.

Other than issues of membership and impeachment no formal constitutional authorization for Congressional investigations exists. It is an implied power. Although precedent for investigation does exist within the British parliamentary system upon which our government is organized.[6] From the beginning controversy existed as to how extensive investigatory power could be. Strict constitutionalists wanted Congress' power to investigate to be limited to impeachment and election disputes. While those interpreting the constitution broadly believed that there was an inherent power to investigate within the legislative function itself. In 1792 the first Congressional investigation occurred. It was an inquiry into an Army disaster in the Indian Territory.[7] This clearly established the investigative precedent on home turf and marked the beginning of a new era of Congressional power. From that time challenge was confined basically to specific investigations.[8]

The courts have provided the only formal sanction to ongoing Congressional investigations. After an earlier decision that had whittled away at the scope of Congressional investigations the Supreme Court gave the practice firm legal support in 1927. In a case arising out of an investigation of the Justice Department Administration, McGrain vs. Daughtery, the high court handed down this landmark decision.

> We are of the opinion that the power of inquiry--with process to enforce it--is an essential and appropriate auxiliary to the legislative function... A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions when the legislative body does not itself possess the required information--which not infrequently is true--recourse must be had to others who do possess it.[9]

This formal acknowledgement confirmed the existing Congressional practice.

The process of legislative investigation changed in focus and scope over time. The first investigations dealt primarily with traditional legislative privileges and members' fitness. Toward the end of the 19th Century civil and military activities became the focus for inquiries such as the investigations of the Bank of the United States (1832 and 1834) and the General Land Office (1897).[10] By 1880 the scope of investigation had broadened to include economic and social problems such as strike breaking by the railroads (1892) and concentration of dollars in the money trust (1912-13).[11] Between World War I and World War II the social and political climate of the United States was changing. A fear of subversion by communists and communist sympathizers set in. This wave of fear continued to increase after World War II culminating in the Congressional investigation of Communist subversion begun by Senator Joseph P. McCarthy. Mr. McCarthy's inquiries began in 1950 climaxing in 1954 with one of the first televised Congressional hearings. Support for McCarthy's position dwindled, and he was not reelected in 1954. However, the McCarthy saga brought a new perspective to Congressional investigations. His grueling pervasive questioning of prominent individuals from all walks of life led observers to question how great a threat the investigative process posed to individual rights.[12] During the years following the McCarthy investigation much effort has been devoted to finding means to safeguard the individual while still allowing Congress to perform its investigatory function.

Investigations have not only changed in scope, the investigatory process has grown in magnitude. As the exective branch grew, especially during the New Deal and post-World War II period, Congressional investigations increased in an attempt to oversee administrative actions and spending of appropriations.[13] In the almost 150 years from 1789 to 1938, 500 investigations were conducted. While during the 1967-68 session of the 90th Congress, 496 investigations were conducted.[14] Additionally, "growth of investigations can be documented by the growing amount expended on them."[15] From 1910-1919 the Senate expended 300,000 dollars for investigative purposes. Between 1951-1952 the Senate spent 2.9 million dollars. While from 1967-1968 the 90th Congress (House and Senate together) expended 21,944,843 dollars. The amounts being spent on investigations were so great that they exceeded the statutory ceiling put on committee allotments. Consequently, the House and Senate began allotting investigation monies through special authorizations. In 1973 the special Watergate Committee alone was given 2,000,000 dollars. Since its 1792 beginning the investigatory process has evolved into a major Congressional function.

The purposes of investigation are broad and varied. Investigations can be used as a mechanism for conducting research. They could act as a forum for presentments by lobbyists and others whose perspective could be instructive for lawmakers. Research could provide the basis for needed legislation. Investigations could also be used to oversee the increasingly complex executive branch. Examinations of election results and expenditures with the intent of discovering fraud could also be the aim of investigation. Investigations could be useful too in

handling government personnel type issues such as: 1) the fitness of a member to serve, 2) the fitness of a presidential appointee to take office, or 3) whether or not the president should be impeached. Additionally, investigations can be used to inform the public. Congressional investigatory function then can serve four major purposes: to legislate, to supervise, to discipline, and to inform.[16] These purposes when acted out can "...range from those that are clearly punitive to those specifically designed to advance the interest of a particular department."[17] Investigations can become forums for particular departments to be chastised or forums in which they can vindicate themselves or gain support. Investigations can also become battlegrounds. If an investigative committee chair and his/her members are hostile toward each other a battle of wits can ensue.[18] An investigation can also serve to force a confrontation with the executive branch over release of information. Committees could abuse witnesses. Inquiries could turn into "fishing expeditions." "Investigations also offer an unrivaled opportunity for political advantage and publicity useful to elected officials."[19] These apparent outgrowths of investigations can, however, themselves be purposes for beginning an investigation.

Whatever the purpose of a Congressional investigation "the instrument for looking into every affair of government is the legislative committee."[20] Whether standing committee, subcommittee, or special committee the committee provides the vehicle for inquiry. Procedural differences occur, however, depending on the type of committee conducting an investigation. Some investigative activity is carried on routinely as a specific part of a committee's legislative functioning. Such

investigations are provided for in both the Senate and House Rules. Regardless of whether it is a routine or special investigation that is called for the committee chair is central in determining the scope, focus, and degree of success a given investigation achieves. In the case of investigations carried out by standing committees the committee chair leads the investigation. As a matter of courtesy, investigations assigned to standing committees usually result in formation of a sub-committee with the person requesting the investigation as chair.[21] In the case of special committees the person proposing the investigation is named as chairperson.

> This circumvents the seniority process that works in committee structure. However, some question exists as to whether the person proposing an investigation can really be objective in leading the search.[22]

Regardless of the inherent drawbacks and/or benefits in the type of committee or chairperson conducting an investigation the procedural stages are the same. Congressional investigations occur in three stages: authorization, staff preparation, and public hearings.[23]

The authorization stage is where the investigative process begins. It is the mechanism by which an investigation is sanctioned. In the case of routine investigations existing Congressional Rules can sometimes provide sole sanction. In other cases a Senator or Congressman can propose a resolution calling for investigation. The resolution must include the reason for the investigation, the degree of authority requested, and the scope. Such resolutions are referred to committee as any other piece of legislation would be. The committee considers the request for authorization and the expense necessary to implement the

request. If approved by the committee the resolution is reported out and voted on by the whole chamber. A joint resolution (request made by both houses) is voted on concurrently by both chambers. Many authorization requests die in committee, but those voted out are usually passed by the whole chamber and an investigation proceeds.[24] If authorization is formally given a chairperson is selected according to procedure outlined earlier. This part of the authorization stage is extremely important, because "for the most part the chairman makes or breaks an investigation."[25] The chairperson also determines how best to utilize staff intelligently. The chairperson determines the extent to which every committee member has a chance to participate and develop questions free of party lines.[26] It is the chairperson who sets the tone for the whole proceedings. Once official endorsement is given and the actors are determined the second stage of investigation, staff preparation, begins.

Staff preparation is a relatively new stage in investigative procedure. In early investigations there was no staff. At this time inquiries were often informal and there was much blind blundering done with the hope of unearthing something useful.[27] It was not until the late 1800's and early 1900's that staffs began to be formed to do research. It was not until the 1920's and 1930's that the practice of congressional reliance on staff was firmly established.[28] Now "legwork" is done almost entirely by staff members who can number twenty or more for any given investigative effort. Staff members can include attorneys, research assistants, clerks, editors, and specialists. Staff members can be permanent or permanent-temporary employees. Permanent staffers

assigned to an investigation may be employed by a given lawmaker, a particular political party, or some other governmental agencies. Temporary staffers may be individuals from the private sector whose expertise allows them the temporary appointments as an investigation staffer. Permanent-temporaries are staff people who move around to help form the staff of one investigative effort after another. The type of staff being utilized to conduct an investigation can severely alter its tenor. Permanent staffers have more latitude and are less apt to be intimidated by a committee chairperson than temporaries who are appointed by the chair and owe him/her their agreement in order to retain their appointment.[29] Permanent-temporaries have often been charged with extending the length of an investigation to retain their positions.[30] Although the presence of staff is a definite asset compared to the bumbling beginnings of investigation there are many variables associated with their effective use. Situation dictates whether staff are to be part of the solution or part of the problem in pursuing an investigation.

Staff preparation paves the way for the final phase of the investigative procedure--the hearings stage. Not every investigative effort reaches the hearing stage. Staff research might indicate insufficient reason to proceed to that point or may uncover some alternative method of proceeding. Whether the process actually culminates in a hearing or not the task is initially approached with that end in sight. Although there can be and are departures from the norm generally the same pattern is followed in pursuing an investigation. First the problem is explicitly defined. Then staff is allocated and assigned tasks. In doing this a need may be found and request made for additional

staff and/or monies. A request for background and preliminary data is made from the Legislative Reference Bureau and liaison is established between the Bureau and the staff. Data is collected and assessed. If desired hearings are then planned, expert witnesses are chosen and interested parties are invited to testify. Pre-hearing conferences are held which provide focus for the hearings. Individual committee members are given the chance for input to develop particular points. Then questions are formulated. Supplemental witnesses are found to address any new issues. Hearings are then held and action taken.[31] Action depends on the investigation's initial purpose and could take the form of a formal report being issued, a bill being drafted, the censuring of a member, etc. Hearings done in public reveal little new information not already uncovered by staff. "They do however act as a check on staff findings, provide accused a chance for defense, and inform and influence public opinion."[32]

The procedural stages for an investigation are the same regardless of the house of Congress in which it originates. Each house does, however, have its own set of rules. In the Senate almost any Senator of the majority party can successfully propose an investigation if he/she wishes. Two alternate vehicles are open to do this. First, if a special committee is planned the Senator would seek the consent of the standing committee which would normally claim subject area jurisdiction over such an investigation. As a second choice the Senator desiring an investigation could work from within his standing committee and suggest a special subcommittee.[33] Any committee, however, "...shall adopt rules not inconsistent with rules of the Senate governing procedure."[34] The

Standing Rules of the Senate include a provision for authorization.

> Each standing committee, including any subcommittee of any such committee, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to take such testimony and to make such expenditures out of the contingent fund of the Senate as may be authorized by resolutions of the Senate.[35]

This authorization allows a Senatorial committee to carry on such routine investigations as review of presidential appointments. Subpoena power is thus automatically delegated to all committees. Refusal of a witness to respond to a subpoena or to be unresponsive if he/she does appear to testify opens such a witness to charges of contempt. Such contempt charges were misused by both houses of Congress early in the evolution of investigative power in an attempt to keep unruly witnesses in their control.[36] Since 1945, however, contempt charges against a witness testifying in either house of Congress must be filed in accordance with the same criminal statute in a court of law.[37] Other rules are also similar in both houses. An example of such rules is the proliferation of regulations governing expenses. Informal investigations carried on within the scope of a standing committee's jurisdictional area are limited to a maximum of 5,000 dollars from the Senate contingent fund. Greater amounts can be drawn only through means of a resolution and complete budget review by the Committee on Rules and Administration.[38] In the case of investigations called for by resolution the resolution must include cost limits which cannot be exceeded without a vote of the whole body.

In the House Rules as well as those of the Senate an authorization provision for investigations exists. The House terms these as oversight responsibilities and mandates that

> each committee other than appropriations and budget shall review and study on a continuing basis the application, administration, execution, and effectiveness of those laws or parts of laws, the subject of which is within the jurisdiction of that committee and the organization and operation of the Federal agencies and entities having responsibilities in order for the administration and execution of in order to determine if such laws and the programs there under are being implemented and carried out in accordance with the intent of Congress...[39]

This rule is more specific than that of the Senate and strongly states a perceived need for on-going day-to-day investigative responsibilities. Such investigations as those outlined in this rule can exist and gather research with or without resolution.[40] In the formation of a special committee the Speaker of the House plays a pivotal role. The House Rules state that a committee wishing to sponsor a special investigation requiring expenditure of funds must present its case to the Committee on House Administration.[41] However, it must first be cleared with the Speaker. His objection is tantamount to a veto, but his support acts as source of power.

Whichever type of committee--standing or special--is conducting an investigation in the House there is an abundance of specific rules by which it must abide. Hearing rules are outlined including rules governing when the committee can set, guaranteeing them subpoena power if necessary, and establishing procedures of testimony of members and other witnesses. Many rules such as a witness' right to counsel speak to the issue of individual rights.

The rules of the House and Senate have not remained static over time. Those rules described above are part of a body of procedural regulation that has been established through a lengthy evolutionary process. The rules changed most dramatically as a result of the Legislative Reorganization Act of 1946.

> Prior to passage of the Legislative Reorganization Act the majority of investigations were carried out by special or select committees, with subpoena power established to conduct the inquiry.[42]

In the case of these special committees when an investigation ended so did the committee. Its power ceased to exist.[43] This discouraged on-going follow-up investigations. In response to this 1946 legislation the House of Representatives adopted a mildly worded code of procedure. It was limited reform designed to protect the status quo.[44] Only after the Legislative Reorganization Act of 1970 did the Senate committees adopt and publish rules of procedure such as those discussed above.[45]

The evolutionary nature of rule making can be better understood by looking specifically at rules governing individual rights. In the early days of investigations few rules existed. Many investigations were informal and many were totally disorganized. Witness' rights were virtually ignored. The early establishment of subpoena and contempt powers by Congress made it easier to ignore individual rights. As mentioned earlier, the contempt power was so misused by Congress that individual rights were not just ignored they were often abused. The advent of the 1930's and the establishment of the House on UnAmerican Activities Committee refocussed the investigation from government officials and issues to the lives of private citizens.[46] Investigations

of this type continued and reached a peak under the aforementioned McCarthy investigations of the 1950's. These types of investigations brought the issue of individual rights to the fore. The fact that television was coming into being and investigations were being televised made the general public aware of this important issue. A showdown between the legislative and judicial branches occurred as individuals began to go to court and charge the Congress with violation of their rights. In 1957 the Supreme Court, without directly citing the First Amendment, questioned the principle of Congressional prying into the lives of private citizens. In Watkins v. United States it was ruled wrong to "expose for the sake of exposure" and an individual's freedom of association and speech were considered inviolable.[47] This 6-1 decision was the subject of much criticism. Two years later in a similar case, Barenblatt v. United States, the court retreated from the Watkins decision. This pattern of advance and withdrawal is typical of the high court's involvement in Congressional investigations traditionally. When investigation is the issue the court has ruled on fine points of law rather than broad constitutional issues. Despite the failure of the Supreme Court to consistently meet the issue head on individual court cases and public opinion did work together to remind Congress that individual rights were constitutionally based and, as guaranteed, "inalienable." Every citizen is guaranteed, by the First Amendment, freedom of speech. This means that an individual cannot be called upon to testify to and be held accountable for political opinions which he/she may hold. If the Congress attempts to force such testimony it is violating these First Amendment rights. The Fourth Amendment

precludes unreasonable search and seizure. Thus Congress could not abuse individuals' rights in securing material evidence such as documents. The Fifth Amendment insures that an individual cannot be forced to give testimony if it will incriminate him/her. This right must be as rigidly inspected in a Congressional hearing as it is in a court of law. This amendment is the most used and abused by witnesses. Such abuses by witnesses and even greater abuses in other areas by the Congress called for reform on both sides.[48]

In 1954 the House of Representatives called for the establishment of unified investigative procedures called the "Fair Play Act" which was included in the House Rules.[49] The "Fair Play Act" included such individual rights as the right to counsel, right to defend oneself against charges, and treatment of witnesses with courtesy.[50] The Senate passed no "Fair Play Act" in 1954. A code similar to that established in the House was proposed and defeated. Instead recommendations were made and accepted for the Senate Rules to be changed to include some rather banal charges such as: 1) any person felt damaged by his/her committee testimony could testify on his/her own behalf or file a sworn statement, 2) only by committee authorization could testimony given in closed session be released publicly, 3) each witness would be advised in advance as to the subject of an investigation and a witness could request that a television camera not be turned on him/her while giving testimony with the committee members present ruling on the request.[51] These suggestions and eight others comprised the Senate's much diluted equivalent of the Houses' action. Treatment of witnesses was left to the discretion of individual committees and procedure varied greatly.[52] Although

outside pressure brought less stringent rule changes in the Senate than in the House, both recognized that their investigative powers were not to be without limits; individual rights had to be respected. The individual rights issue serves as an example of the pattern of evolution observable in other rule making changes as they relate to investigation.

Congress is bound by many rules arrived at in some very complex manners. However, as the individual rights issue illustrates Congress does not function as an entity apart. Congress must fulfill its investigating function while interacting with the judicial and executive branches of government. The involvement of the Supreme Court in Congress' ability to investigate first occurred in 1881 almost 100 years after the practice started. The high court has traditionally held back when ruling on cases concerning investigatory process. Even after their involvement began in 1881 their decisions were generalized and often provided little direction. It was not until 1927 one hundred thirty-five years after the first investigation that the Supreme Court officially sanctioned Congress' right to investigate in the aforementioned McGrain vs. Daughtery case. On individual rights issue too the Court has dragged its feet. The Supreme Court and lower courts may have ruled in favor of individuals whose rights had been violated by a Congressional committee, but it would not consistently step into the Congressional domain and draw specific boundaries for their authority to conduct investigations. The influence of the courts on investigating process is real, however, even if it has been slow, erratic, and often indirect in exercising that influence.

