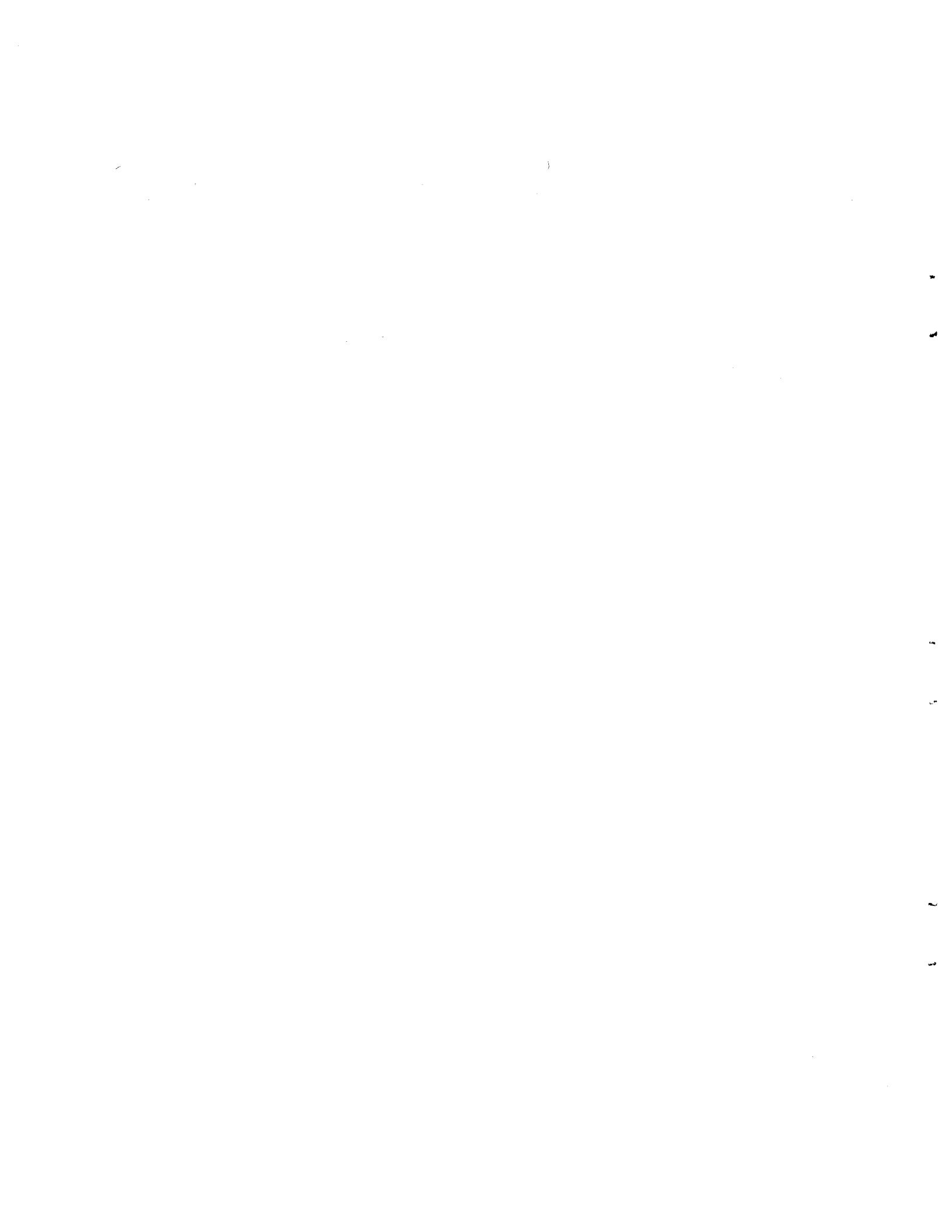


**EYE
ON
THE
EXECUTIVE**

LEGISLATIVE OVERSIGHT COMMITTEE
NEW JERSEY GENERAL ASSEMBLY

DECEMBER, 1977



SUMMARY OF RECOMMENDATIONS

A. JOINT OVERSIGHT COMMITTEE (page 8)

The committee recommends the establishment of a statutory Joint Oversight Committee with the following responsibilities:

1. To review all existing and proposed administrative rules;
2. To conduct reviews of agency programs, policies and procedures;
3. To monitor the implementation of recommendations contained in program reviews carried out by the committee, the standing reference committees, the Legislative Services Agency and the Office of Fiscal Affairs;
4. To serve as a clearinghouse for the collection of critical assessments of State agencies which are offered from time to time by private organizations and individuals;
5. To engage in continuous study of oversight procedures in New Jersey and other states in order to assess their effectiveness and to remain abreast of new methodologies;
6. To provide assistance and guidance for the oversight efforts of the standing reference committees.

B. STANDING REFERENCE COMMITTEES (page 16)

The committee recommends that the standing reference committees make more extensive use of the following oversight techniques:

1. engage in budget review;
2. engage in post-auditing and program review;
3. review administrative rules;
4. conduct more public hearings on agency policies;
5. provide specific termination dates for any new programs which are authorized;
6. provide for committee intercession in agency activities at future dates by requiring committee approval for certain actions or funding;
7. require agencies to provide more documentation for proper program evaluation;
8. engage in more on-site review of agency facilities and operations;
9. require notification of agency applications for Federal funding and information as to the nature of the programs and the rules under which it will operate;
10. devote greater attention to expressing legislative intent when approving legislation.

C. BUDGET REVIEW (page 20)

1. Standing reference committees, in coordination with the Joint Appropriations Committee, should engage in budget review;
2. A permanent sub-committee of the Joint Appropriations Committee should be established with the responsibility to monitor the application, receipt and use of Federal funds.

D. REVIEW OF ADMINISTRATIVE RULES (page 26)

The committee recommends the enactment of legislation giving the Joint Oversight Committee the power to delay the implementation of proposed rules and to temporarily suspend existing rules. Furthermore, the Legislature should be empowered to permanently veto such rules if they are found to be unreasonable, arbitrary, capricious, inconsistent with legislative intent or beyond the scope of the a gency's authority.

E. RULE-MAKING PROCEDURES (page 37)

The committee recommends the following changes in the Administrative Procedures Act:

1. Every proposed rule should be accompanied by an agency statement which summarizes the rule, demonstrates that it conforms to legislative intent, explains its purpose, and describes its expected socio-economic impact.
2. Every rule-making agency should evaluate the manner in which it publicizes its rule-making activities and should adopt such strategies as will generate the maximum publicity among persons likely to be directly affected by or interested in a proposed rule. Agencies should make every effort to bring such persons into the process before a rule is formally proposed for adoption.
3. All rules issued by any agency of State government should be subject to the procedures outlined in the Administrative Procedure Act.

4. The comment period prior to adoption of a rule should be increased from 20 to 30 days. Agencies should endeavor to issue a call for comments prior to proposing a rule.
5. An agency should conduct a public hearing at the request of at least ten interested parties. Notice of the hearing should be publicized in the same manner as notice of the proposed rule-making.
6. Hearings should be conducted by impartial hearing officers whose responsibility is to offer recommendations to the agency regarding adoption, modification or withdrawal of the proposed rule. The officer's recommendation should be made public.
7. All hearings should be stenographically transcribed. Transcriptions should be printed and made available for distribution to the public upon request at a nominal fee prior to final rule adoption.
8. At least a portion of each hearing (or one of a series of hearings) should be conducted during the evening.
9. Hearings should be conducted in close proximity to the affected parties, if appropriate, or in locations throughout the State, if there is more than one hearing.
10. Agency officials should testify at the hearings and be available for questioning by the public.
11. Prior to the adoption of a rule, the agency should publish a formal report summarizing the nature of the public comments received and providing agency responses to each of the points raised by such comments.

12. Rules promulgated under the imminent peril provision should be valid for a period not to exceed 120 days. Re-promulgation as a permanent rule should be done in accordance with standard procedures.
13. No agency should be permitted to promulgate an emergency rule unless the Governor certifies that such action is necessary due to the existence of an imminent peril.
14. Procedural rules should be promulgated in accordance with normal rule-making requirements. Procedural rules which must be implemented immediately can be offered as imminent peril rules.
15. Agencies should develop formal procedures for acting upon petitions for rule-making action which are submitted from the public, in accordance with guidelines established by the Division of Administrative Procedure.
16. The Division of Administrative Procedure should assume a more active role in monitoring, assessing and providing information concerning rule-making procedures.

F. SUNSET LEGISLATION (page 54)

The committee recommends that the Joint Oversight Committee carefully monitor how existing sunset laws are working and what this State's response should be.

TABLE OF CONTENTS

	COMMITTEE MEMBERS	ii
	PREFACE	iii
I	PURPOSE OF THE STUDY	1
II	THE OVERSIGHT MOVEMENT	4
III	JOINT OVERSIGHT COMMITTEE	8
IV	CURRENT COMMITTEE RESPONSIBILITIES	12
V	RECOMMENDATIONS FOR COMMITTEE ACTIVITIES	16
VI	BUDGET REVIEW	20
VII	REVIEW OF ADMINISTRATIVE RULES	26
VIII	RULE-MAKING PROCEDURES	37
IX	SUNSET LEGISLATION	54

APPENDICES:

A.	Agencies Identified as Having Rule-Making Authority	56
B.	Parties Testifying at Hearings of the Committee	60
C.	Parties Responding to the Committee Questionnaire for Registered Agents	63
D.	Questionnaire Distributed to Assembly Committees	70
E.	Questionnaire Distributed to Executive Departments	72
F.	Questionnaire Distributed to Registered Agents	75
G.	States with Rule-Review Laws	77
H.	States with Sunset Laws	81

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PREFACE

Legislative oversight is many things to many people. It must be if it is going to work. This Report, aptly entitled "Eye on the Executive," thoroughly examines those components.

Historically, state legislators, as part-timers, have played second fiddle as policy formulators. Until recently, most policy initiatives have emanated from the Executive. The Legislature has lacked adequate staff or expertise to offer judgments on policy.

In New Jersey that has changed somewhat, but not nearly enough. Too often, Executive agencies view legislators not as policy partners but as agents of the Executive will. In the main we have been awed -- yes even overwhelmed -- by the size, expertise, and strength of the bureaucracy. And the bureaucracy, for its part, readily maintains this profile, rarely seeking counsel from the Legislature even when legislative intent is unclear.

As long as legislators continue to acquiesce, to accept only such policy roles as the Executive and its subdivisions permit or suggest, constitutional parity will suffer. A true policy-partnership will never occur until we demand a major adjustment of attitude, a more than lip service commitment to implement the oversight recommendations contained in this Report.

Yet, based on present legislative oversight efforts such as those undertaken by the Joint Committee on Public Schools and the Assembly Energy and Natural Resources Committee, there is every reason to believe that if we readily want to, the Legislature can be equal to the task. Simply put: Where the Legislature has demonstrated an unwillingness to relinquish its "follow-up" responsibilities, or to permit the Executive to promulgate rules and regulations inconsistent with what legislators perceive to be legislative policy, the Executive will listen, the Executive will cooperate.

And that is what legislative oversight should be all about. That it is working in many other states cannot be denied: From Wisconsin, where a joint permanent committee carefully screens all rules and regulations for compliance, to states such as Pennsylvania, which reviews the spending of Federal funds, Legislatures are demanding to be policy partners and to have an equal say as to how their states will operate.

To reach this potential will not be without cost. It will require adequate legislative facilities (which presently do not exist) and an increase in staff. Few will deny, though, based on results here and elsewhere, that strong legislative oversight, backed by competent staff, is worth funding.

The Executive and its bureaucracy will be watching us to see if we really mean business or whether we will be little more than policy-paper

tigers. But the question central to this Report still remains: Are we willing to do what has to be done to watch them?

I PURPOSE OF THE STUDY _____

The Assembly Legislative Oversight Committee was established upon the recommendation of Speaker William J. Hamilton, Jr., in January 1977. The committee was provided with the following broad mandate as expressed in Assembly Rule 10:16:

The Legislative Oversight Committee is authorized to examine State government programs and their administration to ascertain whether such programs are effective, continue to serve their intended purposes, are conducted in an efficient and effective manner, or require modification or elimination. The committee is further authorized to review administrative rules and regulations to ascertain whether the executive department, agency or authority promulgating the rules or regulations is faithfully executing the intent of the Legislature in its grant of statutory authority to issue such rules or regulations.

The jurisdiction of the Assembly standing reference committees was also significantly expanded at this time. Committees were to maintain a continuous review of the powers, functions, duties, operations and policies of agencies. Since committees were given this oversight function, the Oversight Committee determined that its initial task should be directed towards assembling information on the nature of oversight and offering recommendations for oversight procedures.

Accordingly, the committee entered into a wide-ranging search to gather information and opinions which would be useful in formulating a legislative oversight strategy. The committee has reviewed oversight mechanisms and their implementation, and has analyzed the formal and informal rule-making procedures employed by Executive agencies.

The committee undertook extensive efforts to gather material from the public, legislative committees, Executive departments and other states. Specific committee activity has included the following elements:

- . distribution of a questionnaire to all Assembly standing committees seeking information on their oversight activities and suggestions as to the course of action to be followed by the Oversight Committee.

- . distribution of a questionnaire to all registered agents (lobbyists) and other interested parties to ascertain their experiences with the rule-making procedures of Executive agencies.

- . distribution of a questionnaire to all Executive departments to elicit information concerning their administrative rule-making procedures.

. convening of two public hearings to receive comments from the public and local officials regarding their experiences with State agencies.

. attendance by committee members and staff at two conferences on legislative oversight sponsored by the Council of State Governments and the National Conference of State Legislatures.

. collection and review of an extensive number of documents regarding legislative oversight.

The committee believes that the comments and recommendations offered in this report will provide the Legislature with a foundation on which to construct an extensive oversight effort which is compatible with existing committee operations.

The committee wishes to express its appreciation to all who shared their comments with us. The files of the committee are, of course, available to any legislator, State official or member of the public who may wish to review the material assembled by the committee.

The legislative branch of government, at both State and Federal levels, is presently engaged in what may be described in contemporary terms as a major "consciousness-raising" effort. As the branch of government closest to the people, legislative bodies are becoming increasingly aware of the need to augment their fundamental and traditional responsibility to enact public policy with an equal obligation to monitor the implementation of policy and its impact on the public. In virtually every State, the Legislature is exploring and defining the nature of its inherent, but often neglected, powers and prerogatives concerning the manner in which the Executive branch administers legislative enactments.

Legislative activities which involve the examination and evaluation of the programs, policies and procedures of Executive agencies have been described collectively as "oversight" functions. While virtually every legislative activity -- whether undertaken by an individual legislator, a committee or an agency serving the Legislature -- contains an oversight component, major oversight activities can include the following: the appropriations process, program review, program auditing, review of administrative rules, termination of programs or agencies at a date certain (the "sunset" concept), confirmation of gubernatorial appointees, impeachment of officials, and special investigatory hearings and reports.

While certain of these functions have been employed for years, they have never achieved the prominence or status associated with the Legislature's major (and much more dramatic) law-making role. Now, however, legislatures are coming to view oversight as a distinct and highly appropriate phase of the process.

The development of a more pronounced legislative role with respect to the operations of the Executive branch is a natural outgrowth of the recent movement to improve and strengthen the resources, capabilities and powers of legislative bodies. More directly, however, it represents a response to increasing public resentment of governmental involvement (some would say "intrusion" or "interference") in our daily social and economic affairs, as well as a reaction to well-publicized examples of governmental excesses of both political and legal import.

The purposes of oversight are manifold: to ascertain whether an agency is following legislative intent; to assess whether laws are in need of revision; to promote efficiency, economy and honesty in governmental programs; to determine levels of funding for programs; to protect the public from arbitrary, capricious and inappropriate executive action; and to promote the power and independence of the Legislature.

Emphasis on the need to review Executive actions also carries with it an element of legislative self-criticism. The growing popular consensus that government is unwieldy, unresponsive and uncontrollable applies equally to all three branches. Legislative bodies are certainly open to the charge that they often act without sufficient consideration of the full impact of a particular public policy. Since legislators have no role in administering programs, they have been able to easily eschew their own accountability for public policy failures. This situation is likely to change, however, as more legislative effort is devoted to reviewing governmental operations. In moving to strengthen its oversight function, a Legislature is acknowledging that its duty to the public does not merely begin with the introduction of a bill nor end with its passage. In pledging to hold the Executive branch more accountable for its actions, the Legislature is accepting its responsibility for insuring that its enactments are properly implemented and that the machinery of government is operating in accordance with the public interest. Enactment of the "Economic and Environmental Impact Statement Act of 1976," (P.L. 1977, chapter 247), which provides for impact statements on proposed legislation is a direct response to the criticism that the Legislature has taken action without full regard for the consequences.

Legislators must be aware of some basic considerations which will affect oversight performance. Effective oversight entails an extensive, detailed and time-consuming effort on the part of both legislators and staff alike. This point cannot be emphasized strongly enough. Oversight will occupy a substantial portion of the time now devoted to bill drafting, committee meetings, deliberations of bills and routine legislative matters.

The success of oversight will depend upon four interlocking ingredients: (1) a commitment from leadership that it be a major legislative function; (2) an organizational plan and timetable for carrying it out; (3) a continuing interest on the part of committee chairman; (4) sufficient, qualified staff to perform the necessary tasks.

If these conditions are met, oversight can provide as much excitement, drama and public rewards as any other legislature activity. At the same time, it will lead the way for improvement and reform in a government which is, after all, of the people, by the people, and for the people.

III JOINT OVERSIGHT COMMITTEE _____

The committee recommends the establishment, by statute, of a bipartisan Joint Oversight Committee with the following responsibilities:

1. To review all existing and proposed administrative rules;
2. To conduct reviews of agency programs, policies and procedures;
3. To monitor the implementation of recommendations contained in program reviews carried out by the committee, the standing reference committees, the Legislative Services Agency, and the Office of Fiscal Affairs;
4. To serve as a clearinghouse for the collection of critical assessments of State agencies which are offered from time to time by private organizations and individuals;
5. To engage in a continuous study of oversight procedures in New Jersey and other states in order to assess their effectiveness and to remain abreast of new methodologies;
6. To provide assistance and guidance for the oversight efforts of the standing reference committees.

The committee believes that the centralization of these duties in a joint committee with appropriate staff and facilities will provide the Legislature with an effective vehicle for pursuing its oversight responsibilities. The experience of other states, notably Florida and Wisconsin, has indicated that the vesting of rule review in a joint committee, rather than each of the standing reference committees, provides for a strong, consistent and uniform approach.

The attention of a joint committee will be focused entirely on its oversight function. It can develop procedures and practices which will rather quickly result in an institutionalization of oversight. Further, the joint committee will hold itself more aloof from executive agencies and special constitutencies than would any standing reference committee, thereby permitting a more dispassionate and objective scrutiny of the agencies.

The joint committee would not usurp any of the existing powers or functions of the standing reference committees. These committees would continue to monitor the agencies within their areas of jurisdiction and develop and review legislative proposals. Indeed, this report elsewhere recommends increased oversight responsibility for each of the reference committees. Close cooperation between the joint committee and the reference committees would be necessary to promote the most effective oversight response. While the actual review of rules would be the formal responsibility of the joint committee, the reference committees would be encouraged to offer their comments and bring instances of rule abuse to the attention of the joint committee. Likewise, in the area of program review, the role of the standing committee would be unchanged from its present status; the joint committee would stand as an additional mechanism

for monitoring agencies and following up to insure that recommendations do not merely collect dust on the shelf. The joint committee would supplement the existing efforts of the reference committees and would provide a focal point for all oversight activities.

The effectiveness of the joint committee's operations will, of course, depend on the size of the staff assigned to it. The Florida Joint Administrative Procedures Committee is staffed by six attorneys. In Wisconsin, the Joint Committee for Review of Administrative Rules has about a dozen staff members. Clearly, the range of responsibilities contemplated for this joint committee will require substantially more than one committee aide if it is to approach its task with the expectation of doing more than shuffling paper.

The committee should be established by statute in order to provide both the committee and the Legislature with the appropriate legal authority to review and suspend objectionable rules. Until the committee is established statutorily, however, both houses should provide for a joint oversight committee in their joint rules. The committee would have the same functions as a statutorily-based one, except that it would lack the power to suspend objectionable administrative rules. That power, for both the committee and the Legislature as a whole, can only be bestowed by statute.

The initial lack of a formal veto power should not inhibit the work of the joint committee.

In Florida, for example, an effective rules review committee has had tremendous success in persuading agencies to revise or withdraw rules despite the fact that the Legislature lacks the power to suspend rules. The experience of many states has shown that, where oversight receives the attention of the legislators, where it is given sufficient staff, and where it is conducted with determination, it does work. It provides for a stronger legislative role in the business of government, it draws attention to and corrects problems, it resolves disputes before they evolve into bitter political confrontations, and it provides the public with a forum in which to seek relief from well-intentioned, but over-zealous, bureaucratic actions.

IV CURRENT COMMITTEE RESPONSIBILITIES _____

The establishment of a Joint Oversight Committee should not divert attention from the need to develop a strong oversight function in each of the standing reference committees. These committees, with jurisdictional authority over specific departments and with a mandate to review legislation in particular substantive areas, should take on oversight roles in the areas specified in section IV. The committees provide the most appropriate operational framework (and existing staff support) for the efficient handling of the additional work load which oversight entails.

Emphasis on the oversight role of the standing reference committees is a continuation of existing legislative policy. As the General Assembly has entered the mainstream of oversight reform, it has already relied on standing committees to increase their responsibilities in this area. An examination of the Assembly Rules for 1977 provides an indication of a more aggressive legislative approach towards the Executive branch and a desire to utilize standing committees to end Executive hegemony over the governmental process.

The 1977 rules governing committee operations contain several changes which are designed to emphasize oversight as an important legislative function and to provide committees

with the authority to independently initiate oversight functions. While committee responsibility for monitoring State agencies may have been an understood goal in the past, the rules of previous years were silent on the issue. The present rules, however, explicitly authorize each standing reference committee to:

maintain a continuous review of the powers, functions, duties, operations and policies of the executive branch of the State government.... To this end, the committee may conduct such investigations or studies, meet with such public officials or private citizens, inspect such books, papers, documents, records or other data, visit such facilities, hold such hearings, issue such reports, or make such recommendations on legislative or administrative actions, as the committee may deem appropriate or as the Speaker of the General Assembly may direct (Assembly Rule 10:2).

Also for the first time, the rules list the specific subject matters and departments which come under each committee's jurisdiction (Rule 10:1).

Further support for committee oversight activities is found in the rules governing the conduct of public hearings. Where previously the rules contained the assumption that a public hearing by a standing committee would be focused on a bill or resolution (see Rule 16A:1 of 1975), the revised version of this section refers to the

holding of a public hearing "upon any bill or resolution...or upon any matter under investigation or study by the committee" (italics added).

With the direction provided by these new rules, and with the Assembly leadership's active encouragement, Assembly committees have greatly increased their vigilance over Executive actions. With increasing frequency, committees are demanding -- either through routine committee operations or through legislative pronouncements -- that agencies justify their activities, rules and expenditures. More than ever, the Executive branch is being forced to pay greater heed to the limits of its credibility with both the Legislature and the public. A survey of committee activities undertaken by this committee indicates that Assembly committees have been engaged in reviewing major administrative policies in such diverse areas as energy, education, environmental protection, corrections, health care, insurance, legalized gambling and transportation.

Undoubtedly the most dramatic outcome to date of the General Assembly's desire to counteract the past dominance of the Executive branch is the requirement, first adopted by the Assembly, that all rules proposed by the Division of Energy Planning and Conservation in the new Department

of Energy be subject to legislative veto within 60 days of their submission to the Legislature (section 22.1 of Chapter 146 of the Laws of 1977).