In its dealings with the Executive Branch Congress has had more head-on confrontations. There has always been running battle over whether or not the Executive had to supply Congress information as it carried on investigations. Congress takes the position that agencies within the Executive Branch for which they mandate and appropriate funds should be obligated to fulfill their requests for information. However, precedent until recent years showed that in such battles the Executive Branch had consistently won. Reasons for their victory are rooted in such concepts as national security and military and diplomatic secrecy.[53] Confidentiality is considered necessary for actors within the Executive to have a free exchange of ideas. For any of these reasons a President can refuse to hand over information or invoke what is termed Executive Privilege. Executive Privilege can result in a President being able to hide necessary information or can be a protection for genuinely confidential information. Executive Privilege has been much debated, but never with such ferocity as during the 1973 Watergate investigation. After a complicated series of court battles President Nixon was finally ordered in July, 1974, to surrender tapes which the Watergate committee had requested over a year before.[54] The revelations contained in the tapes seemed to confirm witness's testimony that Nixon had participated in the Watergate coverup. The bitterness that surrounded the investigation caused Executive Privilege to be viewed by many as a dangerous tool allowing the protection of the guilty. This attitude toward Executive Privilege and the Supreme Court ruling against Nixon mark a major victory for the Congress in its on-going battle with the Executive Branch. Today we are all seeing the fall out of the Watergate Investigation.

Thus, often let alone by the courts and now bolstered by negative attitudes toward Executive Privilege the Congress, while allowing consideration for individual rights, has even broader arenas in which to pursue investigations.

INVESTIGATIVE PROCESS--A CONTROVERSY

The Congressional model of investigation has evolved over the past 190 years in an atmosphere marked by controversy. Controversy existed initially over whether or not Congress should be allowed such an unmandated right. Once that issue was favorably resolved controversy has continued over the procedures with which it conducts investigations. Confrontations have been faced with the Judicial and Executive Branches as to whether or not Congress does in specific incidents violate the constitutional principle of separation of powers through the exercise of investigative power. The controversy now seems to be how far can Congress go in its utilization of its investigative right.

In the 1920's Woodrow Wilson outlined an extremely broad scope for Congressional investigative activity.

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress, says Wilson, should be preferred even to its legislative function.[55]

Wilson envisaged investigatory activity as a tool to uncover data, discuss it, and most importantly to inform the public of its findings. Such information giving is the bulwark for public feedback to and

involvement in their government. The proven merits of Congressional investigation cannot be ignored.

> Investigations have gathered information for possible future legislation, tested the effectiveness of past legislative action, inquired into qualifications and performance of members and laid groundwork for impeachment proceedings.[56]

Wilson's description of the assets of Congress' investigatory function ignores the political realities of its implementation. "By their very nature investigating committees have become the focal point of partisan strife."[57] Investigations can be used to exploit individuals and situations. Individual lawmakers' desire for popularity, attention or publicity can be the impetus for an investigation. An investigation can also be the arena in which one lawmaker's pet programs are allowed to shine or a place where another's individual hates can be aired. Party politics can result in a struggle to be the first to initiate a popular investigation. Politics can also determine efforts to bring to light information one party may not wish uncovered. Overlapping responsibilities between committees can cause a struggle for control. Politics also influences the decision to establish a special committee or rely on a standing committee to pursue any given investigation. This is especially crucial in the Senate where standing committees are by nature very conservative.[58]

Investigative process has been much debated as having more negative qualities than positive ones such as Wilson describes. Noted journalist and political philosopher, Walter Lippman, voiced his agreement he spoke of "...that legalized atrocity, the congressional investigation, in which congressmen, starved of their legislative food for thought, go on a wild and feverish manhunt, and do not stop at

cannibalism."[59] However, defenders of the investigative function are as steadfast as the two opponents. One such defender was Harry S. Truman. Before becoming president Truman achieved national fame as head of a World War II Senate Special Committee to investigate the National Defense Program. He said to the Senate in 1944, "in my opinion, the power to investigate is one of the most important powers of Congress. The manner in which this power is exercised will largely determine the position and prestige of the Congress in the future."[60] Truman defends the process, but also points out the crucial pivotal point in any assessment of investigative activity--"the manner in which it is conducted." Controversy will continue to brew over the failings and merits of investigative activity. Perhaps, however, those arguments would be more cogent if focussed on, as Truman suggests, the ways in which investigation is performed.

THE INVESTIGATIVE PROCESS IN STATE LEGISLATURES

"In 1789 the states were the creators of the Federal Government; by 1861 the Federal Government was the creator of a large majority of the states."[61] In many areas such as investigatory process that trend has continued. The Federal model has truly fathered the investigative procedure at work in the states. Investigative power is implied as ancillary to legislative power at the state as well as the Federal level.[62] The same court cases which legitimized investigations by Congress provide sanction for state legislatures to conduct investigations. Each state pursues use of its investigative function somewhat differently. For example in some states, such as Ohio, the legislature does not rely on implied status or court sanction for its right to investigate, instead it is expressly granted that right through state statute.[63]

In all states though dimensions of investigative power, as at the federal level, are interpreted very broadly.

> Inquiries concerning effective administration of existing laws, checking desirability of new laws, surveying a state's social, economic, or political system for defects which the legislature may need to remedy, and probing into departments of government to expose possible waste, inefficiency, or corruption[64]

are all aspects of investigative activity. The purposes for which a state legislature carries out an investigation are the same as those underlying Federal problems: getting information necessary to enact

legislation, inquiring into management of administrative agencies, examining the quality of members, and informing the public.

As is true Federally the structure for pursuing investigations at the state level is the committee. Legislative investigations can be initiated by single house resolution, joint house resolution or statute. As at the Federal level resolutions cannot be so broadly written as to allow a committee to define its own authority or to independently choose the direction and focus of its activities.

> Committee authority is limited to: 1) authority which the legislature itself possesses, 2) authority which is delegable, and 3) adequate guidelines within which it must exercise its power.[65]

In pursuit of information state legislatures utilize the subpoena just as Congress does. The legislative right to compel evidence is implied according to an 1821 court ruling in Anderson vs. Dunn, although some states, like Mississippi, explicitly grant it.[66] In utilizing the subpoena and compelling evidence state legislatures have had to deal with the same knotty issues of contempt, and individual rights, as were confronted federally. The results too have been essentially the same. In cases of contempt state legislatures retain the right to enact their own punishment or utilize the existing criminal statutes. In practice it has proven to be cheaper and more expeditious to utilize the existing criminal statutes. Strong respect for individual rights seem to exist uniformly in state legislatures.

Although similarities between state legislatures can be assumed in general terms it is almost impossible to do so in specifics. Rules governing investigations differ greatly from state to state and con-

sequently any attempt to make comparisons with Congressional rules is ludicrous. States are, however, aware of the disparity between the procedures by which they carry on investigations. In 1968 the Council of State Governments sponsored a conference at which legislative investigatory process was studied. The report from that conference documented the historical evolution of the concept of investigation and developed a list of suggested principles to guide the conduct of legislative investigation. These recommendations dealt with specific suggestions concerning resolutions, committee membership and quorum, rights of witnesses, testimony, and recordkeeping among other things. However, it was a guide not a mandate and as such was not binding on any state. How many or how few of these suggestions have been incorporated into the investigative procedure of any state would require an individual look at each. Some states are more proficient in utilizing the process well than others.

However, even the states more proficient at carrying out investigative procedures are not as active at it as Congress is. Many states do not have full time legislatures and consequently do not have time, influence, or expertise to actively investigate. Other burdens also exist which are common to full and part time legislatures alike. One example is the fact that unless a legislative committee is created by statute it cannot function between legislative sessions.[67] This rule would tend to destroy some committees and sap their strength. Such a weakening of committee forcefulness could also act as a contributing factor in making legislatures less active than Congress in pursuing investigations.

In addition to the degree of investigative activity another contrast between state legislatures and Congress is the degree of politics that permeate the process. The motives of investigators are more open to suspicion and are more apt to be politically based at the state than at the Federal level.[68] The reasons for this are many and varied. Being closer to home than a congressman a state legislator is apt to find himself/herself more open to scrutiny, more tied to his/her constituency, and thus more apt to be reactive and political rather than proactive. There is also less professionalism among state legislators than is practiced by Congressmen. Again one can look to the part-time status of many state legislatures as a contributing factor. Even in those states which do have full time legislatures many have not had the time, climate, or respect to build professional status. In absence of a full-time commitment and/or professional standing and in the full fire of public opinion it is not uncommon for state legislatures to make politically motivated decisions. Although these examples of comparisons and contrasts between state and federal process are far from exhaustive they do document the reality of a weaker but Federally molded investigatory process operating at the state level.

Recognizing that investigatory process is weaker at the state than at the Federal level it is interesting to explore the alternatives to legislative investigation. One alternate is the legislative council. The legislative council movement began in Kansas in 1933.[69] Councils have sprung up in many states and have diminished the need for legislative investigatory committees. The councils are information gathering agencies that feed data directly into the legislature. In some states

councils have subpoena power which increases their ability to gain information. Their research reports are often accompanied by recommendations for legislative action. Councils are independent of party lines and can thus unearth less biased information and possibly result in less politically based decision-making. Councils are a particular boom to part-time legislatures that must operate within tight time constraints. With or without the presence of a council a legislature can exercise two other alternatives to conducting in-house investigations. One option is to request the governor to make an inquiry on the legislature's behalf. This is particularly useful when investigating a specific agency. "A legislature may also memorialize Congress to investigate a matter whose ramifications touch the interests of the state."[70]

LEGISLATIVE INVESTIGATORY PROCESS AS IT OPERATES IN MICHIGAN

The Michigan legislature has been as plagued by problems as any other state legislature. For a long time it was the brunt of much political criticism by Democrats and Republicans alike. In the post World War II period the legislature was dominated by Republicans. Thus an era of conservatism pervaded the legislative proceedings especially in the Senate where there seemed to be an indifference to the economic and social problems of a growing industrial population. The post World War II period was also marked by a tug-of-war between executive and legislative priorities.[71]

Gradually the state constitution came under criticism as well. It contained many conflicting and inoperative amendments and seemed too rigid in its fiscal provision. The legislative apportionment formula in the constitution was no longer fitting. Requirements for terms (2 years) were considered too short and elections were considered too many in number. In 1948 and 1958 attempts had been made to call a state constitutional convention to revise the existing document, but neither attempt succeeded due to the inability to secure a majority vote of the citizenry in a general election.[72] Not until 1961 did the voters give approval to a convention to revise a constitution which dated back to 1908. After much diligent work the new constitution, under which Michigan still operates, was ratified April 1, 1963. It went into effect January 1, 1964. It contained many productive overall changes some of

which were: a consolidation of government departments, establishment of a Civil Rights Commission, and a provision stating that all judges have legal training and all courts be courts of record.

Additionally, changes occurred which directly affected the legislature and ultimately its ability to investigate. First new appointment rules were established which better represented the new population distribution. Secondly, the terms of the governor and Senators were extended to four years; representatives retained their already existing two year terms. The extension of the terms for Senators allowed increased continuity and stability of activity including investigation. Third, the Auditor-General ceased to be an elective appointment, but rather was made a legislative appointment responsible to the legislature not to the executive as had been the case in the past. The new system was established to give the legislature a mechanism through which to see that funds appropriated by the legislature were in fact expended according to their intent. Fiscal post-audits and performance audits were to be of all departments, branches, agencies, and institutions.[73] Through these means both quantitative and qualitative (operational effectiveness and/or performance) could be evaluated. Fourth, a Legislative Services Bureau was formally established. It was designed to be a bipartisan legislative council to supervise research and draft bills. In reference to these changes one prominent legislative leader of the day commented that "we are beginning to have the tools with which to become more inquisitive."[74]

Shortly after the constitutional changes in 1966, a legislative salary hike was enacted. Salaries rose to $15,000 annually; $2,500 of

which was for expenses.[75] During the early 1970's another significant change was beginning. Legislators began acting on their legal ability to become full-time public servants. "In Michigan there is no definite set number of days that the legislature may remain in session. The legislature stays in session until it finishes its work and then recesses or adjourns."[76] If the legislature adjourns it is unable to hold another session until the next January unless summoned into special session by the governor. Such a special session is to act on only the specific issue for which the session was called. If, however, the legislature recesses it can reconvene as part of its regular session if called back by the joint action of the majority leaders of the House and Senate.[77] In the 70's the legislature began to recess rather than to adjourn and its full time status was gradually established.

This change was accompanied by an expansion of staff. The ratio of six legislators to one secretary dropped as additional secretaries were hired. The legislature began to move into the Capitol as the executive branch moved out. Overflowing that facility other buildings were acquired to house the expanding legislative branch. In 1973 the legislative research staff was added.[78] Today every state legislator has a minimum of one full time staff person who acts as secretary and constituent problem solver. Legislators who are committee chairs are granted an additional staff person as a committee aide. Technically all legislatures also have access to the legislative research staff. In reality, however, it is dominated by the party in power.

The results of all these changes have been a legislature which is noticeably different. "Legislators today are younger, better-educated,

and much better compensated than their predecessors."[79] One could argue about the relative significance of the factors that caused these changes, but that would generate little that was productive. It is, however, important to realize that not everyone sees these changes as positive.

Many see full-time status and increased legislative salaries as leading to possible problems in the legislature. There is a fear that full time status will cause a lack of the perspective legislatures had when they were the farmer-legislator or the factory-worker legislator. The new legislators might be subject to fewer conflict of interest problems, but the result could be openness to greater pressure from their home districts. An additional fear is that higher salaries will bring disinterested professional payrollers into the legislature.[80] Whether any of these fears do materialize into real problems in state government is a question which can only be answered by longitudinal observation.

In the state of Michigan the last twenty years has been marked by significant changes in state government. For the legislature many of these changes have been structural and effect its very foundation. The result has been observable operational changes. The legislature's power has increased vis-a-vis the executive and judicial branches. This means the legislature is now much more able to exert itself and effectively utilize its right to investigate. In the case studies and observations which follow types of investigations, procedures used to investigate, barriers to successful investigations, results of investigations, and an alternative to the existing process will be illustrated.

CASE STUDY I

ROUTINE INVESTIGATION AND LEGISLATION

The most common type of investigations are those preceding passage of legislation. Routinely when bills are introduced and assigned to a committee the issues involved in the bill are investigated and discussed. As a result of investigative findings and political positions the bill can be reported out as written, revised with a substitute bill being accepted and reported out, or it can be dropped completely.

An example of this process can be seen by tracing a house bill to amend the vehicle code. A bill to establish new restrictions on vehicles carrying certain flammable liquids was introduced in the spring of 1982 to modify restrictions which had been passed earlier and were to take effect in 1983. The bill which was introduced in the house by Representative Francis R. Spaniola was formulated on the basis of new research findings and the latest traffic accident figures. House Bill 5597 as originally introduced was referred to the Standing Committee on Roads and Bridges. After discussions and examination of the research a substitute bill was adopted, reported out of committee, passed on the floor of the House, and sent to the Senate. The origin of the bill and its substitute were based on investigations. Independent research done by the Highway Safety Research Institute of The University of Michigan, reports compiled by the Fire Marshall Division of the Department of State Police, and traffic accident statistics provided the factual data

upon which decisions were made. As part of the bill's passage process the House Legislative Analysis Section prepared an information sheet on the bill for all legislators. It contains a statement of the problem, synopsis of the contents of the bill, pro and con arguments, and positions held by various interested parties (see Appendix A). This information sheet was available to all House members before they voted. Later when the bill reached the Senate floor the same fact sheet was available to help Senators in making their decision.

However, before the bill reached the Senate floor where it was passed, it had to go before the Senate Standing Committee on Transportation. The bill was sent to the Transportation Committee and a formal hearing was held. Having observed the hearing it was interesting to see the formal procedures used. Anyone wishing to speak about the bill had to fill out a card stating his/her reason for desiring an opportunity to speak. These cards were given to the committee clerk who, at the instruction of the committee chair, called those giving testimony. At this particular session the small hearing room was filled to capacity mostly with representatives from various facets of the trucking industry.

The audience waited impatiently for the committee to assemble. There was barely a quorum, and the committee chair was the last person to arrive. One House aide reflected that it was not unusual for Senate committees to keep Representatives introducing bills waiting. By the time the hearing was called to order the House of Representatives had already called their afternoon session to order. Representative Spaniola who was, out of courtesy, allowed to testify first was limited in the time he could spend speaking, because he felt pressure to return

to his own chamber to vote on bills coming to the floor there. Spaniola gave a brief testimony and left. His aide remained to give additional testimony. The University of Michigan professor who conducted the original informational study gave the only testimony against passage. A representative of the Fire Marshall's office supported the bill as did representatives of the truck manufacturing industry. Spaniola's aide and other representatives of the trucking industry made one-line statements in support and passed their opportunities to formally testify as it became overwhelmingly clear that the bulk of the testimony favored the bill. The Senators asked only one or two questions and quickly voted the bill out of committee unanimously. It was so cut and dried and the trucking companies had lobbied so hard that Spaniola later commented he was afraid he had unknowingly proposed something that had some as yet hidden benefits for someone.