The effectiveness of legislative forays into administrative policies should not, of course, be measured solely on the basis of whether they result in the enactment of corrective legislation. In many cases, legislative committees and executive agencies reach harmonious accords on directions in policy in ways which remain unpublicized by the media and unappreciated by the public. In fact, it is the commitment to remain abreast of the day-in and day-out functioning of State agencies which lies at the heart of the oversight philosophy and of this committee's recommendations for action.

In conducting an ongoing review of the activities of Executive agencies, standing committees should make more extensive use of the following oversight techniques:

1. Committees should undertake a review of the funding requests of Executive agencies within their areas of jurisdiction. This could include review of the agency's submission to the Governor, and the holding of hearings whenever possible to provide committee members with the opportunity to question, prod and obtain commitments from agency officials. Following a budget review, committees should recommend to the Joint Appropriations Committee the levels of funding for each agency as well as any specific spending provisos which should be included in the budget as a control on what an agency may or may not do with a specific line-item appropriation.

2. Committees should engage in post-auditing and program review to follow the expenditure of money, to gauge whether a program is functioning efficiently, and to determine whether it is in accord with Legislative intent and whether it is meeting its goal.

3. Committees should review administrative rules to ascertain whether they are appropriate, consistent with legislative intent and within the scope of the agency's authority.

4. Committees should conduct more public hearings in order to investigate administrative policies and to receive the views of the public concerning governmental operations.

5. In authorizing new programs, committees should provide for a termination date for the program after a reasonable period (perhaps two to three years) and for a review of that program by the committee prior to the termination date. The purpose of the review would be to determine whether or not it should be allowed to expire.

6. Committees should reserve the right to intercede in an agency action at a future date. For example, the committee may retain the authority to either approve or disapprove a particular agency activity with a set period of time. A more forceful variation would require an agency to obtain committee approval prior to initiating certain action. A committee may require that appropriated funds be withheld from release to an agency for a particular activity until certain conditions have been met and committee approval has been obtained.

7. Committees should impose more stringent reporting requirements on Executive agencies in order to gain the information necessary for proper program evaluation. Committees should regularly be receiving annual reports, agency self-evaluations, and standards and criteria for program operation and review. Committees should withhold action on legislation until the agencies have complied with all requests for information.

8. Committees should engage in more on-site review of agency facilities and operations. Such personal contact will not only acquaint legislators with the actual details of daily activity, but will also provide an opportunity for informal discussions between the committee and agency officials.

9. Since the Executive expends a great amount of Federal funds which generally by-pass the appropriations process, and since many administrative rules must conform to Federal dictates, committees must devote more attention to the interaction between the Executive and the Federal government. Committees should require that agencies notify them of all applications for Federal assistance programs and provide them with information as to the proposed expenditure of this money and the rules under which the programs will operate.

10. Committees must devote greater attention to an explanation of their intent when

approving legislation. In what has been termed "pre-oversight", committees should provide more detailed analysis of bills in the committee statement. The statement should also include information as to the standards and goals which are to guide the agency's operations. The lack of clear intent (and confusion as to language) in many pieces of legislation stands as the most common criticism of the Legislature from Executive agencies. Committees should consider the use of committee reports (as opposed to bill statements) to provide a thorough discussion of the bill, to interpret complex language and to guide both the Executive and the Judicial branch as to legislative intent.

The annual appropriations process presents the Legislature with its most valuable opportunity for conducting oversight. Each departmental budget represents a statement of agency priorities, methods of program implementation, and manner of resource allocation. The entire State budget stands as a declaration of governmental priorities for the ensuing year. Budget review, consequently, is a central feature of an oversight effort. As such, it is essential that the Legislature be effectively prepared for the task.

Throughout the year, the standing reference committees are the focus for consideration of substantive issues through review of legislation and the conduct of oversight responsibilities. Members of the committees and the staff assigned to the committees develop subject-area expertise as they review bills, evaluate programs, monitor rules, meet with departmental officials, consult with knowledgeable persons and interact with the public. Unfortunately, this expertise has been under-utilized during the appropriations process. The absence of a formal role for standing committees in budget review matters has rendered the committees' oversight efforts incomplete.

In contrast to the standing committees, the Joint Appropriations Committee is the focus of

budget review for a concentrated period in each year. The essential task of this committee is to weigh the demands of the various departments and the needs of the multitude of programs against the available fiscal resources. In essence, the committee must establish priorities for funding -- an extremely delicate, important and time-consuming responsibility. The job is made more difficult by the fact that the members of the Joint Appropriations Committee must attempt to become experts in every field of State activity while they receive testimony from every department and independent agency. In attempting to thoroughly examine the massive budget document, the committee members must try to duplicate in the span of a few weeks the depth of knowledge accumulated by the standing committees on a routine yearly basis. Clearly to attempt such an endeavor is too great a burden on the Joint Appropriations Committee. Furthermore, it detracts from their main task, that of developing a comprehensive budget.

It is the belief of the Legislative Oversight Committee that the standing committees, in coordination with the Joint Appropriations Committee, should engage in budget review. Ideally, an integration of membership between each of the standing committees and the Appropriations Committee would promote such coordination. Either each chairman could also serve with the Appropriations Committee or, in the alternative, one or more

members of the Appropriations Committee could sit with each standing committee during budget review. Whatever the arrangement, communication between the standing committees and the Appropriations Committee must be maintained.

Standing committees should be formally charged with the responsibility to review departmental budgets in their area of jurisdiction. This would insure the involvement of those most familiar with departmental programs, policies and procedures, with potential problems, and with recent legislative activity in the area. Committee work on the budget should begin in the fall when the departments submit their budget requests to the Bureau of the Budget. The activity should continue through the winter, with the period of peak concentration occurring after the Governor's presentation of his proposed budget. During this phase, committees would hold hearings to gather information from the departments and the public, and would prepare a report to the Joint Appropriations Committee which would contain recommended budgets and a listing of program priorities for the departments. The report could also include specific spending provisions to be written into the budget as a control on departmental action. For example, an agency could be required to consult with or obtain approval from a standing committee prior to entering certain contracts or expending certain funds.

All final decisions would remain with the Appropriations Committee, whose task would be to determine priorities in the context of available resources from among the recommendations submitted by the standing committees. The Joint Appropriations Committee would still have the option to schedule hearings, call witnesses and develop additional information. It would be starting its task, however, with the basic ground work already completed by the standing committees. The reports of the committees would be helpful to the Appropriations Committee in the framing of questions and the identification of problem areas.

The Oversight Committee also recommends that the Joint Appropriations Committee and the standing reference committees devote more time to examining the State's use of Federal funds. In the past, Federal money has been eagerly sought and accepted simply because it was available and because it would merely be directed to other states if not used in New Jersey. Little, if any, discussion has centered on the public policy impact of the use of such funds. Federal funds have been used by the Executive to initiate or extend programs which bypass the legislative process. It is not possible to hold agencies accountable when they operate as an adjunct of the Federal government.

Some states are now requiring that all Federal funds be appropriated by the Legislature in order to insure that these funds are used for purposes which the Legislature deems proper. A Pennsylvania law on the issue is now under court challenge. Whether or not this proves to be a suitable mechanism for reviewing federally-funded projects, this committee believes that the Legislature should raise certain initial questions with regard to the receipt of Federal funds: will Federal money be devoted to programs and projects which serve a useful public purpose? Will the acceptance of these funds bind the State (either legally or morally) to continue supporting programs with its own tax revenues after the Federal funding ends? Does the use of Federal funds require adherence to rules and regulations which are objectionable to the Legislature or to the public?

The committee recommends the establishment of a permanent sub-committee of the Joint Appropriations Committee with the responsibility to monitor the application, receipt and use of Federal funds. Such a sub-committee will institutionalize the Legislature's right to participate in policy decisions relating to the state's involvement in federally-funded programs. While the Executive currently forwards copies of applications for Federal funds to the Office of Fiscal Affairs, there exists no formal process for continued legislative monitoring of these

applications. Other states (Ohio, for example), have created bodies composed of members of the Executive and the Legislative branch to serve as a clearinghouse to identify where and how Federal funds are used.

The approach recommended here should provide for a more effective and efficient budget review process. In addition, standing committee involvement in the appropriations process would represent a major advance for the legislative oversight effort.

VII REVIEW OF ADMINISTRATIVE RULES _____

Approximately 300 to 400 rules are adopted by State agencies each year. Some are only one sentence long; others can be extremely complex and may run for tens of pages.

The administrative rule serves two basic purposes: 1) it relieves the Legislature from the need to consider and develop details of program implementation which are too technical, cumbersome, routine, uncertain, or changeable in nature to be included in a statute and 2) it provides the administering agency with flexibility in management of programs. In essence, the vesting of rule-making authority in an administrative agency represents a transfer of law-making power from the legislative to the Executive branch.

Since the administrative rule has the force and effect of law, and since an agency's right to promulgate a rule stems from the largess of the Legislature, it is critical that the Legislature monitor those rules which implement its actions and intercede when it finds those rules inappropriate. When one considers the relative ease with which a rule can be put into effect as compared to the lengthy process of enacting a statute, it becomes clear that additional safeguards are necessary to insure that rules are not advanced which, if they were in bill form, would not attain the consent of the majority of

both houses of the Legislature.

Until rather recently, administrative rules were generally considered to be practical and benign tools for transferring legislative enactments into agency directives with a minimum of delay and confusion. Indicative of the minimal public attention devoted to administrative rules in the past is the rather cursory treatment given to rule promulgation in the State Constitution. The Constitution merely states that agency rules or regulations shall be effective upon their filing with the Secretary of State (or as may otherwise be provided by law) and that the Legislature shall provide for their prompt publication (Article V, Section IV, paragraph 6). The Constitution is strikingly silent as to any procedures to be employed in the rule-making process or as to any safeguards to be erected against Executive abuse of the rule-making authority. No definition of a rule is offered, no guidelines are provided concerning the circumstances under which a rule may be promulgated, and no standard is given against which one might test the appropriateness or legitimacy of a particular rule.

A full 22 years were to elapse after the adoption of the 1947 Constitution before the Legislature met the Constitutional mandate to provide for prompt publication of the rules. The Administrative Procedure Act, which became effective in 1969,

required the codification of all rules in the New Jersey Administrative Code. More significantly, the act established a formal rule-making procedure, including publication of proposed rules in the New Jersey Register and consideration of public comment prior to final rule adoption. Prior to the passage of this act, rules were merely maintained in chronological order in the Secretary of State's office, no usable index was available, and each agency was free to publicize and enact rules in any manner it deemed appropriate or expedient.

When the Legislature adopted the Administrative Procedure Act to bring order into the rule-making process, it could hardly have foreseen the tremendous public concern over the substantive content of rules which was to arise during the 1970's. As government greatly extended its sphere of concern to areas previously unregulated (often, it should be noted, in direct response to public pressure) and as issues grew more complex, the administrative rule surpassed its previous role as a convenient device for crossing the "t's" and dotting the "i's" of legislative enactments and became, in a sense, virtually a substitute for legislation itself.

In recent years a tremendous public concern has arisen concerning the extent to which administrative rules are dominating our society. It appears to be the bureaucratically conceived and promulgated administrative rule, rather than the democratically debated and enacted statute, which more often than not prohibits, permits, prescribes, promotes, protects or punishes various aspects of our social and economic behavior. The wide-spread concern that many rules may be unreasonable, arbitrary, capricious, inconsistent with legislative intent or beyond the scope of an agency's authority has prompted the Legislatures in at least 38 states to establish some type of procedure for the regular review of rules (see Appendix G).

Review of rules need not be an adversative proceeding between Executive and Legislative branches. In fact, one of the major concerns of the oversight movement is how to frame a rule-making procedure which recognizes and protects the sometimes diverse responsibilities, interests and needs of both branches of government. The review of rules should neither unduly delay program implementation nor provide a forum for private interests to shape rules to their particular liking.

This committee firmly believes that, just as the enactment of legislation is the result of a partnership, involving departmental participation during the committee process and the approval of the Governor, rule-making should also be considered a continuation of this partnership. This view is apparently not shared by most

Executive departments. One of the most distressing findings of this committee's survey of departmental rule-making procedures is that, with only a few exceptions, Executive departments do not find it appropriate or necessary to contact the Legislature when developing rules. When asked whether they regularly inform or consult with the Legislature during the rule-making process, virtually every department (except Corrections, Education, Environmental Protection and Human Services) responded with an unqualified "No." Typical of most department was the reply of Community Affairs: "This department does not normally consult with the Legislature or legislative committees concerning our proposed rules." Even when a department has difficulty discerning legislative intent, the agencies still do not seek guidance from the Legislature. Instead, they rely on in-house interpretations or seek advice from the Attorney General.*

* A major complaint of witnesses at the committee's public hearings involved excess rule-making and Executive incursion into areas not specified by legislation. While it is not the purpose of this report to pass judgment on specific departmental activities, it is illustrative of the problem to note the following testimony concerning rules promulgated by the Department of Community Affairs. This testimony, by John E. Trafford, assistant director of the New Jersey State League of Municipalities, emphasizes what should be axiomatic: that errors of omission or commission in legislation should not be overcome in the rule-making process, but rather should be corrected by new legislation. Only the Legislature, not the Executive branch, can establish policy. (Public hearing, May 18, 1977, New Brunswick.)

"There is a much more far reaching concern that we have, however, and that is the

It would certainly appear to be a matter of common sense and propriety to afford the Legislature (either through the bill's sponsor, the reviewing committee or the leader-

matter of the extent to which the regulations either go beyond the legislative intent or if they don't go beyond it, at least build this whole super structure of new policy and new interpretation which may not be inconsistent, but it goes considerably further than the original legislation.

We cite here a number of examples. One is with regard to the recently adopted Uniform Construction Code. The Department of Community Affairs is authorized to promulgate rules and regulations and in the process of so doing, they suggested a conflict of interest prohibition under which the bottom line is all of the building and plumbing inspectors could no longer work in any municipality on a part time basis. Now, the law doesn't say much more than there shall be five members, each member shall be qualified by experience, etc., etc. When you look at the rules and regulations they go into considerable detail: No more than two members shall be selected from the same profession; at least one member should be a registered architect; another shall be a professional engineer; one member shall be a qualified plumbing subcode official, etc. They go on to say that the commission may require training for these people. The rules go on to say that failure to attend 50% of the meetings is grounds for removal from membership on the board. Now, again, the law is silent on all of these things.

An interesting sidelight to this is that in other areas the Legislature itself does address in some detail a number of these requirements for membership on boards. An interesting example is the matter of the payment of expenses. The Uniform Construction Code, again with reference to this construction board of appeals, is silent on the subject of payment of expenses. But the regulations specifically authorize the payment of expenses and reimbursement salary at the discretion of the agency. This is not in the law. However, the Legislature is addressing itself right now, through Assembly Bill 3178, to the payment of expenses and reimbursement for planning and zoning board members. So, in one instance it is a matter of legislative policy and in another instance it is a matter of administrative policy."

ship) with an opportunity to express its views on the rules which will be carrying out legislative intent. In fact, the Legislature has the right to be involved. Executive agencies regularly attempt to guide and influence the course of legislation; yet in most cases they do not invite nor are receptive to legislative involvement in the rule-making process. Such an attitude is wrong and must be changed.

This committee rejects the notion that administrative rules are removed entirely from the Legislature's domain. Furthermore, the committee believes that a review procedure which provides for a legislative veto of administrative rules is consistent with existing legislative procedures and is not violative of the constitutional separation of powers. The committee views the rule-review process as the mirror image of the legislative process. Where a bill is acted upon first by the Legislature and presented to the Governor for concurrence, an agency rule, which is a direct extension of that legislation, should similarly be presented to the Legislature for its approval. Such a procedure can be likened to the Legislature's power to pass a law by overriding the Governor's veto. In this case, the Constitution provides a device which, for purposes of assuring an adequate system of checks and balances, blurs the distinction between legislative and Executive powers. A mechanism for legislative veto of Executive rules would likewise be a necessary exception to a strict

interpretation of the concept of separation of powers on the grounds that unrestricted Executive power to promulgate rules violates the spirit of checks and balances.

There apparently have not yet been any court findings in any state or at the federal level which bear directly on the constitutionality of the legislative veto of administrative rules. In New Jersey, there are at least three statutes which establish precedent for the legislative veto: 1) the Executive Reorganization Act of 1969 (P.L. 1969, c. 203), 2) the Department of Energy Act (P.L. 1977, c. 146), and 3) the New Jersey Wild and Scenic Rivers Act (P.L. 1977, c. 236).

The committee believes that the legislative veto of rules would be employed sparingly, and only as a last resort in those cases where an accommodation between the agency and standing reference committee could not be reached. This committee expects that a thorough review of rules would find many which are routine and appropriate. Rules with technical faults could easily be corrected upon notification to the agency by the reviewing committee. The power to veto rules would be the backbone of the review system; but the committee believes that an agency's respect for the Legislature's right to be consulted on proposed rules would obviate a need to utilize this ultimate power.

The Constitution provides that rules shall be effective when filed "in such...manner as may be provided by law." The committee recommends the enactment of legislation giving the Joint Oversight Committee the power to delay the implementation of proposed rules and to temporarily suspend existing rules. Furthermore, the Legislature should be empowered to permanently veto such rules if they are found to be unreasonable, arbitrary, capricious, inconsistent with legislative intent or beyond the scope of the agency's authority.

Under this proposed legislation, agencies would be required to submit notice of a rule-making proceeding to the Joint Committee at the same time that the rule is submitted for publication in the New Jersey Register. The committee would review the rule and also ask the appropriate standing reference committee for its evaluation. If the Joint Committee were to disapprove the rule, its implementation would be automatically delayed for 60 days. The Joint Committee would file notice of such disapproval with the clerk of both Houses, the agency, and the Division of Administrative Procedure. Following such notice, if the Legislature, by concurrent resolution, were to disapprove the rule within this 60 day period, the rule could not be promulgated. The actions of the Joint Committee and the Legislature would be recorded in the New Jersey Register.

This review would not be applicable to emergency rules promulgated under the imminent peril provisions of the Administrative Procedure Act. However, as recommended in section VII, emergency rules would be temporary in nature, and would be required to be repromulgated as permanent rules in accordance with regular rule-making procedures. They would therefore be subject to the review procedure when proposed as permanent rules.

The Joint Committee would not be limited to reviewing only proposed rules. It would be empowered to review any existing rules, either as part of a systematic review of the entire Administrative Code, or because it was provided with evidence that a rule was inappropriate. For this reason, this report does not recommend placing a time limit within which the Joint Committee must review a new rule. A rule could be placed into effect following the required public comment period called for in the Administrative Procedure Act (currently 20 days, but recommended elsewhere in this report for extension to 30 days). The Joint Oversight Committee would still have the power to temporarily suspend the rule at any time after implementation. This procedure would serve two purposes: 1) it would not unduly delay the implementation of all rules as would be the case if a 60 or 90 day waiting period were required for legislative review; and 2) it would provide

the Joint Committee with ample time to scrutinize rules and to correct abuses which may have gone undetected at the time a rule was initially offered.

Such a system is employed in Wisconsin. In that state, the standing reference committees may review proposed rules, request a meeting with the agency and make nonbinding recommendations within the normal public comment period. The Joint Committee for Review of Administrative Rules only reviews rules after they have been implemented.

The public interest requires that a rule not only be consistent with legislative intent but that it be adopted in a manner which demonstrates governmental openness, fairness and responsiveness. The Administrative Procedure Act, which became effective in 1969, was designed to provide certain minimal procedural safeguards against arbitrary and hasty rule-making actions and to allow interested parties the opportunity to participate in the rule-making process. The committee undertook a survey of Executive departments and registered lobbyists in order to obtain as accurate a description as possible of the actual conditions under which rules are promulgated.

One of the most striking findings of the survey is the degree of diversity in the procedures employed by the departments in promulgating rules. While all follow the specific requirements of the act, many aspects -- such as when to hold hearings, how to effectively consider public comments, when to use emergency procedures, for example -- are left entirely to the discretion of the agency. The act provides little direction for many of these details. Furthermore, the Division of Administrative Procedure, which has

the responsibility for publishing the Register and the Code, plays only a passive role in the rule-making process. It has not been given specific authority to issue standards of procedures governing rule-makings; it makes no determination as to whether a rule has been promulgated in compliance with the act; and it does not become involved in the substantive aspects of any rule.

The procedures employed by agencies vary not only because the act is loosely drawn, but also because the size of the agencies vary, as does the nature of the issues they deal with and the size of their constituency. To understand the reasons for this diversity, however, is not to excuse the lack of uniformity in their rule-making procedures. Public confusion, rather than public enlightenment, can only result from exposure to differing practices among State agencies.

Contributing to this confusion is the fact that no source exists which lists all of the State agencies with rule-making powers. Surprisingly, even the Division of Administrative Procedure has not compiled such a list. As a result of this committee's survey, we have been able to identify no fewer than 82 departments, divisions, commissions, boards, agencies, councils,

authorities and bureaus which have been empowered by the Legislature to adopt rules on their own behalf. In addition, many agencies promulgate their rules under the signature of the commissioner of the department rather than the head of the particular agency. While these agencies would not be considered to have independent rule-making powers, it is clear that the specific responsibility for the development of a rule lies within the agency rather than the commissioner's office. Thus, despite the fact that the Constitution restricts the organization of the Executive branch to 20 principal departments, administrative rules emanate from a plethora of jurisdictions.

Limitations of time and resources made it impossible for the committee to survey each of the rule-making agencies. Instead, questionnaires were sent to the commissioner of each of the 19 Executive departments. Responses were received from all departments, as well as three additional agencies with independent rule-making powers. (The survey was undertaken prior to the establishment of the Department of Energy and the absorption of the Department of Public Utilities into that department).

A review of the departmental responses, as well as comments received in answers to a questionnaire to all registered lobbyists and

submissions from witnesses at two public hearings, leads to the general conclusion that departments are in faithful compliance with the minimal requirements of the Administrative Procedure Act. The committee has received no evidence of systematic abuses of either the spirit or the letter of the act. The committee does believe, however, that a number of amendments should be adopted in order to insure that agencies are making maximum efforts to involve the public in rule-making proceedings. A discussion of these recommendations follows.

Explanation of Rules

1. Every proposed rule should be accompanied by an agency statement which summarizes the rule, demonstrates that it conforms to legislative intent, explains its purpose, and describes its expected socio-economic impact.

It is often extremely difficult to understand not only the wording of a rule, but also its purpose. Furthermore, the rule itself may give no clue as to its intended impact. In order to foster enlightened public participation in the rule-making process, agencies must provide an explanation of their intent. The agency should bear the burden of proof that a rule is in conformity with legislative intent and is reasonable and equitable. The Legislature is now calling for economic and environmental statements on proposed legislation. Agencies should be required to do no less for proposed rules.

Public Notice

2. Every rule-making agency should evaluate the manner in which it publicizes its rule-making activities and should adopt such strategies as will generate the maximum publicity among persons likely to be directly affected by or interested in a proposed rule. Agencies should make every effort to bring such persons into the process before a rule is formally proposed for adoption.

The Act requires notices of proposed rules to be published in the New Jersey Register. Every department adheres to this requirement. In addition, the Act provides that notices are to be mailed to "persons who have made timely request of the agency for advance notice of its rule-making proceedings." Most departments appear to be in substantial compliance with this requirement. Some departments, however, made no mention of a regular mailing of notices to interested parties. This might reflect the fact that no persons have ever requested such notice. In other cases, it is not clear as to whether these mailings actually provide "advance" notice as called for in the act. If the mailings are received at the same time that the rule appears in the Register, the advantage of an "advance" notice will have been lost.