This scenario may not be typical of all committee hearings on bills, however it does illustrate the procedure used. The University research, Fire Marshall's report, and traffic statistics were sources of information. The hearing represented an investigation of those facts and an opportunity to weigh the different conclusions provided and make a formal decision.

This hearing also illustrates the politics involved in the investigative procedure. Lobbyists for the trucking industry, a truly biased and self-interested group, were allowed to make their views heard. Much money was expended by the industry to support a bill which they felt would eventually improve their industry's profit picture.

Another type of politics illustrated here is the possible use

for delaying a hearing. In this case the bill was not in jeopardy. However, if the bill had been in jeopardy stalling and limiting a sponsor's testimony by creating a time and responsibility conflict could be used as a ploy to weaken a sponsors' chance for passage. The subtleties of the formal process: where people sit, lateness of the chairperson, the order in which people are called to speak, etc. can be tools to intimidate or in other ways influence a hearing's outcome. Although committees routinely use the investigative process to become informed and make more reasoned and productive decisions many other variables influence the final outcome of a committee hearing on proposed legislation.

An Understanding

In the type of investigation which ultimately resulted in the passage of House Bill 5292 Substitute H-4 no special resolution was required. The standing committees did not utilize nor need subpoena power; witnesses came willingly. No extra staff was required so no additional financing was needed. The investigation done prior to the bill being written and during its consideration for passage was simply an extension of the legislature's power to make the law and required no special action. Such investigations have become the routine activity of all standing committees of the legislature.

CASE STUDY II

A TASK FORCE AND LEGISLATION

Another mechanism for investigation is the task force. A task force is a group designated to study a given problem and propose a legislative remedy. Its work differs from that of a standing committee because its investigation occurs prior to the proposal of legislation. Bills proposed by a task force are still investigated, discussed, and studied, by a standing committee in accordance with the process described in the first case study. A task force also differs from a standing committee in that it is formed to consider one issue only and then disbands.

An example of such a task force is the House of Representatives' Utilities Task Force. It was established in July of 1980 by the Speaker of the House, Bobby Crim, and served at his will. The task force was composed of six members all of whom were also members of the House Standing Committee on Economic Development and Energy. The committee was headed by co-chairpersons Jack Gingrass, chair of the Committee on Economic Development and Energy, and William Ryan.[81] The Speaker made this choice of members because they were likely to be the most informed about utilities' issues, and they were among those who would ultimately report legislation out to the House floor. Their involvement from the inception could expedite the process. Expediency was also a factor which caused the Speaker to appoint only six out of the seventeen members of the standing committee.[82] To have appointed all seventeen members

would simply have been too unwieldly.

The purpose of the task force was to devise legislation to resolve the pressing problems surrounding the utilities industry and its provision of service. Both the utilities industry and the consumers had problems which they had previously attempted to resolve by proposing legislation. However, neither side could garner enough support to pass their proposals.[83] The utilities companies, United Auto Workers, the 86,000 members of the Michigan Citizen's Lobby, and Michigan Legal Services all clamored for solutions. In response Speaker Crim established the Utilities Task Force to act as a forum in which compromises could be developed. Under the guidance of the task force members representatives from all interested groups were heard and an atmosphere of give and take was established which facilitated the trading off of bits and pieces of issues to make gains on other issues. The utilities industry, for example, claimed it took too long to get rate increases. Consumers, however, said they could not support expediting the rate increase process without something such as a shut-off protection clause for low-income families in return. Compromise such as this could result in legislation that would benefit all.[84]

The task force's first accomplishment was Lifeline Legislation (1980/81). Lifeline Legislation established the principle that every family should have within its means a certain amount of electricity per month. That life line block was to be set and made available at a cost that represented only 85% of its production cost. Each successive block of energy used was to cost an additional amount representing an increased percentage of its production cost.[85]

From this beginning the task force worked for over two years to devise six specific pieces of legislation. HB 5527 was proposed to eliminate the automatic adjustment clause for gas utilities. The elimination of fuel adjustment and purchase power clauses were proposed in HB 5528. These bills were combined into one when they reached the Economic Development Committee. HB 5529 was a rate bill designed to streamline the process by which utilities can receive rate relief. In return a consumer's bill, HB 5530, was proposed that would guarantee low-income families service as long as they paid 15% of their monthly income for utilities whether or not that 15% covered actual usage. Consumer advocates also pushed for HB 5531 and HB 5532 (Appendix B). The first, the Siting Bill, calling for public hearings prior to the building of any new power plant, was dropped by the standing committee. The second bill called for a few cents a month to be taken from everyone's electric bill to be deposited in a fund to support utility advocacy.[86]

Once these bills were drafted the work of the task force was over. The bills were then referred to the Standing Committee on Economic Development and Energy. All six bills were reported out of committee in the fall of 1982. However, only the bill to eliminate the automatic adjustment clause actually became law (Appendix C). All of the others failed to be passed, and any plans for reintroducing them are as yet unclear.

An Understanding

The task force brought experts and knowledge together to investigate a problem for which there were no easy solutions. Costs paid by

utility companies have risen drastically, but at the same time inflation has lowered consumer's purchasing power.[87] Consequently, developing legislation to address both these issues was a Herculean task. However, through investigation solutions were proposed which attempted to solve at least a portion of everyone's problems.

Although a task force is in reality a special committee it is not established by resolution. Neither does it possess subpoena power. It is weaker than those committees established through resolution, because it exists and can be dissolved at the speaker's will. This weakness is, however, one of the task force's greatest assets. Since it requires no legislative consensus, but rather is the will of one man/woman it can be marshalled quickly to meet an immediate need. The task force is indeed a unique vehicle through which to conduct investigation.

CASE STUDY III

WRONG-DOING, INVESTIGATION, AND CHANGE

Rumors, constituent complaints, and one's own observations of incidents that seem out of line can all be signals to a legislator that wrong doing exists within a given government agency.[88] Once such a suspicion exists a legislator has open to him/her the option of demanding by resolution, an inquiry. Such a request must document the problem and define the scope of the inquiry. If his/her peers concur and the resolution passes an investigative committee can be appointed.

Such was the case in February of 1975 when Representative Gary Owen introduced HR 103 calling for an investigation of the Department of Licensing and Regulation (Appendix D). This investigation was the third one to be done of the Department. Rumors and complaints led to media attention, recognition and coverage. The incidents which created the furor were charges of misconduct in the administration and scoring of the examination to license builders.[89] These allegations led to an investigation by the Attorney General. That investigation was quickly followed by a probe into department finances by the Auditor General's Office.[90] Questions were still left unanswered. Since Representative Owen headed the subcommittee responsible for oversight of the Department of Labor in which the Department of Licensing and Regulation was housed he had a vested interest in the problems being unearthed and introduced the resolution.

The Speaker of the House named Owen as committee chair and appointed five others to serve with him. (If this investigation had occurred in the Senate the Majority Leader with the Minority Leader's input would make appointments.) Staff people were also assigned: a member of the Judiciary Committee Staff, a member of the Democratic Research Staff, a member of the House Fiscal Agency, and clerical staff.[91] The staff represented a balance of skills. This process took months.

Once formally established the committee's first function was to hold general public hearings allowing whistle blowers a chance to speak. They also clarified issues and helped give the committee direction. The scope of the investigation was great. There were 35 separate licensing boards to review and a separate public hearing was held to address each.[92] Since the Auditor General and the Attorney General had already held investigations they were aware of people who had information useful to the committee. They extended a "command performance invitation" to such people who attended and shared their knowledge. During this and all subsequent stages of the investigation the committee also had the cooperation of department head, Beverly Clark.[93] The public hearings provided a good beginning.

The next stage of the investigation was to conduct private interviews under oath with approximately 30 people from the department.[94] Each interview took one-half of a day. The interviews were taped and attended by as many committee members as possible although not all staff attended all interviews. One staffer, Ms. Farmer, worked sixteen hours a day at this stage of the investigation.[95]

The tool used to facilitate these indepth interviews was the subpoena. At this time investigating committees were routinely given subpoena power. (In the Senate standing committees as well as special committees require a resolution to be granted a subpoena.) Yet no form for a legislative subpoena existed. The committee, using the Attorney General's subpoena form as a model had to draw up its own.[96] Although witnesses came willingly, subpoenas were offered as a means of protection against a supervisor's reprisal. However, due to the cooperation of the department head only one subpoena was actually issued. This committee marked the last time that subpoena power was automatically given. Only after documentation that lack of subpoena power is an obstacle to information gathering can a committee now get subpoena power.

The Owen committee suffered no such obstacles, however, and continued to gather data. During this round of interviews license applicants were again heard. They testified as to whether or not they felt their profession should be licensed as well as giving information on the licensing procedures itself, i.e., how long it took to get a license. Additionally, the department's hearing procedure was examined not only from the applicant's point of view, but from the perspective of all those directly involved in facilitating the procedure.

The thoroughness used in getting testimony was just as rigorously applied to the task of gathering documentary evidence. Initially letters from state employees addressing the issues of the investigations were solicited. Letters from license holders were also gathered. Budget data dating several years back was requested for study. Per committee request, licensing revision plans were being received. The committee

also referred applicant complaints to the department and demanded responses. This process indicated that department understaffing made speedy handling of license requests almost impossible.[97] In addition the committee gathered and studied administrative rules governing licensing and regulation to see that each rule complied with the law and had been promulgated according to the Administrative Procedures Act.[98] New tests such as those available through the Educational Testing Service were studied and compared to existing tests.

The testimony and documentary evidence were carefully studied with an eye toward making recommendations to improve the operation of the department. Although wrong-doing had been evident from the beginning and proven during the investigation the inquiry never took on a purely punitive air. The committee wanted wrongs righted. However, their real goal was to make recommendations and propose legislation for a better functioning more productive licensing department.

Throughout its tenure the committee kept excellent records of its proceedings. Upon finishing its work a full report was written for the House. Copies of that report were filed in the State and Detroit libraries, Legal Services Bureau, and with the Council of State Governments and National Conference of State Legislatures.[99] Such thorough recordkeeping is not the legislative norm.

The committee was able to contribute to an improvement in the functioning of the department. One result of the committee's efforts was that six occupations including horology (watch making and clock and watch repair) were no longer required to be licensed. Cosmotology and barber licenses were combined into one. These changes helped streamline

procedure. Also a complete department reorganization occurred voluntarily with centralization of activities increasing productivity. An examination writing unit was formed. A testing unit was developed to make sure all questions were being asked in a valid format. Much more use was made of regulation and national exams. This centralization plus standardization of testing made the process operate more expeditously. Increased efficiency was not without its price tag, however. The department's budget almost doubled in order to get the needed staff to operate speedily and systematically.

Recommendations concerning licensing boards were also made and accepted. Boards were decreased in number. Composition of boards were changed to include one-third lay people on each. A recommendation was also made that more minority group members and women be appointed to fill board seats.[100]

Rule making procedures too were the subject of recommendations. Due to committee scrutiny and suggestions departmental rules are better promulgated today. A recommendation was made and later a piece of legislation proposed to revamp the hearing process spelled out in the Administrative Procedures Act. This change called for all hearing officers to be placed in one unit of the Department of Management and Budget with subunits to be developed on the basis of expertise.[101] This is still to be acted upon. No change has been implemented yet.

The committee may not have accomplished all of its goals, however, it did succeed in improving the day to day operation of the Department of Licensing and Regulation. Its investigation was well-planned, thorough, and productive in the recommendations made. The fact

that much of the change implemented was done without passage of legislation illustrates again the impact of the cooperation of the department chief. This type of cooperation is not a standard feature in all investigations, but certainly facilitated this committee's job.

An Understanding

The investigation through resolution described here illustrates the process through which a special investigation is initiated. This example illustrates the authorization, staff preparation, and hearings stages that are part of the Congressional investigatory process. Here, as is true Congressionally, authorization is required. Authorization was provided by resolution and had the backing of the whole House so the committee pursuing this investigation was stronger than the task force in Case Study II. However, the Speaker's influence is still present in this type of committee, as illustrated by his involvement in choosing the chairman and committee members. The staff preparation phase of investigations can also be likened to the Congressional model. The staff does the scout work, gathers the data, prepares for the hearings, and gives lawmakers information upon which to base their decisions. The hearings described in this example differ somewhat from the Congressional model described earlier. In this case hearings are not merely the forum in which staff findings are disclosed. They are also used at the onset of an investigation as a primary source of information. The other unique thing about this investigation was the meticulous nature of the record keeping and the number of agencies. Many legislative investigations are poorly documented and finished reports never reach the Legislative

Services Bureau or State Library where legislators and their aides could have future access to them.[102] Even so all special investigative committees still provide a good basis for tracing legislative process and a useful source of comparison with the Congressional model.

CASE STUDY IV

WRONG-DOING, INVESTIGATION, AND NO CHANGE

Personal knowledge of wrong-doing and rumors stimulated an investigation of Medicaid fraud in 1976. This probe was initiated by a State Representative. He was alerted to the problem by a friend who worked in the Bureau of Medicaid within the Department of Social Services (DSS). The Representative's friend brought him information about vendors who owed the state money. The state never collected on these monies yet continued to allow these same vendors to keep billing the state for services delivered under Medicaid.[103] Many of the people involved in this fraud were the same people who were extremely critical of welfare recipients while feathering their own nests through defrauding the system.[104]

This Representative began quiet inquiries. He then received a letter from the United States Attorney of the State of Indiana which stated that people in high places in the State of Michigan had their hands in the Medicaid till.[105] This letter stimulated the legislator to investigate more thoroughly. Additional contacts were developed in DSS. Information was gathered from welfare recipients and billing clerks in doctor's offices. This preparation took months and was done by the Representative himself and his office staff, the people he could trust. During this period the Representative showed the Indiana letter to some people outside his inner circle as a means of testing the waters. This

action, however, was the turning point in his investigative effort.[106]

The Representative was about to request a solution when the Speaker appointed a special committee naming him as chair. However, this undercut the lawmaker's efforts, because failure to have the investigating committee established by resolution weakened its position. Two other actions quickly followed. A "sleezy senator" was able to pass a resolution for a similar investigation.[107] The Senate committee never uncovered anything substantive and quickly died. This was believed to be a ploy to make it seem as though the department was being thoroughly if not overly investigated. At about the same time DDS head, Dr. Dempsey, announced a complete departmental reorganization. "This is a neat bureaucratic trick, because although little happens it takes the punch out of an investigation."[108]

However, the Representative did proceed with the investigation even in the face of these and other problems. A member of the American Medical Association (AMA) contacted him and offered to help. When the AMA member arrived, however, he pumped the Representative for information and left giving no assistance or any promise of future cooperation. Later the Indiana letter which was so vital to the lawmaker's contention of fraud mysteriously disappeared from the locked file cabinet in his office.[109] During this time period he also received phone calls threatening his life.[110] The Representative was not going to be scared off and he proceeded more determinedly than ever.

The lawmaker's determination was not enough to keep the committee from disintegrating. As an appointment committee they had no subpoena power, and that is a significant weakness for a committee investigating

fraud. The greatest weakness was the committee members themselves. They did not have their chairperson's interest, commitment, or determination. Attendance was so poor that the committee never had a quorum present. Regardless what information might be unearthed it was useless if committee members were not present to hear it. The committee died with little information ever being brought to light. The lawmaker felt this was due to the fact that advantage was taken of his innate decency. He bitterly stated that he would have got further had he gone on a witch hunt.[111] The committee was never able to act on any of the facts they did discover, because of lack of a quorum. The committee ended without bringing about any productive change. The Representative recently talked to his original DSS contact who said that the extent of fraud going on is worse than before the thwarted investigation began.[112]

An Understanding

Substantial justification and good advance preparation does not ensure an investigation's success. Many variables not mentioned in the Congressional investigatory model can effect a committee's chances for success. The Congressional model specifically points to the importance of choosing a committee chair. This example, however, illustrates that the appointment of members is equally important. It is easy for the Speaker to be hoodwinked into making bad appointments by legislators convincing him that the person pursuing the investigation is on a vendetta. A committee chairperson cannot effect action without a quorum of the membership. Being beat to the punch in calling for a resolution is definitely a political maneuver which can undermine an investigation.

Additional investigations and departmental reorganization described here are also examples of political ploys which can be used to kill an investigation. Although this was a sensitive investigation and complicated to pursue its chances of success may have been increased if the legislator who had initiated it had had a stronger political support base from which to operate.

This Representative now has more seniority and is currently the chairperson of an important standing committee. He has gained grassroots supports from constituents throughout the state. He has increased his ability to activate change. This lawmaker feels that today he has greater strengths and his legislative peers could not "screw around" with him anymore and he would be more able to pursue a successful investigation.[113] The learnings which this Representative gained since 1976 are instructive to us as well. These past learnings and his current record of success show how important political clout can be when pursuing an investigation. The Congressional model may provide a starting place for understanding investigation, however, it is only a beginning. The variables which are part of the day to day realities of legislative activity are equally important in understanding how investigations are conducted and what their outcome will be.

CASE STUDY V

WRONG-DOING AND INFORMAL INVESTIGATION

The dissatisfied voices of constituents can cause a big reaction in a legislator's office. When the multitude of voices include a local businessman and his disgruntled employees the legislator may find it necessary to become proactive not just reactive. This was the position in which one legislator found himself in the spring and summer of 1982.

Vince Mulanaphy was the operator of the Owosso based Michigan Interstate Railroad. He ran the old Ann Arbor Railroad which employed many people in the legislator's 87th District and affected rail employees, grainery operators, and sand and gravel suppliers along the entire western side of the state. Although the state owned, with the exception of one small section, the rail Mulanaphy owned the Ann Arbor's rolling stock and was under contract to the Michigan Department of Transportation (MDOT) to run the line. Mulanaphy's contractual problems did not just suddenly appear full blown in the spring of 1982. Mulanaphy had had during the tenure of his contracts with MDOT an opportunity to see the Department operate firsthand. He had observed mismanagement of projects and funds and witnessed waste. After doubling the amount of his rolling stock Mulanaphy was faced with MDOT's non-compliance with track rehabilitation clause in its contract with him and felt firsthand results of MDOT's misconduct. Early on Mulanaphy had shared his observations and problems concerning MDOT with his Representative and his aide. The

aide, with leads from Mulanaphy and permission from the Representative, had begun gathering data about MDOT's misconduct.

The aide's files included specific incidents of MDOT mismanagement. One example was MDOT's failure to buy the small section of the Ann Arbor it did not own. Instead that section of the line was leased from Grand Trunk for amounts which would have paid the purchase price many times over. Another example of poor management was money invested for rehabilitation of a line which was abandoned shortly afterwards. The Lake Michigan ferryboats which were a Northern link of the Ann Arbor were also mismanaged. Old ferries were scrapped and replaced by a new tug-barge system which never ran, because of its high operating costs. The growing files included letters to and from MDOT officials, inter-office memos, and copies of Attorney General rulings on MDOT's interpretation and implementation of state law.

The legislative aide also discovered that he was not the only person interested in looking into MDOT activities. He pursued his relationship with a member of the House Fiscal Agency. This fiscal agent had been examining MDOT's budget and accounting system for several years.

MDOT is unique in that the gas taxes which fund it do not go to the general fund, but go instead directly to the department. This by-passes the legislative appropriations system other departments must go through to get their monies. Since there were fewer checks on MDOT the fiscal agent had cause to examine MDOT's budget closely. In doing so he discovered that even though MDOT was required to submit its program plan including expenditures to the legislature for approval that process did not replace the greater watchdog nature of the appropriations

process. His search led him to suspect that MDOT was using its "7700" account as an illegal slush fund in which unexpended monies could accumulate and be used later at the department's discretion. The fiscal agent also suspected that MDOT was keeping more than one set of books. This too he labeled as illegal. His suspicions could not be proven with the data he had at his disposal.

Changes in state laws designed to close any loopholes which would allow a department to engage in illegal accounting practices caused others with suspicions concerning MDOT to see the problem as solved. The fiscal agent, however, still observed discrepancies in MDOT accounting after passage of the new laws. An Auditor General's investigation was also done and the formal report was issued in the spring of 1982. This report credited MDOT with the corrections they had made to comply with new state laws. A few problems with their system were also reported. When the Auditor General first proposed the investigation the fiscal agent shared some of his suspicions and suggested certain documents which the Auditor General's Office should request from MDOT. However, the Auditor General was able to secure few of these documents. Consequently, the fiscal agent felt the report to be inconclusive. However, those unaware of the background looked at the report and saw the department as clean. These problems were barriers to further investigation.

It was not until the shutdown of the Ann Arbor in May that MDOT was brought back into the spotlight. The Representative's office became overrun with calls from laid-off constituents and their families, union leaders, business owners, and of course Melanaphy. A demonstration was

planned. Hundreds arrived wearing buttons with the slogan "Get Annie Off Her Fannie" and urging that the Ann Arbor line be reopened immediately. The Representative reserved the House chambers for them to meet and gave them a forum in which to air their grievances. He arranged for MDOT chief, James Kellogg, and many legislators to speak. After the general meeting he arranged for leaders from MDOT, rail carriers, and the legislature to talk. This was the first of his attempts to bring a reconciliation of differences and get the railroad running again.

The result was weeks of negotiations. The press was full of stories about "Annie." MDOT attempted to blame the failure of the line on Mulanaphy. They pursued negotiations with other carriers such as Beth Andrus' Michigan-Northern. These other negotiations were pursued with the knowledge that MDOT would have to pay compensation to Michigan-Interstate for contract violation in addition to paying a new carrier. Negotiations dragged on. During this time the Representative's aide attended sessions and kept him informed. Then the lawmaker proposed a plan which bore his name to resolve negotiations impass. It looked viable and acceptable to all sides, but at the last minute it fell through. Finally MDOT opened the contract to competitive bidding with Beth Andrus and Michigan-Northern coming in with the low bid. It was clear she did not have the rolling stock and manpower to run the line, but was assigned the contract anyway. The Ann Arbor ran briefly and shut down again. Michigan-Northern lost the contract and after months the line was still shut down and people were still out of work. Finally Mulanaphy and Michigan-Interstate got the contract back again and

reopened the line. This lengthy irresponsible process wasted state tax dollars.

Having been an intern in the Representative's office from May to mid-July many of these incidents were observed firsthand. While negotiations proceeded I was given the job of following up on the fiscal agent's suspicions to see if they could be further documented. The aide attempted to better organize the mountain of material concerning MDOT which was piled in a corner of his office. Negotiations kept interfering with this task. Putting out fires became more important than building a case.

Through interviewing people at the Department of Management and Budget and the Office of the Auditor General it was possible to confirm most of the fiscal agent's suspicions (Appendix E). The interviews were not hard evidence but proof that the probe was going in the right direction. Also during this time both the fiscal agent and the aide discovered that a member of the Democratic Research staff assigned to the Speaker was also interested in MDOT. He began pumping them for information, but they gave little. They were afraid to trust him yet they needed to know what he knew. They sparred but neither side actually shared anything.

The exact purpose for gathering all this data was unclear. Originally it seemed that the information would be used as justification to file a resolution calling for a complete investigation. Later it appeared that the information would be used to force MDOT chief, James Kellogg, to resign. Neither of these things happened. Whether or not the information was used as leverage at any point during the Ann Arbor

negotiations is not known. Other than that possible use no application seemed to be made of the data. Certainly no formal action was taken. The fiscal agent attempted to get legislative support for an extensive probe by the appropriations committee. On a Friday it looked as though he had succeeded, but by Monday it was clear he would get no support. The reasons for his failure to muster support or the Representative's inaction are unknowns.

One could speculate on the reasons. Maybe the fiscal agent's failure to gain support was due to misconduct by people in higher places than he had realized. Maybe the lawmaker's inaction was due to the fact that Annie did not get moving again and the pressure was off him personally. Maybe the lawmaker's past failure in leading an investigation made him gun shy. Maybe unearthing of this information was just untimely. It occurred just before the summer recess of an election year in which the Republican incumbent William Milliken was stepping down as governor and chances were good that a Democrat could capture the seat for the first time since the 1960's. Everyone wanted to campaign. If the Democrats won gubernatorial appointees such as Kellogg would likely be gone and if the Democrats were unsuccessful the mountain of information pointing to misconduct within MDOT would still be there. These are speculations of what might have stopped these men. All of them may be partially right or none of them might be. However, they are all speculations based on the politics surrounding the situation and whatever the real reasons they are politically based.

An Understanding

The investigation described in this case study is different from all the others. It was not done as part of a legislator's lawmaking duties. Neither was it done by virtue of resolution. This investigation was not even done by committee. This is an example of an informal staff inquiry. The fiscal agent's inquiries could be seen as part of his oversight duties, however, he probed far more extensively than is ordinarily expected of one in his position. His decision to pursue this investigation was independently made not ordered by the subcommittee to whom he reports. The Representative became involved in the investigation, because of constituent complaints. The Representative gave his aide a free hand to pursue what factual information concerning MDOT he could. The aide became very immersed in the investigation and then his attentions were, by necessity, redirected to the Ann Arbor negotiations. His inquiries were strictly informal, however. People being questioned began to wonder why the Representative whose committee chairmanship was totally unrelated to transportation, was so interested in MDOT's internal workings. Other than the Auditor General's report all the information collected about MDOT was done outside of the investigative process and the procedures used to implement it. Nowhere in the Congressional model is there a parallel to this case study. Yet legislators and staff people say this informal type of investigation is the most used in Michigan today.

COMMENTARY

Legislators and staff people seem to have some common views about legislative investigatory process. Other than the routine investigation of a standing committee prior to passage of legislation, investigation does not constitute one of the Michigan legislature's primary functions. One aide commented that in his six year tenure as a committee aide he has never been involved in a policy type of investigation. Others commented on the decline, especially in the last two years, of special committees to pursue investigations. More investigations are conducted by standing committees. This move away from the special committees avoids overlap, better utilizes staff, and saves money.[114]

Investigation seems to have taken on the form of on-going oversight. In the Senate a formalized attempt to require periodic and microscopic oversight by passage of Sunset Legislation failed in 1979. Even without that legislation there has been some greater use of the Appropriations Committee in conducting oversight in the Senate. Appropriations bills for education, for instance, go first to the Standing Committee on Education for recommendations before going to the Committee on Appropriations. All standing committee chairs are now asked for recommendations on their area before appropriations bill are acted on by the Committee on Appropriations. Such interchange of information makes meaningful evaluation of proposed programs and expenditures easier for the appropriations committee. Response to these

changes have been positive and a movement is again afoot to push for formalized oversight legislation.[115]

One representative has jokingly suggested to his colleagues that the first six months of each session be devoted to oversight with no legislation other than appropriations bills being acted upon.[116] However, this suggestions brings home to his peers how important he thinks oversight is. He recognizes that the Senate has made greater progress in linking committee input to appropriations decisions. In the House this happens only in the area of education and that is accomplished only because of the strength of the chair of the Committee on Education.[117] This same representative does not, however, see the need for legislation to correct the problem. His remedy is for the legislature, through its innate ability to form standing committees, to create a Joint Standing Committee on oversight and implement the concept immediately.[118] One committee aide observed that the legislature is weak in its ability to investigate or force compliance with regulations. He stated that the only club the legislature has is appropriations and lawmakers did not use it well.[119] Maybe the current moves in the House and Senate will cause a change in this assessment in the future.

The move to a new format for investigations seems to be rooted as strongly in politics as it is in expediency and good economic principles. Many negative comments were made concerning the political nature of investigations. One aide noted that many more resolutions calling for investigations are introduced than are passed and result in actual investigations. Most resolutions for investigations are introduced for political reasons. If there is a problem in his/her district

a legislator might call for a special investigation to look into it knowing that it will not get support of the full House.[120] However, the attempt alone is often enough to let the legislator off the hook and calm the homefront.

In other cases investigations initiated for the purpose of bringing swift movement toward reform may really not be oriented to the problem at all. They can instead be political moves to put an issue to rest. However, enough can often be done so rapidly that people's vision is clouded and they are left unaware, for a while at least, that the problem still exists.[121]

Even if an investigation is genuinely pursued it is still wrapped in politics. The appointments of the chair and members are inherently political. In the case of investigations pursued by the subcommittee of a standing committee politics would govern appointments. The committee chair chooses the subcommittee with the idea that it will report back according to his/her wishes.[122] In the case of a special committee the Speaker of the House or the Majority Leader of the Senate may, by precedent and courtesy, be stuck with appointing the person who initiates the resolution as committee chair. However, when it comes to appointing members to a committee he/she will choose cooperative and supportive members only if he/she himself/herself supports the investigation.[123]

If an investigation is politically harmful to the establishment it will be thwarted. It is the belief of one representative that over the past 2-3 years the Speaker of the House has worked hand in glove with executive branch to stop investigations.[124] The real or perceived

presence of such political barriers to investigation may be responsible for the greater use of informal staff investigations. In this way enough information can be uncovered to force agencies or individuals into mending their ways without jeopardizing one's efforts by subjecting them to the political games of the formalized process.[125] Staff information gathered informally can produce change informally (i.e., a change in an agency's procedural rules) explained one Senator.[125]

Investigation is not as viable a process in Michigan as it is federally. Tightening of money and politics seem largely responsible. The strength and skills to make it work well do not seem to be present. Yet interesting alternatives are being worked on which may provide on-going oversight that can act as a preventive measure against agency mismanagement. If so the need for policing type investigations would be all but eliminated. Only time will reveal the changes which are evolving.

A VIABLE ALTERNATIVE?

Clearly, the investigative process is plagued with a variety of problems. Since that is the case an examination of an alternative to the traditional, Congressionally framed investigative process is in order. Since it has already been proposed and is again being studied for reintroduction the aforementioned Sunset Legislation will be looked at as a viable option.

Sunset Legislation or formalized oversight is necessary, because the standing committees do not provide the function well. Bills requiring corrective legislation do come out of standing committees, but they tend to be personalized in nature. There is no systematic method for access to the committee chair. No institutional process for oversight exists within the standing committee.

The concept of Sunset Legislation was promoted by a Colorado based group called Common Cause. Although the Colorado model represented a starting place it could not be transported and superimposed on the Michigan legislature. Instead a bipartisan study committee, in which Senator Gary Corbin was instrumental, attempted to adjust the concept to fit the structure of the Michigan legislature. Unique parts of Michigan's structure such as the Auditor General responsible to the legislature could become an important element in the design of our own Sunset Legislation.

The Michigan proposal that was finally decided upon called for a

12-member joint sunset review committee. It was to be composed of the chairpersons of the Senate and House appropriations committees and five members from each chamber, two of whom were chairpersons of standing committees and two who were members of the minority party. Action by the review committee could only be done with concurring majorities of the members from each chamber. The purpose of the committee would be to obtain and review data concerning the organization and structure of state government. Annually every governmental agency would have to submit program data including objectives, program changes, staff allocation, budget, etc. The committee would then evaluate each agency on the basis of the same standard criterion and a formal report issued.

The study committee suffered little dissention until the issue of termination dates was reached. The committee finally decided to include termination dates. However, in order to get support of the full Senate the bill was revised and termination dates were excluded. The bill was passed by the Senate and the House. However, from the moment it was reported out with no termination dates it became politicized. Republicans said it did not have enough teeth in it, and they wanted a tougher bill. The Department of Management and Budget was opposed to the bill because they did not want the legislature interfering in the executive branch. Publicly, however, they came out in favor of termination clauses and fueled the fire of Republican opposition. Consequently, when the governor vetoed the bill it was impossible to build a bipartisan coalition to pass it over the veto. Sunset Legislation was dead.

The following year the governor's office called a meeting of Senators, Representatives, and staff people to discuss compromise

language for Sunset Legislation. Spirits were still running high and consequently nothing happened. Now, however, a legislative interest in it seems to be building again.

However, if Sunset Legislation is to become a viable alternative it will have to overcome the political controversy and executive branch opposition which caused its earlier defeat. If strong Sunset Legislation can be passed it will provide a standardized, systematic review of the system which is not being accomplished now. It will provide that necessary addition to the system of checks and balances which legislative investigatory process has failed to supply.

IN CONCLUSION

Legislative investigatory process has been examined here through the use of specific examples. The successes and failures of each case study were discussed. An alternative to the existing process was explored. A comparison of the Michigan investigative process to that operating in Congress was made. The results are some generalizations concerning the Michigan legislature's use of investigatory power.

Michigan, despite its full time legislature, has not been capable of pursuing investigations to the extent that is done federally. There appears to be a politically based reluctance to look at what has been created. The complexity of the mechanism used to conduct investigations and its dependence on the nod of the party leadership and the appointment of motivated, interested people make it wide open to political gamesmanship. If the goal of an investigation is to activate change through legislation the entire process is again politically motivated. Since the relationship between the lawmakers and the constituents is so much closer at the state than the federal level political realities act as a greater obstacle to investigation. Many of these political barriers might be more rooted in time and the personalities of the people involved than in the process itself.

The most common type of investigation in Michigan is that which precedes legislation. That type of investigation will always be a significant part of legislative activity. In other types of investigation

such as outlined in the case studies some clear trends are observable. First, the special committee is being replaced by the expansion of activities of the standing committee. This money saving trend is just as prevalent federally as it is at the state level. An additional trend is the seeming movement toward on-going oversight. The failure of formal Sunset Legislation in 1979 does not make this trend any less believable. The defeat of Sunset Legislation revolved around the mechanism not the principle of oversight. Without backstage political maneuvering it may well have become reality in 1979. Even though it did not reach fruition in that legislature it may become a reality in some future legislature. Those all important political personalities and leadership have recently changed from what they were in 1979. There may be significant changes in state legislative process in the near future or the process may continue to limp along as it has in the past. Regardless of the future evolution of the process it is a recognized all be it unmandated legislative function.

The future evolution of legislative investigatory function in Michigan will largely hinge on whether the decision makers involved in the process see it as Lippman's atrocity which promotes legislative witch hunts or Wilson's view that the legislature's investigative function is even more important than its lawmaking function. The actors within the system will determine the future mechanism for investigative process. However, this study of federal and state investigative process clearly shows that although the mechanism may change investigation is a function of lawmakers, state and federal, that is not going to go away.