Some departments go beyond these minimal requirements and take the initiative to reach out for parties who may have an interest in

the matter. In a few instances, contact is made with interested parties before a rule is formally proposed. Strong support for pre-proposal notices and meetings was voiced by many witnesses at the committee's hearings on the grounds that advice will have a greater impact if offered before an agency takes a formal position which it is then obligated to defend.

Methods of public notice which may be employed include: publication of the proposed rule (or notice of the rule-making activity) in newspaper advertisements or, where appropriate, in trade, industry, governmental or professional publications; distribution of press releases; posting of notices in appropriate locations; and development of mailing lists of interested parties.

Exempt Agencies and Rules

3. All rules issued by any agency of State government should be subject to the procedures outlined in the Administrative Procedure Act.

The Office of the Governor, The Department of Defense and the Division of Worker's Compensation are exempt from the requirements of the act. In addition, rules relating to the internal affairs of any educational,

medical, mental rehabilitative, custodial or correctional facility need not be promulgated in accordance with the act. This latter category in effect exempts the Department of Corrections and much of the Department of Human Services from the necessity to adhere to rule-making procedures. Concerns over such issues as the prison work-release, furlough and parole programs and the conditions in mental institutions call for the inclusion of these agencies in the regular rule-making process.

Public Comment Period

4. The comment period prior to adoption of a rule should be increased from 20 to 30 days. Agencies should endeavor to issue a call for comments prior to proposing a rule.

The act provides that agencies must provide at least 20 days public notice prior to the adoption of a rule. This requirement is met through publication of the notice in the New Jersey Register. The mechanism of publishing the Register is such that notices must be filed with the Register 15 days in advance of the publication date. The publication date marks the beginning of the 20 day notice period. Thus, agencies actually have to submit rules 35 days in advance of the earliest date on which they can be adopted. Of course, agencies can provide

much longer periods to receive public comments and schedule hearings. Usually, agencies will provide much longer time periods when an issue is likely to prove controversial or is very complex.

By far the greatest number of complaints received by this committee from the public concerned the 20 day notice period. Virtually every person responding to our questionnaire felt that the period was too short to obtain the rule, review it and frame a response. This is particularly true for an organization which must circulate the rule among a number of members and develop a collective response. Some persons did fear that increasing the time might delay rules that were in the public interest (particularly in the environmental area); however, opponents of some of these rules equally believe that the complex nature of these rules and their potential impact warrants additional response time.

The Departments are generally opposed to increasing the length of time. Of 18 responding departments, 11 were opposed, five favored and two had no position. However, the emergency provision is available if a rule is truly needed at once, and many departments routinely provide more than 20 days at present.

Another procedure for lengthening the notice time is to make known the agency's interest in adopting a rule prior to its formal proposal. Rather than asking the public to respond to a rule after the agency has established its position (with pre-conceived bias to adopt a rule as is), the agency should actively solicit comments to guide it in drafting the rule.

Public Hearings

5. An agency should conduct a public hearing at the request of at least ten interested parties. Notice of the hearing should be publicized in the same manner as notice of the proposed rule-making.
6. Hearings should be conducted by impartial hearing officers whose responsibility is to offer recommendations to the agency regarding adoption, modification or withdrawal of the proposed rule. The officer's recommendation should be made public.
7. All hearings should be stenographically transcribed. Transcriptions should be printed and made available for distribution to the public upon request at a nominal fee prior to final rule adoption.
8. At least a portion of each hearing (or one of a series of hearings) should be conducted during the evening.
9. Hearings should be conducted in close proximity to the affected parties, if appropriate, or in locations throughout the State, if there is more than one hearing.
10. Agency officials should testify at the hearings and be available for questioning by the public.

The act does not require an agency to conduct public hearings prior to adoption of a rule. Surprisingly, however, quite a number of hearings are actually held. During 1976, departments held approximately 85 hearings concerning some 60 rules. (Two departments, Education and Higher Education, by virtue of the fact that they are headed by boards who review rules at open meetings where public comment may be presented, hold de facto hearings on every rule.) Departments hold hearings either because in some situation they are required by law, or because an issue is controversial, has elicited a significant public response or will have a major economic or social impact. Interestingly, the Department of Insurance automatically schedules public hearings for every proposed rule.

The act does not prescribe procedures to be employed in public hearings. The survey disclosed that hearings are for the most part conducted during normal working hours in the agencies office, although a few departments hold evening hearings and hold hearings in affected areas or in regional locations throughout the State. Hearings are generally conducted by agency officials rather than impartial hearing officers specifically trained to weigh the evidence on both sides and present a formal opinion concerning the proposed rule to the department.

Departments vary in the manner in which they record hearings. Methods include

a mixture of stenographic transcriptions, tape recordings and simple minutes. Transcripts may be available to the public by purchase from the stenographer. Departments do not necessarily go to the expense of printing and distributing transcripts. Furthermore, transcripts are not always available to the public prior to the promulgation of a rule.

The hearing process is probably the most vital component of the rule-making procedure in the public's mind. The public generally assumes that hearings will be held, and expects that these hearings will focus public attention on the agency's action. It further assumes that hearings will provide the public with an opportunity not only to offer comments, but to receive information from agencies. Hearings should not be a one-way street. Agency officials ought to testify as to the reasons for their action and to answer questions from the public. Hearing officers, rather than departmental officials, should preside at hearings. An agency should have the obligation to justify a rule.

Consideration of Public Comment

11. Prior to the adoption of a rule, the agency should publish a formal report summarizing the nature of the public comments received and providing agency responses to each of the points raised by such comments.

In general, departments report that public comment on proposed rules is sparse and usually limited to a few parties directly concerned with the particular rule. Agencies do find comment helpful in many cases, however, and rules are frequently modified in response to the statements offered by interested parties. Whether the low volume of response is indicative of lack of interest or simply reflects lack of knowledge of a rule-making procedure is not possible to determine. This committee certainly believes that greater public exposure to rule-making through increased departmental efforts, and public hearings, will lead to a substantial increase in the number of persons responding to calls for comment.

The act requires agencies to "consider fully all written and oral submissions" prior to adopting a rule. The committee was curious as to how departments carried out this obligation. The only effective measure of such consideration would be a formal agency

report which summarizes the nature of the comments received and provides the agencies' response to each of the points raised in such comments. Such a report should accompany the promulgation of any rule, and its publication would achieve three purposes: 1) provide evidence of all comments received, 2) indicate that the agency considered the comments and 3) provide the agency's reason for accepting or rejecting the comments.

Few departments now prepare such a report; some compile material in a fashion similar to that described, but it falls short of meeting all the requirements this committee believes are necessary to insure the public that the agency has acted in good faith.

Imminent Peril Rules

12. Rules promulgated under the imminent peril provision should be valid for a period not to exceed 120 days. Re-promulgation as a permanent rule should be done in accordance with standard procedures.

13. No agency should be permitted to promulgate an emergency rule unless the Governor certifies that such action is necessary due to the existence of an imminent peril.

The act provides that in the case of an "imminent peril" to the public health, safety or welfare, an agency may adopt a rule without prior notice and without the usual 20 day comment period. Despite the adoption of such rules on an emergency basis, "imminent peril" rules are not temporary in nature. Like rules adopted under the regular procedures, they remain in effect until the agency decides to repeal or modify them. Of 18 departments surveyed 11 were not opposed to limiting these rules to a temporary period, four were against the idea, and three had no position.

The determination as to whether a situation calls for the use of the "imminent peril" provision is left entirely to the discretion of the agency itself. The only obligation imposed on the agency is the requirement to state in writing its reasons for invoking the emergency. The act does not provide for the prior review or approval of the agency's action by any other jurisdiction, such as the Governor, the Attorney General, the Division of Administrative Procedure or an appropriate court. Of course, the action can be contested in court after the fact by an aggrieved party.

According to this committee's survey, 42 imminent peril rules (approximately 10% of all rules) were adopted in 1976. While the committee has received no evidence which questions the wisdom of any of these adoptions, it is cognizant of the fact that invocation of imminent peril as currently constructed tends to undermine public confidence in the governmental process.

Procedural Rules

14. Procedural rules should be promulgated in accordance with normal rule-making requirements. Procedural rules which must be implemented immediately can be offered as imminent peril rules.

The act provides that a rule prescribing the organization or procedure of an agency may be adopted at any time without prior notice or hearing. The intent of this provision is to allow administrative flexibility for routine changes of operation which do not affect the public. A considerable number of procedural rules are adopted each year (at least 86 in 1976), and in some cases there may be a question as to whether they are truly "procedural". For example, the Department of Agriculture classifies revisions of the

minimum milk prices as procedural.

Rather than continuing a situation in which the promulgating agency makes its own determination as to whether a rule should be exempt from any notice requirement, it seems preferable to eliminate this exception entirely and to process procedural rules in the same manner as all other rules.

Petitions for Rule-Making Action

15. Agencies should develop formal procedures for acting upon petitions for rule-making action which are submitted from the public, in accordance with guidelines established by the Division of Administrative Procedure.

Departments report relatively few instances in which interested parties have formally petitioned that the department institute a rule-making procedure. Nonetheless, an open process would provide for such public access and would call for a uniform manner for handling petitions. The act does not provide any guidance on the matter. For example, need an agency publish such a petition in the Register and call for comments within a certain period of time? Should the agency be required to hold a

public hearing on the issue? Should the agency be obligated to formally respond to the petition?

Division of Administrative Procedure

16. The Division of Administrative Procedure should assume a more active role in monitoring, assessing and providing information concerning rule-making procedures.

In addition to publishing the New Jersey Register and the Administrative Code, the Division should determine whether an agency has fully complied with the provisions of the act before publishing a rule promulgation. It should offer advisory opinions as to whether imminent peril or procedural rules meet the conditions stipulated in the act. It should certainly maintain a list of all rule-making agencies, all legislation empowering agencies to issue rules, and all court decisions which strike down, modify or comment upon administrative rules. It should issue a manual of style and procedure to guide the agencies, and a consumer's guide to rule-making procedures for the benefit of the public.

IX A LOOK AT SUNSET LEGISLATION _____

There is a distinct public perception that there is too much government. We fear -- with some justification -- a growing dominance by an ever expanding bureaucracy, referred to by many as the 4th branch of government (non-elected, non-defined, but there).

The legislative reaction to the public's cry for more responsive government or less government -- or even better still, government that self-destructs -- has taken many forms. The most fashionable has been the adoption in at least 23 states to date of "Sunset Legislation" (see Appendix H).

The term "Sunset" -- the termination of an agency or department unless specifically renewed by legislation -- has as many different meanings as there are such laws. Whether "Sunset" will work or not is still to be seen. Even now, there is some indication that the broad broom-sweeping approach ("All must go!") will be ineffective; that "Sunset" will prove to be more a triumph of form over substance, a great public expectation gone awry. Any hope for success appears to rest with those states, such as Florida, which have initially set modest goals and have limited their Sunset Laws to a review of regulatory agencies.

At this juncture the Committee takes no position as to whether "Sunset" can be effectively used in New Jersey. The time frame and the emphasis of the Committee effort has not allowed for the making of such a judgment. We believe the Joint Oversight Committee should carefully monitor how existing Sunset Laws are working and what, if any, New Jersey's response should be.

For the present, the committee believes that the additional resources that will be needed to implement even a modest "Sunset" law could be better utilized in more direct "Oversight" functions (as set forth in this report) that will definitely produce immediate as well as long-term benefits.