House Legislative Analysis Section
650 Roosevelt Building
Phone: 517/373-6466

House Bill 5292 Substitute H-4
House Bill 5597 as originally introduced
First Analysis (4-22-82) Floor Copy

Sponsor: Rep. Francis Spaniola
Committee: Roads and Bridges

THE APPARENT PROBLEM:

At least partly in response to a series of fatal accidents involving tanker trucks hauling flammable liquids, the legislature in 1978 enacted laws requiring vehicles hauling flammable liquids to meet state police safety standards, creating a low-interest loan program to aid the trucking industry in complying with the new standards, imposing more stringent regulations on tankers as of 1981 (the effective date of these regulations was subsequently postponed until 1983), instituting a state fire marshal inspection program for vehicles and storage tanks, and mandating pertinent research by the Highway Safety Research Institute at the University of Michigan (U-M).

Research findings, published in December 1980, suggested that the restrictions planned for 1983 should be modified. For example, there are indications that cargoes larger than the planned 9,000 gallon maximum may be hauled relatively safely in tankers equipped with properly strengthened ports. In light of these developments, the Fire Marshal Division of the Department of State Police is seeking to revise statutory standards to reflect new data, and to extend the current funding mechanism for the self-supporting inspection program.

THE CONTENT OF THE BILL:

House Bill 5292 (H-4)

The bill would amend the Vehicle Code to enact new requirements for trucks, truck-trailer combinations, truck tractor-one semitrailer combinations, and double-bottom combinations (i.e., tractor-semitrailer-trailer or tractor-two semitrailers) doing bulk hauling of flammable liquids with flash points at or below 70 degrees Fahrenheit. Current law generally requires such transporters to meet safety standards imposed by the Department of State Police (the law treats the tri-county area of Wayne, Oakland and Macomb as a special case). Under provisions slated to take effect November 1, 1983, double-bottom rigs would be banned, and other tanker trucks and combinations could only haul cargoes of 9,000 gallons or less, and then only if the total capacity was 9,500 gallons or less. The bill would generally replace these planned restrictions with new ones also applying only to those hauling, in bulk, flammable liquids with flash points at or below 70 degrees Fahrenheit. (The future ban on double-bottom tankers would stand, but would be postponed until November 1, 1985; trucks pulling trailers also would be banned as of November 1, 1985.)

A truck or semitrailer manufactured after the bill's effective date could haul such highly flammable liquids only if its capacity was less than 13,800 gallons. As of November 1, 1983, trucks and tractor-semitrailer combinations with capacities of more than 9,5000 gallons, plus all other truck-trailer and double-bottom combinations regardless of capacity, would have to be able to pass a porthole pressure test prescribed by the bill. As of November 1, 1985, trucks and tractor-semitrailer combinations would be limited to cargoes of no more than 13,400 gallons.

The bill would delete the provision requiring the University of Michigan's Highway Safety Research Institute to study tanker truck design and make recommendations to the legislature. Various responsibilities currently

assigned to the Department of State Police would be transferred to the state fire safety board, thus making the statute consistent with the provisions of the Fire Prevention Code.

House Bill 5597:

Among other things, the Michigan Fire Prevention Code provides for the certification and inspection of firms and vehicles engaged in transporting hazardous materials, and of storage facilities for such materials. (The act defines "hazardous material" as explosives, fireworks, flammable or compressed gas, oxidizing materials, poisonous fluids, liquified petroleum gas, and materials which are irritating, oxidizing, radioactive, corrosive, or disease-causing.) The statute limits funding for the certification and inspection program to the amount collected in fees. Current law imposes an annual certification fee of $70 for each vehicle and $30 for each storage tank. This fee schedule is slated to expire October 1, 1983, at which time the fees would revert to a base fee of $35 for each vehicle and $15 for each tank; the base fees would be adjusted annually based on the Detroit Consumer Price Index.

The bill would amend the code to retain the current fee provisions until October 1, 1985, and to prevent application of the consumer price index adjustment should there be a material change in the items constituting the index.

The bills are tie-barred.

FISCAL IMPLICATIONS:

The state fire marshal's office reports that based on current certifications, enactment of House Bill 5597 would prevent a revenue loss of $281,180 annually. (4-7-82) House Bill 5292 (H-4) has no direct fiscal implications for the state, but the Highway Safety Research Institute has estimated that the bill could increase the cost of a delivered gallon of gasoline by 0.5-1.0 percent. (4-19-82)

BACKGROUND INFORMATION:

Data are incomplete for 1977 when, according to fire marshal records, three people died in double bottom tanker accidents all occurring in the Detroit area and each attributed to error on the part of one of the drivers. However, from 1978 through 1980, the number of accidents involving tanker trucks has dwindled, as have the numbers of fatalities. There have not been any double-bottom fatalities since 1977, but there have been a number of deaths in single-bottom accidents. Statistics compiled by the state fire marshal's office also suggest a decrease since 1978 in the numbers of overturns and cargo spills involving the types of vehicles affected by the provisions of House Bill 5292. Driver error has been determined to be the cause of the vast majority of tanker accidents, and equipment failure has been faulted in only a very few. The 20 percent decline in industry volume since 1977 means that fewer vehicles are on the road, but unfortunately the absence of accurate comparisons between changes in the number of accidents and changes in the number of vehicles on the roads, or, more significantly, the number of miles traveled, makes it difficult to draw firm conclusions about improvements in highway safety. In other words, changes in the accident rate apparently have not been established in fully meaningful terms.

ARGUMENTS:

For:

The tanker truck industry desperately needs to have the issues of tanker truck regulation resolved. Since 1977 when the controversy arose, the uncertainty regarding details of future restrictions has prevented many

transporters from replacing aging equipment. Obviously, this interferes with a business's long-range investment plans, but there is also a concern that if modernization of fleets does not begin soon, neither the efforts of maintenance crews nor of state inspectors will avert mishaps caused by worn equipment.

House Bill 5292 (H-4) incorporates those U-M research findings considered practicable. Generally, a unit's tendency to roll over increases with larger capacities (reflecting a raising of the center of gravity). However, this trend must be balanced against the increased risk presented by having a greater number of smaller vehicles on the roads. Michigan is the only state in the nation allowing cargoes of more than 9,000 gallons, and rigs ranging up to 16,000-18,000 gallons are plying Michigan highways. The U-M researchers premised their work on a desire to maintain roll stability comparable to that of the conventional 9,000 gallon tanker, and found that 13,400 gallons represents a reasonable maximum. Under the bill's provisions, there would probably be somewhat fewer roll-over incidents (and therefore fewer spills and fires) than there would be under the provisions to be replaced; it has been estimated that the bill would produce a 15 percent reduction in current accident rates. In fact, one Michigan transporter has safely used single-bottoms of the bill's type for the past nine yers and a total of nine million miles. The requirement for strengthened ports also derives from the U-M research.

Admittedly, the proposed regulations do not incorporate all of the study team's recommendations. For instance, limiting the height of the tank shell by requiring a dropped floor was proposed, but has been rejected for several reasons. The modification would destroy the structural integrity of the one-piece tank shell, and necessitate welds which eventually would leak. A dropped tank would increase difficulties in clearing bumps in the road and in loading and unloading cargo. Funding for the intended loan program has evaporated, and additional retrofitting would unfairly burden an industry which has already absorbed the expense of the current regulatory program which included a requirement, based on preliminary U-M research, that all tractor-semitrailer-trailer rigs be fitted with suspension modifications and devices limiting the free rotation of the rigs' hitches, thereby increasing roll-over resistance.

Against:

The bill's opponents reject the argument that additional features enhancing roll stability would not be cost-effective. Resistance to roll-over is of primary importance since roll-overs are the usual cause of cargo spills and fire. To achieve the desired level of stability, a 13,400-gallon vehicle must have no more than two "lift" axles on the semitrailer and must be limited to a maximum shell height of 129 inches. The most feasible way of accomplishing the latter seems to be to incorporate a dropped tank section. However, acceptable capacity and shell height maximums also depend on the number and placement of axles. Critics discount fears that the dropped floor modification would cause problems with leaking; they note that tanks with similar welds have been constructed for decades without serious consequences. Though it is conceded that the bill as written could decrease accidents by 15 percent, inclusion of the anti-roll-over specifications could produce a 50 percent reduction. The 13,400 gallon rig authorized by the bill has been calculated to be 18 percent lower in roll stability than that recommended by the U-M researchers, and 36 percent more likely to overturn than the vehicles in other states. The suggested modifications should not prove to be prohibitively expensive, because total trailer costs generally represent only about 5.7 percent of a firm's operating costs. A 50 percent increase in the cost of a new vehicle should necessitate only a five percent increase in the

price of a delivered gallon of gasoline; the estimated 10 percent additional cost presented by the drop section requirement could thus be responsible for a price hike of no more than one percent.

Further, it should be noted that although the frequency of roll-overs might be reduced under the bill, larger cargoes are potentially more dangerous than the 9,000 gallon limit heretofore planned.

For:

Because of statutory constraints on the hazardous materials inspection program, House Bill 5597 is crucial to the program's continuation beyond 1983. Records on tanker inspections conducted since 1977 demonstrate that the program is valuable in identifying potential hazards and in serving as a center for collection of useful data.

Against:

There is insufficient evidence for retaining the future ban on double-bottom combinations. The improved safety record since 1977 shows that the ban is not necessary, especially when one realizes that tanker fatalities are only a tiny fraction of the total number of Michigan highway deaths.

Response:

Such concerns were taken into account in extending the moratorium on the double-bottom ban. There is plenty of time to repeal the ban if the current safety record is maintained.

SUGGESTED AMENDMENTS:

Through an oversight, subsection (13) in House Bill 5292 (H-4) was not included in the penalty section as it ought to have been. This should be corrected.

POSITIONS:

The Fire Marshal Division of the Department of State Police supports the bills. (4-16-82)

The Michigan Trucking Association supports the bills. (4-16-82)

The Michigan Petroleum Association supports the bills. (4-16-82)

The Department of Transportation does not have a position on either bill. (4-19-82)

The Highway Safety Research Institute of the University of Michigan opposes House Bill 5292 Substitute H-4. (4-19-82)

HOUSE BILL No. 5532

March 9,1982, Introduced by Reps. Gingrass, Anderson, Brotherton, Geerlings, Bennane, Ryan, Skrel, Hayes and Ballantine and referred to the Committee on Economic Development and Energy.

A bill to establish a utility consumer representation fund and provide payments to the fund; to provide for the funding of proposals related to the interests of utility consumers; to provide for the rate treatment of certain expenses incurred by utilities pursuant to this act; and to prescribe certain powers and duties of the attorney general and the Michigan public service commission.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "utility consumer representation act".

Sec. 2. As used in this act:

(a) "Annual receipts" means the payments received by the fund under section 4(2) during a calendar year.

(b) "Fund" means the utility consumer representation fund created under section 4.

HOUSE BILL No. 5532

(c) "Residential utility consumer" or "consumer" means a person who receives utility service for use within an individual household or an improvement reasonably appurtenant to and normally associated with an individual household. The term "household" includes a single-family home, duplex, mobile home, seasonal dwelling, farm home, cooperative, condominium, or apartment which has normal household facilities such as a bathroom, individual cooking facilities, and kitchen sink facilities. The term "household" does not include a penal or corrective institution, or a motel, hotel, or other similar structure if used as a transient dwelling.

(d) "Utility" means each electric, gas, or telephone company regulated by the public service commission.

Sec. 3. (1) In carrying out the duties imposed by section 5, the attorney general shall solicit the recommendations of an advisory committee. The advisory committee shall consist of not fewer than 5 members. Persons shall be appointed to this advisory committee by the attorney general, on the basis of their knowledge of and support for consumer interests and concerns in general, or as specifically related to utility matters, as well as their identification with a variety of the social and economic classes and areas of the state whose interests are intended to be advanced by this act. Members of the committee may be reimbursed for actual and necessary expenses incurred.

(2) After conferring with the advisory committee, the attorney general shall adopt guidelines pursuant to chapter 2 of Act No. 306 of the Public Acts of 1969, as amended, being

sections 24.224 to 24.226 of the Michigan Compiled Laws, which identify the policies and goals to be pursued under section 5. Until such policies and goals are developed, the attorney general may adapt policies used to administer the office of electric utility consumer services in the office of the attorney general for temporary use in administering initial operations of the program created under section 5.

Sec. 4. (1) The utility consumer representation fund is created as a special fund. The state treasurer shall be the custodian of the fund and shall maintain a separate account of the money in the fund. The money in the fund shall be invested in the bonds, notes, and other evidences of indebtedness issued or insured by the United States government and its agencies, and in prime commercial paper. The state treasurer shall release money from the fund, including interest earned, in the manner and at the time directed by the attorney general.

(2) Subject to the limitation of subsection (3), and not later than April 1 of each year, each utility serving 500,000 or more customers in this state shall pay to the fund an amount of money equal to the sum of both of the following:

(a) 1/50 of 1% of its total operating revenues for the year ending on the December 31 immediately preceding the April 1 by which the payment is due, as stated in the utility's annual report, to be used by the attorney general to support and enhance the attorney general's representation of utility consumers' interests pursuant to sections 6 and 7. This payment shall be an

operating expense of the utility which the public service commission shall permit the utility to charge to its customers.

(b) 1/50 of 1% of its gross revenues from residential sales for the year ending on the December 31 immediately preceding the April 1 by which the payment is due, to be used for grants under section 5. This payment shall be an operating expense of the utility which the public service commission shall permit the utility to charge to its residential customers. For purposes of this subparagraph, "residential sales" means sales to residential utility consumers.

(3) If the sum of all payments made to the fund pursuant to subsection (2) exceeds $2,000,000.00, the payment of each utility subject to subsection (2) shall be reduced by an amount which bears the same relationship to the excess as the utility's payment bears to the entire amount collected from all utilities in that year.

(4) Within 30 days after the effective date of this act, each utility serving 500,000 or more customers in this state shall pay to the fund an amount of money equal to the sum described in subsection (2) prorated to the number of days between the effective date of this act and the next April 1.

(5) In the event of a dispute between the attorney general and a utility about the amount of payment due, the utility shall pay the undisputed amount and, if the utility and the attorney general cannot agree, the attorney general may initiate civil action in the circuit court for Ingham county for recovery of the disputed amount.

(6) The attorney general may accept a gift or grant from any source to be deposited in the fund if the conditions or purposes of the gift or grant are consistent with this act.

(7) All expenditures authorized by this act may be paid from the fund, subject to the limitation that not more than 5% of the amount available for grants under section 5(1) in a calendar year may be budgeted and used to pay the attorney general's expenses in administering the grant program.

Sec. 5. (1) All money which section 4 requires to be used for grants and any money designated for the attorney general's use which is not needed by the attorney general shall finance a grant program from which the attorney general may award to an applicant an amount which the attorney general determines shall be used for the purposes set forth in this act, in accordance with policies and goals established under section 3(2).

(2) The attorney general shall create and make available to applicants an application form. Each applicant shall indicate on the application how the applicant meets the eligibility requirements provided for in this act and how the applicant proposes to use a grant from the fund. The attorney general shall receive an application requesting a grant from the fund only from a non-profit organization or a unit of local government in this state. The attorney general shall consider only applications for grants containing proposals which are in keeping with section 6 and serve the interests of residential utility consumers. The attorney general shall give preference to proposals which serve not only the interests of residential utility consumers, but also

the interests of the general public. The interests of the general public include, but are not limited to, protection of the environment, energy conservation, the creation of employment and a healthy economy in the state, and the maintenance of adequate energy resources. The attorney general shall not consider an application which primarily benefits the applicant or a service provided or administered by the applicant. The attorney general shall not consider an application from a nonprofit organization if 1 of the organization's principal interests or unifying principles is the welfare of a utility or its investors or employees, or the welfare of 1 or more businesses or industries, other than farms not owned or operated by a corporation, which receive utility service ordinarily and primarily for use in connection with the profit-seeking manufacture, sale, or distribution of goods or services. Mere ownership of securities by a nonprofit organization or its members shall not disqualify an application submitted by that organization.

(3) The attorney general shall encourage the representation of the interests of identifiable types of residential utility consumers whose interest may differ, including various social and economic classes and areas of the state, and if necessary, may make grants to more than 1 applicant whose applications are related to a similar issue to achieve this type of representation. In addition, the attorney general shall consider and balance the following criteria in determining whether to make a grant to an applicant:

(a) Evidence of the applicant's competence, experience, and commitment to advancing the interests of residential utility consumers.

(b) In the case of a nongovernmental applicant, the extent to which the applicant is representative of or has a previous history of advocating the interests of citizens, especially residential utility consumers.

(c) The anticipated effect of the proposal contained in the application on residential utility consumers, including the immediate and long-term impacts of the proposal.

(d) Evidence demonstrating the potential for continuity of effort and the development of expertise in relation to the proposal contained in the application.

(e) The uniqueness or innovativeness of an applicant's position or point of view, and the probability and desirability of that position or point of view prevailing.

(4) As an alternative to choosing between 2 or more applications which have similar proposals, the attorney general may invite 2 or more of the applicants to file jointly and award a grant to be managed cooperatively.

(5) The attorney general shall make disbursements pursuant to a grant in advance of an applicant's proposed actions as set forth in the application if necessary to enable the applicant to initiate, continue, or complete the proposed actions.

(6) Any notice to utility customers and the general public of hearings or other state proceedings in which grants from the

fund may be used shall contain a notice of the availability of the fund and the address of the attorney general.

Sec. 6. Disbursements from the fund may be used for any federal or state regulatory activity or proceeding or related litigation affecting the rates paid by utility customers in this state in which the cost of a utility's participation may be included in the cost of service, subject to the following limitations:

(a) Not more than 5% of the annual receipts of the fund may be used in proceedings primarily affecting utilities which are exempt from the requirement to make payments under section 4. In addition, grants made under section 5 shall not be used in proceedings primarily affecting utilities which are exempt from the requirement to make payments under section 4.

(b) Grants made under section 5 may be used to participate in a federal regulatory activity or proceeding or related litigation only if the attorney general determines that the interests of utility consumers of this state would thereby be more effectively represented in the proceeding.

(c) Disbursements from the fund may be used only to advocate the interests of utility customers or classes of utility customers, and not for representation of merely individual interests.

(d) The attorney general shall attempt to maintain a reasonable relationship between the payments from a particular utility and the benefits to consumers of that utility.

(e) The attorney general shall coordinate the funded activities of the attorney general and grant recipients to avoid

duplication of effort, to promote supplementation of effort, and to maximize the range of hearings and proceedings with intervenor participation.

Sec. 7. (1) A recipient of a grant pursuant to section 5 may use the grant only for the advancement of the proposed action approved by the attorney general, including, but not limited to, costs of staff, hired consultants and counsel, and research.

(2) A recipient of a grant under section 5 shall file a report with the attorney general within 90 days following the end of the year or a shorter period for which the grant is made. The report shall be made in a form prescribed by the attorney general and shall be subject to audit by the attorney general. The report shall include the following information:

(a) An account of all grant expenditures made by the grant recipient. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

(*iii*) Filing fees and other costs required to effectively represent residential utility consumers under section 6.

(b) Any additional information concerning uses of the grant required by the attorney general.

Sec. 8. (1) On or before July 1 of each calendar year, the attorney general shall submit a detailed report to the legislature regarding the discharge of duties and responsibilities under this act during the preceding calendar year.

(2) One year after the effective date of this act, at 1-year intervals for the next 2 years, and at 3-year intervals thereafter, a senate committee chosen by the majority leader of the senate and a house committee chosen by the speaker of the house of representatives shall review the relationship between costs and benefits resulting from this act, and may recommend to the legislature changes in the payment levels under section 4 as necessary to optimize that relationship.

Act No. 304
Public Acts of 1982
Approved by Governor
October 13, 1982

STATE OF MICHIGAN
81ST LEGISLATURE
REGULAR SESSION OF 1982

Introduced by Reps. Gingrass, Anderson, Brotherton, Geerlings, Bennane, Ryan, Skrel, Hayes and Ballantine

ENROLLED HOUSE BILL No. 5527

AN ACT to amend the title and sections 6a and 6b of Act No. 3 of the Public Acts of 1939, entitled as amended "An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law therein on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act," section 6a as amended by Act No. 300 of the Public Acts of 1972, being sections 460.6a and 460.6b of the Compiled Laws of 1970; and to add sections 6h, 6i, 6j, 6k, 6*l*, and 6m.

The People of the State of Michigan enact:

Section 1. The title and sections 6a and 6b of Act No. 3 of the Public Acts of 1939, section 6a as amended by Act No. 300 of the Public Acts of 1972, being sections 460.6a and 460.6b of the Compiled Laws of 1970, are amended and sections 6h, 6i, 6j, 6k, 6*l*, and 6m are added to read as follows:

TITLE

An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law therein on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to provide for the establishment and implementation of gas and power supply cost recovery clauses in the rates and rate schedules of public utilities; to create a utility consumer participation fund and a board to administer the fund; to prescribe certain powers and duties for certain state departments, agencies, and officers; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act.

Sec. 6a. (1) When any finding or order is sought by any gas, telephone or electric utility to increase its rates and charges or to alter, change or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, notice shall be given within the service area to be affected. When such utility shall have placed in evidence facts relied upon to support its petition or application to so increase its rates and charges, or to so alter, change or amend any rate or rate schedules, the commission, pending the submission of all proofs by any interested parties, may in its discretion and upon written motion by such utility make a finding and enter an order granting partial and immediate relief, after first having given notice to the interested parties within the service area to be affected in the manner ordered by the commission, and after having afforded to such interested parties reasonable opportunity for a full and complete hearing: Provided, That no such finding or order shall be authorized or approved ex parte, nor until the commission's technical staff has made an investigation and report: And provided further, That any alteration or amendment in rates or rate schedules applied for by any public utility which will result in no increase in the cost of service to its customers may be authorized and approved without any notice or hearing.

(2) The commission shall adopt such rules and procedures for the filing, investigation and hearing of petitions or applications to increase or decrease utility rates and charges as the commission finds necessary or appropriate to enable it to reach a final decision with respect to such petitions or applications within a period of 9 months from the filing thereof.

(3) This section does not prohibit the incorporation of a gas cost recovery clause or a power supply cost recovery clause in the rate schedule of a utility, but does prohibit the incorporation of a purchased gas adjustment clause, fuel cost adjustment clause, or a purchased and net interchanged power adjustment clause in the rate schedule of a utility.

(4) If a final decision has not been reached upon a petition or application to increase or decrease utility rates within the 9-month period, the commission shall give priority to such case and shall take such other action as it finds necessary or appropriate to expedite a final decision. If the commission fails to reach a final decision with respect to a petition or application to increase or decrease utility rates within the 9-month period following the filing of such petition or application, the commission, within 15 days, shall submit a written report to the governor and to the president of the senate and the speaker of the house of representatives stating the reasons a decision was not reached within the 9-month period, and the actions being taken to expedite such decision. The commission shall submit a further report upon reaching a final decision providing full details with respect to the conduct of the case, including the time required for issuance of the commission's decision following the conclusion of hearings.

Sec. 6b. If the rates of any gas utility shall be based, among other considerations, upon the cost of natural gas purchased by said gas utility which is in turn distributed by said gas utility to the public served by it, and the cost for such gas is regulated by the federal energy regulatory commission, the Michigan public service commission shall have the authority set forth in this section. In any proceeding to increase the rates and charges or to alter, change or amend any rate or rate schedule of a gas utility, the Michigan public service commission shall be permitted to and shall receive in evidence the rates, charges, classifications and schedules on file with the federal energy regulatory commission whereby the cost of gas purchased or received by such gas utility is fixed and determined. If, while such proceeding is pending before the Michigan public service commission, a proceeding shall be instituted or be pending before said federal energy regulatory commission, or on appeal therefrom in a court having jurisdiction, with respect to or affecting the cost of gas payable by such gas utility, said Michigan public service commission shall consider as an item of operating expense to said gas utility the cost of gas set forth in said rates, charges, classifications and schedules on file with the federal energy regulatory commission. If the cost of gas payable by said gas utility shall be reduced by the final order of the federal energy regulatory commission or the final decree of the court, if appealed thereto, and the Michigan public service commission shall have entered an order approving rates to said gas utility as aforesaid based upon the cost of gas set forth in the rates, charges, classifications and schedules on file with the federal energy regulatory commission which were later reduced as above set forth, the Michigan public service commission upon its own motion or upon complaint and after notice and hearing may proceed to order refund to the gas utility's customers of any sums refunded to the said gas utility for the period subsequent to the effective date of the Michigan public service commission order approving rates for the gas utility as above set forth. This section is subject to the provisions of sections 6h and 6i.

Sec. 6h. (1) As used in this act:

(a) "Commission" or "public service commission" means the Michigan public service commission created in section 1.

(b) "Gas cost recovery clause" means an adjustment clause in the rates or rate schedule of a gas utility which permits the monthly adjustment of rates for gas in order to allow the utility to recover the booked costs of gas sold by the utility if incurred under reasonable and prudent policies and practices.

(c) "Gas cost recovery factor" means that element of the rates to be charged for gas service to reflect gas costs incurred by a gas utility and made pursuant to a gas cost recovery clause incorporated in the rates or rate schedules of a gas utility.

(d) "General rate case" means a proceeding before the commission in which interested parties are given notice and a reasonable opportunity for a full and complete hearing on a utility's total cost of service and all other lawful elements properly to be considered in determining just and reasonable rates.

(e) "Interested persons" means the attorney general, the technical staff of the commission, any intervenor admitted to 1 of the utility's 2 previous general rate cases, any intervenor admitted to 1 of the utility's 2 previous reconciliation hearings, or any association of utility customers which meets the requirements to intervene in a reconciliation hearing under the rules of practice and procedure of the commission as applicable.

(2) Pursuant to its authority under this act, the public service commission may incorporate a gas cost recovery clause in the rates or rate schedule of a gas utility, but is not required to do so. Any order incorporating a gas cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule, which hearing shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to subsection (17), as a result of a general rate case. Any order incorporating a gas cost recovery clause shall replace and rescind any previous purchased gas adjustment clause incorporated in the rates of the utility upon the effective date of the first gas cost recovery factor authorized for the utility under its gas cost recovery clause.

(3) In order to implement the gas cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete gas cost recovery plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific gas cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified 12-month period. The description of the major contracts and arrangements shall include the price of the gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the gas utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of the major alternative gas supplies available to the utility, and an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

(4) In order to implement the gas cost recovery clause established pursuant to subsection (2), a gas utility shall file, contemporaneously with the gas cost recovery plan described in subsection (3), a 5-year forecast of the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.

(5) If a utility files a gas cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a gas supply and cost review, for the purpose of evaluating the reasonableness and prudence of the plan, and establishing the gas cost recovery factors to implement a gas cost recovery clause incorporated in the rates or rate schedule of the gas utility. The gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969.

(6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. In evaluating the decisions underlying the gas cost recovery plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to some or all of the utility's customers; the availability of gas in storage; the ability of the utility to reduce or to eliminate any sales to out-of-state customers; whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.

(7) In its final order in a gas supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a gas cost recovery plan in a gas supply and cost recovery review, after first having given notice to the parties to the review, and after having afforded to the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection shall be considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a gas supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amounts up to the gas cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete gas cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order which determines the gas cost recovery factors, a gas utility may each month adjust its rates to incorporate all or a part of the gas cost recovery factors requested in its plan. Any amounts collected under the gas cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, the utility may file a revised gas cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised gas cost recovery plan, the commission shall reopen the gas supply and cost review. In addition, the commission may reopen the gas supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a gas cost recovery factor has been applied to customers' bills, the gas utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility, and the cost of gas sold. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a gas utility's gas cost recovery plan, the commission shall commence a proceeding, to be known as a gas cost reconciliation, as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

(13) In its order in a gas cost reconciliation, the commission shall require a gas utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(14) In its order in a gas cost reconciliation, the commission shall authorize a gas utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in

the gas supply and cost review. For excess costs incurred through actions contrary to the commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through actions consistent with commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates that the excess expenses were reasonable and prudent. Such amounts in excess of the amounts actually recovered by the utility for gas sold shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for gas sold had been included in the gas cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a gas cost reconciliation, the refunds, credits, or additional charges shall include interest and shall be apportioned among the utility's customer classes in proportion to their respective usage during the reconciliation period. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the gas utility during the appropriate period, or the authorized rate of return on the common stock of the gas utility during that same period. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the gas utility during the appropriate period.

(16) To avoid undue hardship or unduly burdensome or excessive cost, the commission may exempt a gas utility with fewer than 200,000 customers in the state of Michigan from 1 or more of the procedural provisions of this section or may modify the filing requirements of this section.

(17) Notwithstanding any other provision of this act, the commission may, upon application by a gas utility, set gas cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. Within 120 days following the effective date of this section, for the purpose of setting gas cost recovery factors, the commission shall permit a gas utility to reopen a general rate case in which a final order was issued within 120 days before or after the effective date of this section or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets gas cost recovery factors in an order resulting from a general rate case:

(a) The gas cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new gas cost recovery factors in a general rate case, whichever is the shorter period.

(b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (14), the commission shall authorize the gas utility to defer the amount and to accumulate interest on the amount pursuant to subsection (15), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (14).

(c) The gas cost recovery factors shall not be subject to revision pursuant to subsection (10).

Sec. 6i. (1) This section shall govern the initial filing and implementation of a gas cost recovery plan under section 6h(3).

(2) The initial gas cost recovery plan may be for a period of less than 12 months and shall be filed:

(a) By a gas utility with at least 1,000,000 residential customers in the state of Michigan, within 75 days after the effective date of this section.

(b) By a gas utility with more than 500,000 but fewer than 1,000,000 residential customers in the state of Michigan, within 90 days after the effective date of this section.

(c) By all other gas utilities subject to commission rate jurisdiction, within 30 months after the effective date of this section.

(3) Notwithstanding section 6a(3), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a gas utility is required to file its first gas cost recovery plan pursuant to subsection (2) of this section, the utility may alter its rate schedule in accordance

with an existing purchased gas adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of gas sold pursuant only to subsections (2) and (4) of this section. After the effective date of this section, any revenues resulting from an existing purchased gas adjustment clause and recorded for an annual reconciliation period ending prior to January 1, 1983 by a gas utility shall be subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing purchased gas adjustment clause after the effective date of this section. On and after January 1, 1983, all purchased gas revenues received by a gas utility, whether included in base rates or collected pursuant to a purchased gas adjustment clause or a gas cost recovery clause, shall be subject to annual reconciliation with the cost of purchased gas. Such annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6h(12) to (17), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged pursuant to any purchased gas adjustment clause in existence during the period being reconciled.

(4) Until the commission approves or disapproves a gas cost recovery clause in a final commission order in a contested case required by section 6h(2), a gas utility which had a purchased gas adjustment clause on the effective date of this section and which has applied for a gas cost recovery clause under section 6h may adjust its rates pursuant to section 6h(3) to (17), to include gas cost recovery factors.

Sec. 6j. (1) As used in this act:

(a) "Power supply cost recovery clause" means a clause in the electric rates or rate schedule of a utility which permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices.

(b) "Power supply cost recovery factor" means that element of the rates to be charged for electric service to reflect power supply costs incurred by an electric utility and made pursuant to a power supply cost recovery clause incorporated in the rates or rate schedule of an electric utility.

(2) Pursuant to its authority under this act, the public service commission may incorporate a power supply cost recovery clause in the electric rates or rate schedule of a utility, but is not required to do so. Any order incorporating a power supply cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule, which hearing shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to subsection (18), as a result of a general rate case. Any order incorporating a power supply cost recovery clause shall replace and rescind any previous fuel cost adjustment clause or purchased and net interchanged power adjustment clause incorporated in the electric rates of the utility upon the effective date of the first power supply cost recovery factor authorized for the utility under its power supply cost recovery clause.

(3) In order to implement the power supply cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete power supply cost recovery plan describing the expected sources of electric power supply and changes in the cost of power supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific power supply cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the power supply cost recovery clause established pursuant to subsection (2), a utility shall file, contemporaneously with the power supply cost recovery plan required by subsection (3), a 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of electrical generation under construction. The forecast shall include a description of all relevant major contracts and power supply arrangements entered into or contemplated by the utility, and such other information as the commission may require.

(5) If a utility files a power supply cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a power supply and cost review, for

the purpose of evaluating the reasonableness and prudence of the power supply cost recovery plan filed by a utility pursuant to subsection (3), and establishing the power supply cost recovery factors to implement a power supply cost recovery clause incorporated in the electric rates or rate schedule of the utility. The power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969.

(6) In its final order in a power supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the power supply cost recovery plan filed by the utility pursuant to subsection (3), and shall approve, disapprove, or amend the power supply cost recovery plan accordingly. In evaluating the decisions underlying the power supply cost recovery plan, the commission shall consider the cost and availability of the electrical generation available to the utility; the cost of short-term firm purchases available to the utility; the availability of interruptible service; the ability of the utility to reduce or to eliminate any firm sales to out-of-state customers if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly power supply cost recovery factors requested by the utility in its power supply cost recovery plan. The factors shall not reflect items the commission could reasonably anticipate would be disallowed under subsection (13). The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.

(7) In its final order in a power supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a power supply cost recovery plan in a power supply and cost recovery review, after first having given notice to the parties to the review, and after having afforded to the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection shall be considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a power supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amounts up to the power supply cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete power supply cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order which determines the power supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the power supply cost recovery factors requested in its plan. Any amounts collected under the power supply cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, the utility may file a revised power supply cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised power supply cost recovery plan, the commission shall reopen the power supply and cost review. In addition, the commission may reopen the power supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a power supply cost recovery factor has been applied to customers' bills, the utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the power supply cost recovery factor and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility, and the cost of power supply. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues

including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.