APPENDIX A

STATE AGENCIES IDENTIFIED AS HAVING RULE-MAKING AUTHORITY
(unofficial listing)

Department of Agriculture

State Board of Agriculture
State Soil Commission
Division of Dairy Industry

Department of Banking

Office of the Commissioner
New Jersey Cemetery Board

Department of Civil Service

Civil Service Commission

Department of Community Affairs

Office of the Commissioner
Local Finance Board
Hackensack Meadowlands Development Commission
New Jersey Housing Finance Agency

Department of Corrections

Office of the Commissioner

Department of Education

State Board of Education

Department of Energy

Office of the Commissioner
Board of Public Utilities
Division of Energy Planning and Conservation

Department of Environmental Protection

Office of the Commissioner
Boat Regulation Commission
Fish and Game Council
Shell Fisheries Council
Radiation Council

Department of Health

Office of the Commissioner
Public Health Council
Health Care Administration Board

Department of Higher Education

Board of Higher Education
Higher Education Assistance Authority
State Scholarship Commission
Educational Opportunity Fund
Educational Facilities Authority

Department of Human Services

Office of the Commissioner
Division of Youth and Family Services

Department of Insurance

Office of the Commissioner
Real Estate Commission

Department of Labor and Industry

Office of the Commissioner
New Jersey Area Redevelopment Authority
New Jersey Economic Development Authority
New Jersey State Board of Mediation
New Jersey Public Employment Relations Commission
South Jersey Port Corporation
Division of Workers' Compensation
Division of Workplace Standards

Department of Law and Public Safety

Office of the Attorney General
Division of Alcoholic Beverage Control
Division on Civil Rights
Division of Consumer Affairs

Division of Motor Vehicles
Division of New Jersey Racing Commission
State Athletic Commission
Police Training Commission

Legalized Games of Chance Control Commission
Violent Crimes Compensation Board
Election Law Enforcement Commission
Bureau of Securities

Office of Weights and Measures
Board of Architects
Board of Beauty Culture Control
Board of Certified Public Accountants

Board of Dentistry
Board of Examiners of Electrical Contractors
Board of Professional Engineers and Land Surveyors
Board of Marriage Counselor Examiners

Board of Medical Examiners
Board of Mortuary Science
Board of Nursing
Board of Ophthalmic Dispensers and Ophthalmic
Technicians

Board of Optometrists
Board of Pharmacy
Board of Master Plumbers
Board of Professional Planners

Board of Psychological Examiners
Board of Shorthand Reporting
Board of Veterinary Medical Examiners

Department of State

Secretary of State

Department of Transportation

Office of the Commissioner
New Jersey Expressway Authority
New Jersey Highway Authority
New Jersey Turnpike Authority

Department of the Treasury

State Treasurer
Division of Building and Construction
Division of Tax Appeals
Division of Taxation
Division of the State Lottery
Casino Control Commission

APPENDIX B _____

PERSONS TESTIFYING AT HEARINGS OF THE COMMITTEE

May 18, 1977, New Brunswick

Stanley Bey
Russell-Stanley Corporation
Woodbridge, New Jersey

Emil K. Borch
Vice President and General Manager
Amboy Terminal Company

Stephen Capestro
Middlesex County Board of Freeholders

Peter Lafen
League for Conservation Legislation

George J. Otlowski
Assemblyman, 19th District and
Mayor of Perth Amboy, New Jersey

Leon Boyce
Middlesex County Building Trades

John E. Trafford,
Assistant Executive Director
New Jersey State League of Municipalities

Phillip Busacca
Metuchen, New Jersey

Richard Stuart, Chairman
Citizens for Community Corrections

Francis Kenny
Executive Secretary
Municipal Tax Collectors and Treasurers of the
State of New Jersey

Cable Spence
Secretary/Administrator
New Jersey Farm Bureau

Joseph Hartnett
Business Administrator
Rahway, New Jersey

Stewart Hutt
General Counsel
New Jersey Builders Association

July 21, 1977, Elizabeth

Anthony R. Chiodo
Tax Collector
Elizabeth, N.J.

Bernard Yarusavage
Mayor
Clark, N. J.

John Haertlein
President
Alcan Metal Powders

Edward Del Rosso
Garden State Electrical Contractors Association

Mary Nowakowski
Roselle Citizens Committee

John Reed
New Jersey Builders Association

Doris Mann
Councilwoman
Garwood, N. J.

Mary Ellen Inwin
Councilwoman
New Providence, N. J.

Edward Bein
Mayor
New Providence, N. J.

Fred Dubowsky
Builders Association of Metropolitan New Jersey

Paul J. O'Keefe
Mayor
Plainfield, N.J.

Harold Seymour
Tax Collector
Cranford, N.J.

APPENDIX C

PARTIES RESPONDING TO THE COMMITTEE QUESTIONNAIRE
FOR REGISTERED AGENTS

New Jersey Psychological Association
Orange, N.J.

Bruce C. Cotton
Jerrico, Inc.
Lexington, Ky.

Leonard A. Coyle, Attorney at Law
Trenton, N.J.

Norman Hughes
N.J. Motor Truck Association
East Brunswick, N.J.

Walter Chesner
N.J. Association of Secondary School Principals
Trenton, N.J.

Steve Larkin
International Paper Company
Baltimore, Md.

Charles L. Skerrett
Barnegat Light, N.J.

John V. Spinale Associates
Trenton, N.J.

Jay Townley
Schwinn Bicycle Company
Chicago, Illinois

Robert N. Wilentz, Attorney at Law
Perth Amboy, N.J.

J. Joseph Frankel
Prudential Insurance Company
Newark, N.J.

James T. Pendergast
Staff Builders
New York, N.Y.

Diane Graves
Sierra Club
Princeton, N.J.

S. Cable Spence, Jr.
N.J. Farm Bureau
Trenton, N.J.

John Lockwood
Lockwood Bus, Inc.
Hamilton Square, N.J.

Michael Bethan
Elizabethtown Gas
Elizabeth, N.J.

Jay Adelman
New Jersey Food Council
Trenton, N.J.

Michael J. Groos, Attorney at Law
Toms River, New Jersey

Ellis S. Vieser
New Jersey Alliance for Action
Metuchen, New Jersey

O. Warren Underwood
Owens-Illinois
Toledo, Ohio

William Beren
League for Conservation Legislation
Teaneck, N.J.

Dennis J. Young
New Jersey Dental Association
North Brunswick, N.J.

John F. McDonald
Public Service Electric and Gas Company
Newark, N.J.

Mrs. Candace M. Ashmun
Association of N.J. Environmental Commissions
Mendham, N.J.

Lewis R. Applegate, Sr.
New Jersey State Chamber of Commerce
Newark, N.J.

Dolores T. Corona
New Jersey Education Association
Trenton, N.J.

J. A. Johnson
Athenia Steel Div.
Clifton, N.J.

Ellsworth C. Salisbury, Jr.
Jersey City Chamber of Commerce
Jersey City, N.J.

Atlantic City Sewerage Company
Atlantic City, N.J.

Philip Ganguzza
Valley Fiar Corporation
Totowa, N.J.

Arthur Stern
Glasflex Corporation
Stirling, N.J.

Mary-Kay Zavatone
Englewood Chamber of Commerce
Englewood, N.J.

David Berdan
Buck Engineering Co. Inc.
Farmingdale, N.J.

Insulfab Plastics, Inc.
East Rutherford, N.J.

Dodge-Newark Supply Co., Inc.
Fairfield, N.J.

William J. Doyle
Independent Insurance Agents of New Jersey, Inc.
Highland Park, N.J.

J.H. Young
Anheiser-Busch, Inc.
Newark, N.J.

Norman Ruhle
Whittier-Ruhle Millowrk Co.
Ridgefield, N.J.

Jeffrey Felder
Monsanto Industrial Chemicals Co.
Bridgport, N.J.

Dagny Von Ahrens
Robvon Backing Ring Co.
Elizabeth, N.J.

John A. Coyle
Sink'RSwim Shop
Beach Haven, N.J.

C. F. Lindholm
Falstrom Company
Passaic, N.J.

Frank D. Visceglia
Federal Business Centers
Edison, N.J.

Hydrocarbon Research, Inc.
Trenton, N.J.

Robert C. Patterson, Jr.
Cape May County Chamber of Commerce
Cape May Court House, N.J.

Richard Lynch
North Wildwood Campground
Cape May Court House, N.J.

Ocean View Campground
Ocean View, N.J.

Coastline Advertising
Cape May, N.J.

W. P. Anderson
Tenneco Chemicals Inc.
Saddle Brook, N.J.

J. Eric Helsing
Mutual Benefit Life Insurance Company
Newark, N.J.

Montclair Chamber of Commerce
Montclair, N.J.

Cape May County Campgrounds Association
Ocean View, N.J.

H.S. Larsen
Wilson Products, Division of Dart Industries, Inc.
Neshanic, N.J.

Dr. J. Barker
ICI United States Inc.
Bayonne, N.J.

C. N. Schellinger
Cape May County Board of Agriculture
Cape May Court House, N.J.

Stephen H. Mayer
MEM Company, Inc.
Northvale, N.J.

K.V. Keller
Suburban Propane Gas Corporation
Whippany, N.J.

Ella F. Filippone
Passaic River Coalition
Basking Ridge, N.J.

E & M O'Hara Electrical Contractors
West Orange, N.J.

Jack W. Owen
New Jersey Hospital Association
Princeton, N.J.

Joel H. Sterns & Richard Weinroth, Attorneys at Law
Trenton, N.J.

Hoffman-LaRoche
Nutley, N.J.

New Jersey Public Interest Research Group
Trenton, N.J.

New Jersey Student Association, Inc.
Montclair, N.J.

Riedl Associates Inc.
Clifton, N.J.

Anne W. Attridge
Schering-Plough
Kenilworth, N.J.

Griffinger & Conlon, Attorneys at Law
Union, N.J.

John J. Garrity
Beer Wholesalers' Association of New Jersey
Trenton, N.J.

Marian G. Kent
Consumers League of New Jersey
Montclair, N.J.

Leo H. Mahony
New Jersey Society of Architects
East Orange, N.J.

Donald Sihvey
Firemen's Mutual Benevolent
Elizabeth, N.J.

David T. Houston Co.
Bloomfield, N.J.

Irving J. Tecker
New Jersey Podiatry Society
Cherry Hill, N.J.

John E. Vaughan
Fairleigh Dickinson University
Rutherford, N.J.

Greater Newark Chamber of Commerce
Newark, N.J.

Vincent A. Maressa
Medical Society of New Jersey
Trenton, N.J.

Paul L. Armstrong
TRW, Inc.
Fairfield, N.J.

Eye Institute of New Jersey
Newark, N.J.

Maurio A. Checchio
Association Management Corporation
Springfield, N.J.

Alan C. Marcus Associates
Newark, N.J.

Jeffrey L. Faue
National Association of Social Workers
Trenton, N.J.

Thomas C. Jamieson, Jr. Attorney at Law
Trenton, N.J.

Philip J. Cocuzza
Ramada Inn
East Brunswick, N.J.

Arthur Young Associates
Metuchen, N.J.

Merril-National Laboratories
Cincinnati, Ohio

Stanley W. Wides
Jewish War Veterans of the U.S.
Englewood, N.J.

Richard C. McDonough, Attorney at Law
New Jersey Shore Builders Association
Trenton, N.J.

APPENDIX D _____

QUESTIONNAIRE DISTRIBUTED TO ASSEMBLY COMMITTEES

1. What plans does your committee have for implementing its oversight functions?
2. Have you established any specific procedures for the review of programs or of rules and regulations?
3. What specific governmental activities are you currently reviewing or are planning to review?
4. Is your committee aware of any executive agency rule or regulation which it considers to be unreasonable, arbitrary, capricious, inconsistent with legislative intent or beyond the scope of the agency's authority?
5. Is your committee aware of any judicial decisions which imply or recommend that existing statutes or rules should be revised?
6. To what degree if any, is your committee consulted by agencies for guidance or comment on proposed rules or regulations? If there is consultation, what is the procedure employed? Have the committee's views been reflected in any rules or regulations which have been adopted?
7. Does your committee routinely receive copies of proposed or adopted rules and regulations from agencies which fall within its area of jurisdiction?
8. Is your committee aware of any inadequacies in the existing procedures for the promulgation of rules and regulations regarding such matters as timely notification of interested parties, scheduling of public hearings, due consideration of public comment, etc?