(13) In its order in a power supply cost reconciliation, the commission shall:

(a) Disallow cost increases resulting from changes in accounting or rate-making expense treatment not previously approved by the commission. The commission may order the utility to pay a penalty not to exceed 25% of the amount improperly collected. Costs incurred by the utility for penalty payments shall not be charged to customers.

(b) Disallow any capacity charges associated with power purchased for periods in excess of 6 months unless the utility has obtained the prior approval of the commission.

(c) Disallow net increased costs attributable to a generating plant outage of more than 90 days in duration unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management.

(d) Disallow transportation costs attributable to capital investments to develop a utility's capability to transport fuel or relocate fuel at the utility's facilities and disallow unloading and handling expenses incurred after receipt of fuel by the utility.

(e) Disallow the cost of fuel purchased from an affiliated company to the extent that such fuel is more costly than fuel of requisite quality available at or about the same time from other suppliers with whom it would be comparably cost beneficial to deal.

(f) Disallow charges unreasonably or imprudently incurred for fuel not taken.

(g) Disallow additional costs resulting from unreasonably or imprudently renegotiated fuel contracts.

(h) Disallow penalty charges unreasonably or imprudently incurred.

(i) Disallow demurrage charges.

(j) Disallow increases in charges for nuclear fuel disposal unless the utility has received the prior approval of the commission.

(14) In its order in a power supply cost reconciliation, the commission shall require a utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(15) In its order in a power supply cost reconciliation, the commission shall authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. For excess costs incurred through management actions contrary to the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of such expenses resulted from reasonable and prudent management actions. Such amounts in excess of the amounts actually recovered by the utility for power supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for cost of power supply had been included in the power supply

cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(16) If the commission orders refunds or credits pursuant to subsection (14), or additional charges to customers pursuant to subsection (15), in its final order in a power supply cost reconciliation, the refunds, credits, or additional charges shall include interest. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the utility during the appropriate period, or the authorized rate of return on the common stock of the utility during that same period. Costs incurred by the utility for refunds and interest on refunds shall not be charged to customers. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the utility during the appropriate period.

(17) To avoid undue hardship or unduly burdensome or excessive cost, the commission may:

(a) Exempt an electric utility with fewer than 200,000 customers in the state of Michigan from 1 or more of the procedural provisions of this section or may modify the filing requirements of this section.

(b) Exempt an energy utility organized as a cooperative corporation pursuant to sections 98 to 109 of Act No. 327 of the Public Acts of 1931, being sections 450.98 to 450.109 of the Michigan Compiled Laws, from 1 or more of the provisions of this section.

(18) Notwithstanding any other provision of this act, the commission may, upon application by an electric utility, set power supply cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. Within 120 days following the effective date of this section, for the purpose of setting power supply cost recovery factors, the commission shall permit an electric utility to reopen a general rate case in which a final order was issued within 120 days before or after the effective date of this section or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets power supply cost recovery factors in an order resulting from a general rate case:

(a) The power supply cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new power supply cost recovery factors in a general rate case, whichever is the shorter period.

b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (15), the commission shall authorize the electric utility to defer the amount and to accumulate interest on the amount pursuant to subsection (16), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (15).

(c) The power supply cost recovery factors shall not be subject to revision pursuant to subsection (10).

Sec. 6k. (1) This section shall govern the initial filing and implementation of a power supply cost recovery plan under section 6j(3).

(2) The initial power supply cost recovery plan may be for a period of less than 12 months and shall be filed:

(a) By an electric utility subject to commission rate jurisdiction with at least 200,000 residential customers in the state of Michigan, within 4 months after the effective date of this section.

(b) By all other electric utilities subject to commission rate jurisdiction, within 15 months after the effective date of this section in accordance with the provisions of this act which the commission determines to be appropriate for the individual utility.

(3) Notwithstanding section 6a(3), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a utility is required to file its first power supply cost recovery plan pursuant to subsection (2) of this section, the utility may alter its rate schedule in accordance with an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of power supply pursuant only to subsections (2) and (4) of this section. After the effective date of this section, any revenues resulting from an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause and recorded for an annual reconciliation period ending prior to January 1, 1983, by an electric utility shall be subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause after the effective date of this section. On and after January 1, 1983, all fuel cost and purchased and

net interchanged power revenues received by an electric utility, whether included in base rates or collected pursuant to a fuel or purchased and net interchanged power adjustment clause or a power supply cost recovery clause, shall be subject to annual reconciliation with the cost of fuel and purchased and net interchanged power. Such annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6j(12) to (18), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged pursuant to any fuel or purchased and net interchanged power adjustment clause in existence during the period being reconciled. If the utility has a lag correction provision included in its existing adjustment clauses, the commission shall allow any adjustment to rates attributable to such lag correction provision to be implemented for the 3 billing months immediately succeeding the final billing month in which the existing adjustment clauses as operative.

(4) Until the commission approves or disapproves a power supply cost recovery clause in a final commission order in a contested case required by section 6j(2), a utility which had a fuel cost adjustment clause or purchased and net interchanged power adjustment clause on the effective date of this section and which has applied for a power supply cost recovery clause under section 6j may adjust its rates pursuant to section 6j(3) to (18), to include power supply cost recovery factors.

Sec. 6*l*. (1) For purposes of implementing sections 6h, 6i, 6j, and 6k, this section and section 6m shall provide means of insuring equitable representation of the interests of energy utility customers.

(2) As used in this section and section 6m:

(a) "Annual receipts" means the payments received by the fund under section 6m(2)(a) and (b) during a calendar year.

(b) "Board" means the utility consumer participation board created under subsection (3).

(c) "Department" means the department of management and budget.

(d) "Energy cost recovery proceeding" means any proceeding to establish or implement a gas cost recovery clause or a power supply cost recovery clause as provided in sections 6h, 6i, 6j, or 6k, to set gas cost recovery factors pursuant to section 6h(17), or to set power supply cost recovery factors pursuant to section 6j(18).

(e) "Energy utility" means each electric or gas company regulated by the public service commission.

(f) "Fund" means the utility consumer representation fund created in section 6m.

(g) "Household" means a single-family home, duplex, mobile home, seasonal dwelling, farm home, cooperative, condominium, or apartment which has normal household facilities such as a bathroom, individual cooking facilities, and kitchen sink facilities. Household does not include a penal or corrective institution, or a motel, hotel, or other similar structure if used as a transient dwelling.

(h) "Jurisdictional" means subject to rate regulation by the Michigan public service commission.

(i) "Net grant proceeds" means the annual receipts of the fund less the amounts reserved for the attorney general's use and the amounts expended for board expenses and operation.

(j) "Residential energy utility consumer" or "consumer" means a customer of an energy utility who receives utility service for use within an individual household or an improvement reasonably appurtenant to and normally associated with an individual household.

(k) "Residential tariff sales" means those sales by an energy utility which are subject to residential tariffs on file with the commission.

(*l*) "Utility consuming industry" means a person, sole proprietorship, partnership, association, corporation, or other entity which receives utility service ordinarily and primarily for use in connection with the manufacture, sale, or distribution of goods or the provision of services, but does not include a nonprofit organization representing residential utility customers.

(3) The utility consumer participation board is created within the department and shall exercise its powers and duties under this act independently of the department. The procurement and related management functions of the commission shall be performed under the direction and supervision of the department. The board shall consist of 5 members appointed by the governor, 4 of whom shall be chosen from 1 or more lists of qualified persons submitted by the Michigan consumer's council created under Act No. 277 of the Public Acts of 1966, being sections 445.821 to 445.829 of the Michigan Compiled Laws, and 1 of whom shall be chosen from 1 or more lists of qualified persons submitted by the attorney general. The Michigan consumer's council and the attorney general shall submit to the governor a list of as many qualified persons as the governor has vacancies to fill from that list. If the governor does not appoint all of those whose names are submitted, the Michigan consumer's council or the attorney general shall submit another list containing as many names of qualified persons as remain to be appointed. This process shall continue until all vacancies are filled by the governor.

(4) For the purposes of subsection (5) only, "utility" means an electric or gas company located in or outside of this state.

(5) Each member of the board shall meet the following requirements:

(a) Shall be an advocate for the interests of residential utility consumers, as demonstrated by the member's knowledge of and support for consumer interests and concerns in general or specifically related to utility matters.

(b) Shall not be, or shall not have been within the 5 years preceding appointment, a member of a governing body of, or employed in a managerial or professional or consulting capacity by a utility or an association representing utilities; an enterprise or professional practice which received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities; or an organization representing employees of such a utility, association, enterprise, or professional practice, or an association which represents such an organization.

(c) Shall not have, or shall not have had within 1 year preceding appointment, a financial interest exceeding $1,500.00 in a utility, an association representing utilities, or an enterprise or professional practice which received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities.

(d) Shall not be an officer or director of an applicant for a grant under section 6m.

(e) Shall not be a member of the immediate family of a person who would be ineligible under subdivisions (a), (b), (c), or (d).

(6) The members of the board shall be appointed for 2-year terms beginning with the first day of a legislative session in an odd-numbered year and ending on the day before the first day of the legislative session in the next odd-numbered year or when the members' successors are appointed, whichever occurs later. The governor shall not appoint a member to the board for a term commencing after the governor's term of office has ended. A vacancy shall be filled in the same manner as the original appointment. If the vacancy is created other than by expiration of a term, the member shall be appointed for the balance of the unexpired term of the member to be succeeded.

(7) The governor shall remove a member of the board if that member is absent for any reason from either 3 consecutive board meetings or more than 50% of the meetings held by the board in a calendar year. However, a person who is removed due to absenteeism is eligible for reappointment to fill a vacancy which occurs in the board membership. The governor also shall remove a member of the board if the member is subsequently determined to be ineligible under subsection (5).

(8) The board shall hold bimonthly meetings and additional meetings as necessary. A quorum consists of 3 members. A majority vote of the members appointed and serving is necessary for a decision. At its first meeting following the appointment of new members, or as soon as possible after the first meeting, the board shall elect biennially from its membership a chairperson and a vice-chairperson.

(9) The board shall not act directly to represent the interests of residential utility consumers except through administration of the fund and grant program under this section.

(10) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(11) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(12) A member of the board may be reimbursed for actual and necessary expenses, including travel expenses to and from each meeting held by the board, incurred in discharging the member's duties under this section and section 6m. In addition to expense reimbursement, a board member may receive remuneration from the board of $100.00 per meeting attended, not to exceed $1,000.00 in a calendar year. These limits shall be adjusted proportionately to an adjustment in the remittance amounts under section 6m(4) to allow for changes in the cost of living.

(13) Until the board certifies that it is operating and ready to perform all duties under this act, the director of the energy administration created by executive directives 1976-2 and 1976-5 shall serve as temporary administrator of the fund and exercise all duties and powers of the board.

Sec. 6m. (1) The utility consumer representation fund is created as a special fund. The state treasurer shall be the custodian of the fund and shall maintain a separate account of the money in the fund. The money in the fund shall be invested in the bonds, notes, and other evidences of indebtedness issued or insured by the United States government and its agencies, and in prime commercial paper. The state

treasurer shall release money from the fund, including interest earned, in the manner and at the time directed by the board.

(2) Except as provided in subsection (6), each energy utility which has applied to the public service commission for the initiation of an energy cost recovery proceeding shall remit to the fund prior to or upon filing its initial application for such a proceeding, and on or before the first anniversary of that application, an amount of money determined by the board in the following manner:

(a) In the case of an energy utility company serving at least 100,000 customers in this state, an amount which bears to $300,000.00, multiplied by a factor as provided in subsection (4), the same proportion as the company's jurisdictional 1981 total operating revenues, as stated in its annual report, bear to the jurisdictional 1981 total operating revenues of all energy utility companies serving at least 100,000 customers in this state. This amount shall be made available by the board for use by the attorney general for the purposes described in subsection (17).

(b) In the case of an energy utility company serving at least 100,000 residential customers in this state, an amount which bears to $300,000.00, multiplied by a factor as provided in subsection (4), the same proportion as the company's jurisdictional 1981 gross revenues from residential tariff sales bear to the jurisdictional 1981 gross revenues from residential tariff sales of all energy utility companies serving at least 100,000 residential customers in this state. This amount shall be used for grants under subsection (11).

(3) Payments made by an energy utility under subsection (2)(a) shall be operating expenses of the utility which the public service commission shall permit the utility to charge to its customers. Payments made by a utility under subsection (2)(b) shall be operating expenses of the utility which the public service commission shall permit the utility to charge to its residential customers.

(4) For purposes of subsection (2), the factor shall be set by the board at a level not to exceed the percentage increase in the index known as the consumer price index for urban wage earners and clerical workers, select areas, all items indexed, for the Detroit standard metropolitan statistical area, compiled by the bureau of labor statistics of the United States department of labor, or any successor agency, which has occurred between January 1981 and January of the year in which the payment is required to be made. In the event that more than 1 such index is compiled, the index yielding the largest payment shall be the maximum allowable factor. The board shall advise utilities of the factor.

(5) On or before the second and succeeding anniversaries of its initial application for an energy cost recovery proceeding, an energy utility shall remit to the board amounts equal to 5/6 of the amounts required under subsection (2).

(6) The remittance requirements of this section shall not apply to an energy utility organized as a cooperative corporation pursuant to sections 98 to 109 of Act No. 327 of the Public Acts of 1931, being sections 450.98 to 450.109 of the Michigan Compiled Laws, and grants from the fund shall not be used to participate in an energy cost recovery proceeding primarily affecting such a utility.

(7) In the event of a dispute between the board and an energy utility about the amount of payment due, the utility shall pay the undisputed amount and, if the utility and the board cannot agree, the board may initiate civil action in the circuit court for Ingham county for recovery of the disputed amount. The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section which has not fully paid undisputed remittances required by this section.

(8) The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section until 30 days after it has been notified by the board or the director of the energy administration, if section 6*l*(13) is applicable, that the board or the director is ready to process grant applications, will transfer funds payable to the attorney general immediately upon the receipt of such funds, and will within 30 days approve grants and remit funds to qualified grant applicants.

(9) The board may accept a gift or grant from any source to be deposited in the fund if the conditions or purposes of the gift or grant are consistent with this section.

(10) The costs of operation and expenses incurred by the board in performing its duties under this section and section 6*l*, including remuneration to board members, shall be paid from the fund. A maximum of 5% of the annual receipts of the fund may be budgeted and used to pay expenses other than grants made under subsection (11).

(11) The net grant proceeds shall finance a grant program from which the board may award to an applicant an amount which the board determines shall be used for the purposes set forth in this section.

(12) The board shall create and make available to applicants an application form. Each applicant shall indicate on the application how the applicant meets the eligibility requirements provided for in this section and how the applicant proposes to use a grant from the fund to participate in 1 or more proceedings as

authorized in subsection (17) which have been or are expected to be filed. The board shall receive an application requesting a grant from the fund only from a nonprofit organization or a unit of local government in this state. The board shall consider only applications for grants containing proposals which are in keeping with subsections (17) and (18) and which serve the interests of residential utility consumers. For purposes of making grants, the board may consider protection of the environment, energy conservation, the creation of employment and a healthy economy in the state, and the maintenance of adequate energy resources. The board shall not consider an application which primarily benefits the applicant or a service provided or administered by the applicant. The board shall not consider an application from a nonprofit organization if 1 of the organization's principal interests or unifying principles is the welfare of a utility or its investors or employees, or the welfare of 1 or more businesses or industries, other than farms not owned or operated by a corporation, which receive utility service ordinarily and primarily for use in connection with the profit-seeking manufacture, sale, or distribution of goods or services. Mere ownership of securities by a nonprofit organization or its members shall not disqualify an application submitted by that organization.

(13) The board shall encourage the representation of the interests of identifiable types of residential utility consumers whose interests may differ, including various social and economic classes and areas of the state, and if necessary, may make grants to more than 1 applicant whose applications are related to a similar issue to achieve this type of representation. In addition, the board shall consider and balance the following criteria in determining whether to make a grant to an applicant:

(a) Evidence of the applicant's competence, experience, and commitment to advancing the interests of residential utility consumers.

(b) In the case of a nongovernmental applicant, the extent to which the applicant is representative of or has a previous history of advocating the interests of citizens, especially residential utility consumers.

(c) The anticipated effect of the proposal contained in the application on residential utility consumers, including the immediate and long-term impacts of the proposal.

(d) Evidence demonstrating the potential for continuity of effort and the development of expertise in relation to the proposal contained in the application.

(e) The uniqueness or innovativeness of an applicant's position or point of view, and the probability and desirability of that position or point of view prevailing.

(14) As an alternative to choosing between 2 or more applications which have similar proposals, the board may invite 2 or more of the applicants to file jointly and award a grant to be managed cooperatively.

(15) The board shall make disbursements pursuant to a grant in advance of an applicant's proposed actions as set forth in the application if necessary to enable the applicant to initiate, continue, or complete the proposed actions.

(16) Any notice to utility customers and the general public of hearings or other state proceedings in which grants from the fund may be used shall contain a notice of the availability of the fund and the address of the board.

(17) The annual receipts and interest earned, less administrative costs, may be used only for participation in administrative and judicial proceedings under sections 6h, 6i, 6j, and 6k, and in federal administrative and judicial proceedings which directly affect the energy costs paid by Michigan energy utilities. Amounts which have been in the fund more than 12 months may be retained in the fund for future grants, or may be returned to energy utility companies or used to offset their future remittances in proportion to their previous remittances to the fund, as the board determines will best serve the interests of consumers.

(18) The following conditions shall apply to all grants from the fund:

(a) Disbursements from the fund may be used only to advocate the interests of energy utility customers or classes of energy utility customers, and not for representation of merely individual interests.

(b) The board shall attempt to maintain a reasonable relationship between the payments from a particular energy utility and the benefits to consumers of that utility.

(c) The board shall coordinate the funded activities of grant recipients with those of the attorney general to avoid duplication of effort, to promote supplementation of effort, and to maximize the number of hearings and proceedings with intervenor participation.

(19) A recipient of a grant pursuant to subsection (11) may use the grant only for the advancement of the proposed action approved by the board, including, but not limited to, costs of staff, hired consultants and counsel, and research.

(20) A recipient of a grant under subsection (11) shall file a report with the board within 90 days following the end of the year or a shorter period for which the grant is made. The report shall be made in a form prescribed by the board and shall be subject to audit by the board. The report shall include the following information:

(a) An account of all grant expenditures made by the grant recipient. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

(*iii*) Filing fees and other costs required to effectively represent residential utility consumers as provided in this section.

(b) Any additional information concerning uses of the grant required by the board.

(21) The attorney general shall file a report with the house and senate committees on appropriations within 90 days following the end of each fiscal year. The report shall include the following information:

(a) An account of all expenditures made by the attorney general of funds received under this section. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

(*iii*) Filing fees and other costs required to effectively represent utility consumers as provided in this section.

(b) Any additional information concerning uses of the funds received under this section required by the committees.

(22) On or before July 1 of each calendar year, the board shall submit a detailed report to the legislature regarding the discharge of duties and responsibilities under this section and section 6*l* during the preceding calendar year.

(23) Three years after the effective date of this section, and at 3-year intervals thereafter, a senate committee chosen by the majority leader of the senate and a house committee chosen by the speaker of the house of representatives shall review the relationship between costs and benefits resulting from this section and sections 6h through 6*l*, and may recommend changes to the legislature.

This act is ordered to take immediate effect.

Thomas J. Husband

Clerk of the House of Representatives.

William C. Fowler

Secretary of the Senate.

Approved .....

.....

Governor.

Reps. Owen, Hellman and Jacobetti offered the following resolution:

House Resolution No. 103.

A resolution creating a special committee to investigate certain reported irregularities within the Michigan Department of Licensing and Regulation and to review all existing State licensing and regulatory procedures which come under the authority of the Department of Licensing and Regulation.

Whereas, The Michigan Department of Licensing and Regulation has been endowed by statute with a great deal of authority and public responsibility. The Department currently oversees approximately thirty-three State boards, agencies, or functions involving licensing and regulation of some 330,000 licensees; and

Whereas, The Administrative Secretary of the Board of Residential Builders and Maintenance and Alteration Contractors was dismissed by the Department of Licensing and Regulation on September 25, 1974, following allegations of misconduct, including charges that the Administrative Secretary had improperly issued 110 maintenance and alteration licenses after changing the examination scores of applicants; and

Whereas, Shortly after the September 25, 1974 dismissal of the Administrative Secretary of the Board of Residential Builders and Maintenance and Alteration Contractors, the Michigan Attorney General began an investigation and subsequently issued "Report concerning Investigation of Irregularities of Builders' Licenses". This report covered such subjects as grandfather clause irregularities, improper oral examinations, selling of examinations, bribery, other licensing irregularities in violation of law, and injury to the public; and

Whereas, The Attorney General stated in the report, "our investigation has found fellow employee animosity, administrative laxity and confusion, apparent negligence and incomplete department records". Furthermore, the Attorney General stated, "...the consumer who believed that he was receiving protection from the Department of Licensing and Regulation suffers the greatest loss". In view of these conclusions, it is incumbent upon this legislative body to look into this matter; now therefore be it

Resolved by the House of Representatives, That there is created a special committee of the House of Representatives, to consist of 5 members, to be appointed in the same manner as standing committees of the House are appointed, to function during the 1975 and 1976 Regular Sessions of the Legislature, to investigate certain reported irregularities within the Michigan Department of Licensing and Regulation and to review all existing State licensing and regulatory procedures which come under the authority of the Department of Licensing and Regulation, and to report its findings and recommendations to the Legislature; and be it further

Resolved, That the committee may subpoena witnesses, administer oaths, and examine the books and records of any person, partnership, association, or corporation, public or private, involved in a matter properly before the committee; and may call upon the services and personnel of any agency of the state and its political subdivisions; and may engage such assistance as it deems necessary; and be it further

Resolved, That the committee may employ such consultants, aides, and assistants as it deems necessary to conduct its study; the committee may call upon the Legislative Service Bureau, subject to approval of the Legislative Council, for such services and assistance as it deems necessary and may request information and assistance from state departments and agencies; and be it further

Resolved, That the members of the committee shall serve without compensation, but shall be entitled to actual and necessary travel and other expenses incurred in the performance of official duties, to be paid from the appropriation to the House of Representatives.

The resolution was referred to the Committee on House Policy.

Rep. Hasper asked and obtained leave of absence from tomorrow's session.

Reports of Select Committees

Joint Committee on Administrative Rules

Certificate of Approval of Rules

Date: April 29, 1975

Subject: Trans. No. 619

I hereby certify that on April 29, 1975, the Joint Committee on Administrative Rules approved the Administrative Rules pertaining to Public Bathing Beaches being R325.2101-.2102 of the Michigan Administrative Code.

6/10/82

Interview with Gary Van Norman, financial control section of the accounting division of DMB.

Van Norman's first comment was that MDOT was not following fiscal reporting procedures according 22210 of the Administrative Manual and the 8 memos which accompany it. When questioned on specifics he said the rules were too complex and violation too complicated to explain--it would take weeks.

The procedures for lapsed funds automatically reverting to the "7700" account has undergone a change within the last two fiscal years. In the 1979-80 fiscal year Sec. 27 of Act 51, as amended, called for unencumbered funds in specific numbered accounts to lapse and revert to 7700 at the end of the fiscal year. As of the 1980-81 fiscal year any balance remaining in accounts are held there for a two year period before reverting to the "7700" account. However, due to the fact that DMB has their own personal accounting system which, according to Van Norman, it utilizes as an administrative tool it is impossible to tell the years with which an expenditure is connected. This allows program monies to be carried over in their numbered account beyond the two year limit. The result is that there would be a delay in the transfer of funds into the "7700" account.

Van Norman repeatedly stated that the separate MDOT accounting system he described was solely a managerial tool, and thus not illegal. He stated that they could group line items into one lump fund or in other ways alter the accounting procedure specificed by DMB as part of their in-house management. However, those figures that MDOT reports to DMB must subscribe to DMB line items and account numbers. Van Norman kept emphasizing that MDOT's system had nothing to do with actual fiscal reporting.

Van Norman stated that the accounting of MDOT expenditures is totally dependent on the figures MDOT reports to them. All monies are recorded through MDOT's system and then through DMB's system. If there are any discrepancies between the reported figures and the original appropriations DMB requests a reconciliation statement. Such a reconciliation is accepted at face value and no investigation of the discrepancy occurs until an audit is conducted.

Monies that eventually revert to the 7700 account are as equally unchecked as other areas of MDOT accounting. The 7700 monies cannot be expended until allotted. This appears to be the only check on expending of 7700 funds. Allotment is possible after approval of the Bureau of the Budget. In reality, however, they do not turn down any allotment requests. Consequently there is no check on expenditures from the "7700" account.

Van Norman's information verifies the misconduct of MDOT that was brought to light by George Rusch. It also verifies how intertwined MDOT's separate accounting system and the 7700 account are.

Further pursuit of the accounting system by someone with an accounting background might illicit more specific violations from Van Norman or other DMB officials.

FOOTNOTES

[1]Robert A. Diamond (ed.), Powers of Congress (Washington, D.C.: Congressional Quarterly Review, Inc., 1976), p. 157.

[2]Diamond, Powers of Congress, p. 157.

[3]Ernest S. Griffin, Congress: It's Contemporary Role (New York, N.Y.: New York University Press, 1967), p. 112.

[4]Griffin, Congress: It's Contemporary Role, p. 112.

[5]Griffin, Congress: It's Contemporary Role, p. 113.

[6]Diamond, Powers of Congress, p. 158.

[7]Diamond, Powers of Congress, p. 158.

[8]Diamond, Powers of Congress, p. 158.

[9]William J. Keefe and Morris S. Ogul, The American Legislative Process: Congress and the States (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1973), pp. 220-221.

[10]Diamond, Powers of Congress, p. 156.

[11]Diamond, Powers of Congress, p. 156.

[12]Diamond, Powers of Congress, p. 156.

[13]Diamond, Powers of Congress, p. 164.

[14]Diamond, Powers of Congress, p. 166.

[15]Keefe and Ogul, The American Legislative Process, p. 219.

[16]Griffin, Congress: It's Contemporary Role, p. 111.

[17]Griffin, Congress: It's Contemporary Role, p. 48.

[18]Griffin, Congress: It's Contemporary Role, p. 48.

[19]Griffin, Congress: It's Contemporary Role, p. 48.

[20]Keefe and Ogul, The American Legislative Process, p. 219.

[21]Diamond, Powers of Congress, p. 168.

[22]Keefe and Ogul, The American Legislative Process, p. 219.

[23]Diamond, Powers of Congress, p. 167.

[24]Diamond, Powers of Congress, p. 168.

[25]Griffin, Congress: It's Contemporary Role, p. 117.

[26]Griffin, Congress: It's Contemporary Role, p. 117.

[27]Diamond, Powers of Congress, p. 168.

[28]Diamond, Powers of Congress, p. 168.

[29]Griffin, Congress: It's Contemporary Role, p. 118.

[30]Griffin, Congress: It's Contemporary Role, p. 118.

[31]Griffin, Congress: It's Contemporary Role, pp. 114-115.

[32]Diamond, Powers of Congress, p. 169.

[33]Griffin, Congress: It's Contemporary Role, p. 119.

[34]Standing Rules of the Senate and Congressional Budget and Impoundment Control Act of 1974, as Amended, 97-10 (Washington, D.C. United States Government Printing Office, 97th Congress, 1st session, May 8, 1981), p. 32.

[35]Standing Rules of the Senate and Congressional Budget and..., pp. 31-32.

[36]Diamond, Powers of Congress, p. 160.

[37]Diamond, Powers of Congress, p. 160.

[38]Standing Rules of the Senate, p. 101.

[39]Constitution--Jefferson's Manual and Rules of the House of Representatives of the United States, 96-398 (Washington, D.C.: United States Government Printing Office, 96th Congress, 2nd session, 1981), p. 367.

[40]Constitution--Jefferson's Manual and Rules, p. 368.

[41]Griffin, Congress: It's Contemporary Role, p. 119.

[42]Diamond, Powers of Congress, p. 163.

[43]Griffin, Congress: It's Contemporary Role, p. 48.

[44]Keefe and Ogul, The American Legislative Process, p. 227.

[45]Keefe and Ogul, The American Legislative Process, p. 227.

[46]Diamond, Powers of Congress, p. 163.

[47]Alpheus Thomas Mason and William M. Beaney, American Constitutional Law (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1978), p. 75.

[48]Diamond, Powers of Congress, p. 172.

[49]Diamond, Powers of Congress, p. 172.

[50]Griffin, Congress: It's Contemporary Role, p. 116.

[51]Diamond, Powers of Congress, p. 173.

[52]Diamond, Powers of Congress, p. 173.

[53]Diamond, Powers of Congress, p. 182.

[54]Diamond, Powers of Congress, p. 193.

[55]Keefe and Ogul, The American Legislative Process, pp. 218-219.

[56]Diamond, Powers of Congress, p. 155.

[57]Diamond, Powers of Congress, p. 194.

[58]Diamond, Powers of Congress, p. 194.

[59]Diamond, Powers of Congress, p. 156.

[60]Diamond, Powers of Congress, p. 156.

[61]William J. Siffin, The Legislative Council in the American States (Bloomington: Indiana University Press, 1959), p. 9.

[62]Clyde F. Snider, American State and Local Government (New York, New York: Appleton-Century Crofts, 1950), p. 210.

[63]National Legislative Conference Committee on Legislative Rules, Legislative Investigations: A Survey and Recommendations (Chicago, Ill.: Council of State Governments, 1968), p. 2.

[64]National Legislative Conference Committee, Legislative Investigations, p. 3.

[65]National Legislative Conference Committee, Legislative Investigations, p. 5.

[66]National Legislative Conference Committee, Legislative Investigations, p. 4.

[67]Keefe and Ogul, The American Legislative Process, p. 228.

[68]Keefe and Ogul, The American Legislative Process, p. 230.

[69]Keefe and Ogul, The American Legislative Process, p. 228.

[70]Keefe and Ogul, The American Legislative Process, p. 228.

[71]Carolyn Stieber, The Politics of Change in Michigan (Lansing: Michigan State University Press, 1970), p. 86.

[72]Stieber, The Politics of Change in Michigan, p. 15.

[73]An Analysis of the Proposed Constitution (Lansing: Citizen's Research Council of Michigan, 1963), p. 2.

[74]Stieber, The Politics of Change in Michigan, p. 87.

[75]Ferris E. Lewis, State and Local Government in Michigan (Hillsdale, MI: Hillsdale Educational Publishers, Inc., 1979), p. 33.

[76]Lewis, State and Local Government in Michigan, p. 33.

[77]Lois Davis, "The Beginnings of a Full-time Legislature," June 17, 1982, 9:30 a.m.

[78]Stieber, The Politics of Change in Michigan, p. 86.

[79]Stieber, The Politics of Change in Michigan, p. 86.

[80]Stieber, The Politics of Change in Michigan, p. 87.

[81]Wayne Schacht, "Investigation and the Task Force," June 21, 1982, 10:30 a.m., p. 1.

[82]Schacht, "Investigation and the Task Force," p. 1.

[83]Schacht, "Investigation and the Task Force," p. 2.

[84]Schacht, "Investigation and the Task Force," p. 3.

[85]Schacht, "Investigation and the Task Force," p. 3.

[86]Schacht, "Investigation and the Task Force," p. 4.

[87]Schacht, "Investigation and the Task Force," p. 5.

[88]Nada-Aiyda Farmer, "An Investigation By Formal Resolution," May 26, 1982, 3:30 p.m., p. 1.

[89]Farmer, "An Investigation By Formal Resolution," p. 1.

[90]Farmer, "An Investigation By Formal Resolution," p. 1.

[91]Farmer, "An Investigation By Formal Resolution," p. 2.

[92]Farmer, "An Investigation By Formal Resolution," p. 2.

[93]Farmer, "An Investigation By Formal Resolution," p. 2.

[94]Farmer, "An Investigation By Formal Resolution," p. 2.

[95]Farmer, "An Investigation By Formal Resolution," p. 2.

[96]Farmer, "An Investigation By Formal Resolution," p. 4.

[97]Farmer, "An Investigation By Formal Resolution," p. 4.

[98]Farmer, "An Investigation By Formal Resolution," p. 3.

[99]Farmer, "An Investigation By Formal Resolution," p. 4.

[100]Farmer, "An Investigation By Formal Resolution," p. 5.

[101]Farmer, "An Investigation By Formal Resolution," p. 5.

[102]Ann Batista, "Legislative Investigation and Recordkeeping," May 19, 1982, 1:00 p.m., p. 1.

[103]State Representative, "Barriers to Investigation," May 20, 1982, 2:00 p.m., p. 2.

[104]State Representative, "Barriers to Investigation," p. 3.

[105]State Representative, "Barriers to Investigation," p. 3.

[106]State Representative, "Barriers to Investigation," p. 3.

[107]State Representative, "Barriers to Investigation," p. 3.

[108]State Representative, "Barriers to Investigation," p. 2.

[109]State Representative, "Barriers to Investigation," p. 3.

[110]State Representative, "Barriers to Investigation," p. 3.

[111]State Representative, "Barriers to Investigation," p. 2.

[112]State Representative, "Barriers to Investigation," p. 5.

[113]State Representative, "Barriers to Investigation," p. 5.

[114]Gary Corbin, "Investigation and the Senate," June 9, 1983, 9:30 a.m., p. 3.

[115]Corbin, "Investigation and the Senate," p. 3.

[116]State Representative, "Barriers to Investigation," p. 5.

[117]David Thayer, "Trends in Investigatory Process," May 20, 1982, 3:30 p.m., p. 2.

[118]State Representative, "Barriers to Investigation," p. 4.

[119]A Legislative Aide, "Observations on Investigatory Process," June 16, 1982, 10:00 a.m., p. 4.

[120]Legislative Aide, "Observations on Investigative Process," p. 5.

[121]State Representative, "Barriers to Investigation," p. 4.

[122]Legislative Aide, "Observations on Investigatory Process," p. 5.

[123]State Representative, "Barriers to Investigation," p. 5.

[124]State Representative, "Barriers to Investigation," p. 5.

[125]Corbin, "Investigation and the Senate," p. 4.

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