9. Is there any recently enacted legislation which went through your committee which you believe merits legislative review as regards the rules and regulations promulgated thereunder?
10. Is your committee currently including specific provisions for legislative oversight in bills released from committee?
11. Do you have any suggestions concerning the direction and procedures of the Oversight Committee and the manner in which it should coordinate its efforts with the standing committees?

APPENDIX E _____

QUESTIONNAIRE DISTRIBUTED TO EXECUTIVE DEPARTMENTS

1. Are rules which are promulgated by your department and by agencies within the department issued on behalf of the department or on behalf of the particular agency? If rules are promulgated directly by agencies, are the rules reviewed by the Commissioner (or other chief executive officer) prior to their proposal and promulgation? Please provide a listing of all agencies in your department which promulgate rules on their own behalf. Note that the Administrative Procedure Act defines "agency" to include all boards, divisions, commissions, agencies, councils, departments, authorities and offices within an executive department.

2. Is there a specific office or officer within your department with responsibility for carrying out or coordinating any or all of the aspects of the rule-making procedure, including such aspects as drafting proposed rules, inviting public comment, conducting public hearings, receiving and reviewing public comment, assessing the probable social and economic impact of a proposed rule, reviewing the impact of a promulgated rule, and responding to general inquiries concerning departmental rules? If so, please provide the name of such office or officer and describe which of these aspects fall within the duties of such office or officer.

3. Do all rules issued by your department and its agencies conform to a uniform style? Is a conscious effort made to write them in as simple language as possible?

4. Have there been instances in which it has been difficult to discern legislative intent regarding a program or policy for which rules must be promulgated? If so, please specify recent examples. What steps does the department take to clarify legislative intent in such cases?

5. Does your department or its agencies regularly inform or consult with other departments and agencies concerning proposed rules and their possible impact on the activities of the other departments and agencies? If so, please describe the manner in which this is carried out.

6. Does your department or its agencies regularly inform or consult with the Legislature or any legislative committee or agency concerning its proposed rules? If so, please describe the manner in which this is carried out.

7. Please describe the methods employed by your department to inform interested parties and to invite public comment regarding a proposed rule. At what point in the rule-making procedure are these methods generally employed? Are they ever initiated prior to the publication of the proposed rule in the New Jersey Register?
8. Are notices of rule-making proceedings ever published in newspapers? If this is done on occasion, please indicate what factors determine whether a notice is to be published in newspapers. Are notices ever posted in appropriate locations in order to duly notify those particular classes of persons to whom the intended action is directed?
9. Is the full text of a rule included within notifications announcing a rule-making proceeding? If not, why not? Is a simple explanation of the content and intended purpose of the rule included in such notification?
10. How many rules did your department and its agencies propose and promulgate in 1976 (including rules which amended or repealed existing rules)? How many of these rules were promulgated pursuant to the "imminent peril" provision of the Administrative Procedure Act? How many were classified as "procedural" rules?
11. Prior to the promulgation of a rule, is a formal report prepared which assesses its expected social and economic impact? If so, is it available for public distribution?
12. How many proposed rules were the subject of public hearings in 1976? How many public hearings did this involve? What factors determine whether a public hearing is to be conducted? At what time are public hearings generally scheduled: during normal working hours, in the evenings, on weekends? At what location(s) are public hearings usually conducted? Are public hearings conducted by departmental or agency officials or by hearing officers?
13. Are public hearings transcribed? Are transcripts printed and made available for public distribution? Are all comments and documents submitted at a hearing included in the transcript? Are transcripts distributed before the proposed rule is promulgated?
14. In what manner is public comment on a proposed rule given due consideration? Is a formal record kept which indicates or summarizes each oral or written submission concerning a proposed rule? Is a formal report prepared which summarizes the nature of the public comment? If so, is it made available for public distribution?

15. How would you characterize your department's experience regarding public comment on proposed rules (i.e., in terms of the volume of public response, the diversity of interests of the parties responding, and the value of the response in providing guidance to the department for promulgation of a final rule)?

16. Do you have any recommendations for changes in the Administrative Procedure Act or in the manner in which the act is being implemented?

17. Do you favor or oppose legislation lengthening the period of notice under the Act from 20 to 40 or 60 days? Why?

18. Do you favor or oppose legislation providing that all rules promulgated pursuant to the "imminent peril" provision of the Act be effective for only a temporary period, and must thereafter be promulgated in accordance with the normal procedure? Why?

19. Does the department or its agencies ever receive formal or informal petitions from interested parties for the adoption, amendment or repeal of a rule? Is there a formal procedure for acting upon such petitions? If so, please describe the procedure.

20. At what location(s) are departmental and agency rules available for public inspection? Can the public readily obtain copies of rules through telephone or mail inquiry?

APPENDIX F _____

QUESTIONNAIRE DISTRIBUTED TO REGISTERED AGENTS

1. How do you usually become aware of an agency proposal to promulgate a rule? Are you registered with any agencies to receive notification of a rule-making procedure? If so, how far in advance of the date of promulgation do you receive notification?
2. Do you feel that there are any inadequacies in the existing procedures for the promulgation of rules, particularly regarding such matters as timely notification of interested parties, scheduling of public hearings, due consideration of public comment, etc.?
3. How many proposed rules did you offer comments on in 1976? In what form were these comments offered?
4. Do you consider administrative rules to be generally written in understandable language? Can you cite any examples of rules which are poorly written or difficult to understand?
5. Do you ever have difficulty in obtaining copies of rules or information concerning rules from executive agencies? If so, please describe your experiences.
6. Do you feel that executive agencies are accessible to the public and receptive to your comments? Can you cite any examples of rules that were withdrawn or amended in response to the comments of yourself and/or other interested parties?
7. Can you cite any rules which you consider to be unreasonable, arbitrary, capricious, inconsistent with legislative intent, or beyond the scope of the agency's authority?
8. Can you cite any judicial decisions which imply or recommend that an existing statute or rule should be revised?

9. Can you cite rule-making instances in which you feel the "imminent peril" provision of the Administrative Procedure Act has been abused?
10. Would you favor or oppose legislation which would extend the period for public comment before adoption of a rule from 20 to 40 or 60 days? Why?
11. Have you ever formally petitioned an agency to begin a rule-making procedure for the purpose of promulgating a new rule or amending or repealing an existing rule? If so, what was the agency response to your petition?
12. Do you have any recommendations for changes in the Administrative Procedures Act or in the manner in which the act is implemented?
13. Do you have any suggestions concerning the direction and procedures of the Legislative Oversight Committee?

Legislative Review of Administrative Regulations

STATE	Statute Citation	Type of Reviewing Committee(s)	STRUCTURES & PROC. RULES				COMMITTEE POWERS				LEGISLATIVE POWERS				Adv. Po. Amend. or Modify
			Name of Reviewing Committee	Composition of Reviewing Committee	Rules Reviewed	Time Limit for Submission of Proposed Rules to Legislature	Time Limit for Legislative Review of Rules	Review of Proposed Rates Prior to Effectiveness	Review of Existing Rules	Approval of Proposed Rules Without Objections	Suspension of Power Held by Committee	Time Limit of Committee Suspension	Legislature Must Sustain Action or Recommendation	Time Limit for Legislative Affirmation	
ALASKA	AS 24.20.400 & 444.62.320	Joint	Admin. Regulatory Review Committee	3 House 3 Senate (1 minority member from each house)	X	45 days	None	X	X	X	X	None	Concurrent Resolution		
ARIZONA	ARS 41-511.01(1)	(2)		(2)	X(1)	Immediately after adoption	N/A	X	N/A	X	X	1 year	Concurrent Resolution	X	
ARKANSAS	Ark. Stat. 6-60B et seq.	Joint	Legislative Council	19 House 11 Senate	X	10 days before agency hearing	None	X	X	X	N/A	N/A	Statute	N/A	
CALIFORNIA	Cal. Rev. St. 24-4-103	Joint	Legal Services Committee (3)	4 House (Maj. & Min. Floor Leaders of each house)	X (4)	20 days after approval by Atty. General	None	X	X	X	X	None	Statute	X	
CONNECTICUT	C.S. 4-170 et. seq.	Joint Bipartisan	Legislative Review Committee	8 Senate (Equal Maj.-Min. representation)	X	Simultaneous with Atty. General	65 days	X	X	X	(5)	What is reversed by legislature	Joint Resolution	X (6)	
FLORIDA	Fla. Stat. Sec. 11.60	Joint	Joint Administrative Procedures Committee	3 House 3 Senate (1 minority member from each house)	X	21 days	20 days	X	X	X	N/A	N/A	M/A	N/A	
GEORGIA	Ga. Stat. 3A-104(e)	Standing Commission (in session)	N/A	N/A	X	20 days	None	X	X	X	X	End of regular session	Concurrent Session (7)	X	
IDAHO	Idaho Code Sec. 67-5217-67-5218	Standing Committee (in session)	N/A	N/A	X	Buy-inning of each session	45th day of regular session	X	N/A	X	X	End of regular session	Concurrent Resolution	X	
ILLINOIS	Ill. Rev. Stat. Chap. 127, 1.001 et. seq.	Joint Bipartisan	Joint Administrative Rules	8 House 8 Senate (Equal Maj.-Min. representation)	X	3 days for new rules; 45 days for existing rules	45 days	X	X	X	N/A	N/A	M/A (8)		
INDIANA	Ind. Code Ann. Chap. 17A	Joint	Administrative Rules Review Committee	3 House 3 Senate (1 minority member from each house)	X	35 days (9)	35 days	X (10)	X	X	X	None	Statute		
MISSISSIPPI	MSA 1976 Supp. 77-426	Joint	Joint Administrative Rules and Regulations (3)	7 House 5 Senate	X	By Dec. 31 of each year	May 1	X	X	X	X	End of regular session	(12)	X	
MICHIGAN	MRS 13.007	Joint	Administrative Regulations Review Subcommittee (13)	3 members appointed by Legislative Research Committee (at least 1 minority member)	X	14	30 days	X	X	X	X	None	Statute		
MISSISSIPPI	I. R. S. 49:901	Standing Committee	N/A	N/A	X	15 days prior to adoption of rule (16)	Committee must submit report to legislature by 2nd day of session	X	X	X	N/A	N/A	M/A	N/A	

State	Statute Citation	Type of Reviewing Committee(s)	Name of Reviewing Committee	Composition of Reviewing Committee	Rules Reviewed (All - 117)	Time Limit for Submission of Proposed Rules to Legislature	Time Limit for Legislative Review of Rules	COMMITTEE POWERS				LEGISLATIVE POWERS			
								Review of Proposed Rules Prior to Effectiveness	Review of Existing Rules	Approval of Proposed Rules Without Objections	Suspension of Proposed Rules by Committee	Time Limit of Committee Suspension	Legislature May Suspend Action or Recommendation	Time Limit for Legislative Affirmation	Method of Legislative Affirmation
ME	2501 et seq. (17)	Joint Standing Committees	N/A	N/A	X (17)	None	None	X (17)	X	N/A	None	None	Statute (17)	X	
MA	84, Ann. Code 1977, Art. 40, §90A	Joint	Joint Standing Committee on Administrative Executive and Legislative Review	5 Senate 5 House (At least 2 executive and 2 legislative)	X	None, but can not go into effect without being printed in Maryland Register	45 days	X	X	X	None	End of regular session	Statute	X	
MD	11-6, St. Ann. 24-235 et seq. (19)	Joint	Joint Committee on Administrative Rules	5 House 3 Senate	X	20 days before adoption	60 days	X	X (19)	X (19)	Until reversal by legislature or committee	End of next regular session	Concurrent resolution		
MI	Min. St. 1-965	Joint	Legislative Commission to Review Administrative Rules	5 House 5 Senate	X	None	None	X	N/A	N/A	End of next regular session	Statute	Statute		
MO	Sec. 516.037 R. S. Mo.	Joint	Committee on Administrative Rules	5 House 5 Senate (At least 2 minority members from each house)	X	None	None	X	N/A	N/A	None	N/A	N/A	X	
MS	R. C. M. 1974 Sec. 87-4(01) et seq.	Joint Bipartisan	Administrative Code Committee	4 House 4 Senate (At least 2 minority members from each house)	X	None	None	X	N/A	N/A	None	None	Joint resolution	X	
MT	Prob. Rev. St. Sec. 84-904 and 84-908	Special Committee	Committee on Administrative Agency Rules and Regulations	9 members	X	By Jan. 1 of each year	None	X	N/A	N/A	None	N/A	N/A	N/A	X
ND	Chap. 506 Sec. of Rev. 1977	Joint	Legislative Commission (23)	6 House 6 Senate	X	After adoption	Not more than 35 days	X	N/A	N/A	None	N/A	N/A	N/A	X
NE	(24)	Joint	Administrative Regulations Review Committee	3 House 3 Senate (1 minority member from each house)	X	21 days prior to effective date	None	X	X	X	None	None	Statute	N/A	
NH	CS 120-30. 19 et seq.	Joint	Administrative Rules Review Committee	7 members of General Assm	X	Simultaneously with filing with ALLY. General	60 days	X	N/A	N/A	None	N/A	N/A	N/A	X
RI	Sec. 101.35, 111.15, 119.01 & 119.03 of Rev. Code	Joint	Joint Committee on Agency Rule Review	7 House 7 Senate (At least 3 minority members from each house)	X	60 days before adoption by agency	60 days	X	X	X	60 days after coming of next regular session	60 days	Concurrent resolution	X	
SD	75 D. S. Supp. 1977 Sec. 10-10-1	Standing Committees	N/A	N/A	X	10 days after adoption	None	X	N/A	N/A	None	None	Simple res. of either house	N/A	X
TN	ORS 171-205 to 171-713	Joint	Legislative Council Committee	6 House 5 Senate	X	Simultaneously with filing with Secy of State	None	X	X	X	None	None	N/A	N/A	
TX	Act No. 176 of 1977	Standing Committees	N/A	N/A	X	None, but can not go into effect until 90 days after submission	90 days	X	X	X	None	90 days after next legislature	Joint resolution		

STATE	STANDING COMMITTEES				COMMITTEE POWERS				LEGISLATIVE POWERS				Advisory Power: Only			
	Statute Citation	Type of Reviewing Committee(s)	Name of Reviewing Committee	Composition of Reviewing Committee	Rules Reviewed	Time Limit for Submission of Proposed Rules to Legislature	Time Limit for Legislative Review of Rules	Review of Proposed Rules Prior to Effectiveness	Review of Existing Rules	Automatic Approval of Proposed Rules Without Objections	Suspension of Committee Power by Committee	Time Limit of Committee Suspension		Legislation Must Sustain Committee Action for Completion	Time Limit for Legislative Affirmation	Method of Legislative Affirmation
DELAWARE	DELA. CONST. Art. 4, Sec. 17	Joint	Interim Rules Review Committee	3 House, 3 Senate (At least 1 minority member from each house)	X	20 days before agency hearing	20 days after filing with Sec'y of State	X	X	X (27)	30 days after convening of regular session	X	Statute	X (28)		
ILLINOIS	Ill. Const. Art. 4, Sec. 1	Gov't Operations Committee, Senate Standing Committees	N/A	N/A	X	After adoption	None	X	N/A	X (29)	Until rescinded by legislature	N/A	Joint Resolution	M/A		
INDIANA	Ind. Const. Art. 4, Sec. 22	Standing Committees	N/A	N/A	X	30 days prior to adoption	None	X	X	X (31)	Until rescinded by legislature	X	Joint Resolution	X		
IOWA	Iowa Const. Art. 3, Sec. 17	Joint	Legislative Committee on Administrative Rules (30)	4 Senate (At least 1 minority member from each house)	X	2 weeks before adoption	30 days	X	X	X (31)	Until reversed by legislature	(31)	Joint Resolution	X		
KANSAS	Kan. Const. Art. 3, Sec. 29a	Joint	Legislative Rule-making Review Committee	6 House, 6 Senate (At least 2 minority members from each house)	X	None, but can not go into effect unless filed with committee	6 months	X	X	X	Until reversed by legislature	(31)	Joint Resolution	X		
KENTUCKY	Ky. Const. Art. 4, Sec. 13-16	Joint	Joint Committee for Review of Administrative Rules	5 House, 5 Senate (At least 1 minority member from each house)	X	None	None	X	N/A	X	End of next regular session	X	Statute	X		
LOUISIANA	La. Const. Art. 220	Joint	Legislative Management Council	11 members of legislature (31)	X	20 days prior to adoption	Within 90 days after submission by agency (32)	X	N/A	X	End of next regular session	X (32)	"Legislative Order"			

1. Provides for legislative review of only the rules promulgated by State Parks Board.
2. Not specified; presumably, review done by appropriate committee.
3. Performs review during interim; during session, standing committees perform review.
4. Staff reviews all new rules and makes recommendations to committee.
5. Legislature "may...either sustain or reverse a vote of disapproval" by the committee, but it is not mandatory.
6. Committee may disapprove a part of a rule.
7. Committee must introduce resolution within first 30 days of next regular session. If resolution adopted by two-thirds majority of each house, rule is void. If resolution adopted by less than two thirds majority, it must be submitted to governor for veto or approval.
8. Committee submits "appropriate legislation to implement" committee recommendations.
9. Published in Iowa Administrative Code 35 days prior to adoption.
10. If the committee objects to a rule on the grounds it is "unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to that agency," the burden of proof is then on the agency in any judicial review.
11. By a two-thirds vote the committee may delay for further study the effective date of a proposed rule for up to 70 days.
12. By concurrent resolution for proposed rules; by statute for existing rules.
13. Permanent subcommittee of the Legislative Research Commission (LRC).
14. No time limit, but proposed rule can't go into effect unless it is filed with the LRC and reviewed by the Administrative Regulations Review Subcommittee.
15. If proposed rule is found objectionable by the Administrative Regulations Review Subcommittee and by an interim or standing committee, it is submitted to the House and Senate "for such action as (they) may determine to be appropriate."
16. Also, agencies must submit, 30 days prior to regular session, an annual report to the legislature on all rules adopted over the past year.
17. Under this 1977 law, joint standing committees review all existing rules and introduce legislation stating an expiration date of 5 years or less for each rule. All new rules automatically expire in 5 years unless legislation is enacted to terminate them within 5 years.
18. In addition, Article IV - Section 37 of the Michigan constitution provides for the legislative power to review and suspend rules.
19. Suspension power enacted by legislature over governor's veto in 1977 and effective on January 1, 1978.
20. Suspension is delayed for 60 days to allow appropriate standing committee to review rule.
21. During the interim, the committee may poll the members of the legislature by mail to determine if a rule is consistent with legislative intent.
22. Legislature has power to repeal or amend statute granting promulgating authority upon recommendation of the committee.
23. Standing committees review rules if agency returns unchanged a rule objected to by the Legislative Commission. If standing committee also objects, rule is submitted to legislature for "proper" action.
24. Currently operating under a joint resolution. Legislation to make committee and procedures statutory was vetoed by governor.
25. If a rule is found objectionable by the committee and agency refuses to modify, the rule is reviewed by Legislative Research Commission. If LRC objects and the agency refuses to modify, LRC reports to the General Assembly, recommending "legislative action."
26. Committee may suspend a rule only during the interim by a two-thirds vote of the members.
27. Committee may suspend a rule by a three-fourths vote of the members.
28. Legislature has authority to amend, but it has never been used.
29. Committee can suspend rule after 15 days notice to agency.
30. There is also an executive branch committee which reviews rules for consistency with legislative intent and the authority and policies of the governor.
31. Disapproval of a rule by committee prevents the agency from taking any "action to implement such disapproved rule or regulation," unless the committee action is reversed by the legislature. However, disapproval of a rule implementing a federally subsidized program must be sustained by the legislature before the end of the regular session, or the committee's action is reversed.
32. The Legislative Management Council submits its report to the governor. If the governor objects to the report, he must file his objections with the council within 15 days. The council reports to the legislature each session, at which time, the legislature can prohibit implementation of rule by "legislative order."
33. Council consists of eleven members, which includes presiding officers and the majority and minority floor leaders, or their designees, of the Senate and House; one member from each political party selected at large from the Senate and House; and one member selected at large from either the Senate or House by the ten above-named.

NCSI, Summary of Sunset Legislation

STATE	SUBJECT	TERMINATION PERIOD	PRELIMINARY EVALUATION COMPLETED BY	OTHER EPISODIC REVIEW	PHASE OUT PERIOD	LIFE OF EACH AGENCY	OTHER PROVISIONS
ALABAMA	comprehensive	18 in 1977 18 in 1978 19 in 1979 28 in 1980	select joint committee		180 days	4 years	Zero-base budgeting 2 hour time limit on floor debate on each bill
ALASKA	regulatory	13 in 1979 13 in 1980 1 in 1981	standing committees		1 year	4 years	performance audit In addition to regulatory agencies, programs in other broad areas terminated in 1980-1983; specific programs authorized for termination by legislative Budget and Audit Committee
ARIZONA	comprehensive	169 in 1979 200 in 1981 169 in 1981	Joint interim committees		1 year	permanent	performance audit
CALIFORNIA	regulatory	13 in 1977 12 in 1979 14 in 1981	Legislative Audit Committee, 3 months prior to termination	standing committees	1 year	6 years	performance audit
CONNECTICUT	primarily regulatory	19 in 1979 17 in 1980 18 in 1981 20 in 1982 22 in 1983	Legislative Program Review and Investigations-Lions Committee	Joint Committee on Government Administration	1 year	5 years	performance audit
FLORIDA	regulatory	36 in 1978 23 in 1980 35 in 1982	select joint committee appointed by Speaker of House and President of Senate beginning 1 year prior to repeal date	Appropriate substantive committee of both House and Senate, sitting jointly, designated by Speaker of House and President of Senate	1 year	3 years	provides for periodic review of limitations on the initial entry into a profession, occupation, business, industry, or other endeavor
GEORGIA	regulatory	10 in 1978 17 in 1980 17 in 1983	Standing committees		1 year	6 years	performance audit
HAWAII	regulatory	11 in 1979 9 in 1979 13 in 1981	Joint legislative review committee	not specified	none	6 years	Joint Legislative review
INDIANA	selective	21 in 1978	select joint committee of Division of State Government		none	none	after study of 21 medical health facilities plus, each newly created agency subject to termination with 10 year life span
LOUISIANA	comprehensive	5 in 1979 5 in 1980 6 in 1981 All other groups which receive state funds expire in 1982	Standing committee of House and Senate on Joint Committee created for study of all other groups which receive state funds expire in 1982	Bill authorizing recreation of an agency is referred which has mandatory review	none	4 years	Zero-base budgeting
MISSISSIPPI	Regulatory, plus Department of Social and Community Services, Community Affairs and Institutions	14 in 1979 21 in 1981 11 in 1983	Legislative Audit Committee	standing committees	1 year	6 years	
NEBRASKA	regulatory	6 in 1978 5 in 1979 7 in 1980 5 in 1981 5 in 1981 8 in 1981 8 in 1981	Performance Review and Audit Committee	standing committees	1 year	6 years	act itself terminated in 1981
NEW HAMPSHIRE	diversity/comprehensive	all by 1985	Legislative Budget and Audit	standing committees	9 months	6 years	Joint Legislative committee created to study and submit a schedule for all agencies by January 1, 1978
NEW MEXICO	regulatory	18 in 1978 9 in 1979 16 in 1980	Legislative Finance Committee	not specified	1 year	6 years	

