

## **THE NEW JERSEY LEGISLATURE IN THE PAST DECADE: DEVELOPMENTS AND DEFICIENCIES**

*by Richard Lehne and Paul Schmidhauser\**

When the Assembly speaker gaveled the exhausted chamber into recess after fruitless all night sessions in June and July 1976, most regarded this as another manifestation of a hopelessly inept legislature. For years New Jersey lawmakers had grappled with a series of controversial tax plans encompassing classified and unclassified statewide property taxes, increases and expansions of the sales tax, flat rate and proportional income taxes, and a state surtax on the federal income tax.<sup>1</sup> After countless sessions and conferences, the Legislature had been unable to enact any of these proposals, and the contempt that many citizens felt for the Legislature was reenforced by the televised broadcast of these disorderly proceedings throughout the state. Ignoring the complexities of institutional development, commentators opted for ridiculing accounts of undignified frustration and inaction. The result was a portrait of legislative madness. After the telecasts, pollsters reported that the state's citizens rated the performance of the New Jersey Legislature on at par with that of a recent president while his impeachment proceedings were in progress.<sup>2</sup>

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<sup>1</sup> For details of these proposals see, e.g., A. 1665, 196th N.J. Legis., 1st Sess. (1974); A. 1874, 196th N.J. Legis., 1st Sess. (1974); A. 1984, 196th N.J. Legis., 1st Sess. (1974); A. 3114, 196th N.J. Legis., 2d Sess. (1975); REPORT OF THE BYRNE ADMINISTRATION TASK FORCE, PROPOSED EDUCATION REFORM—PROPERTY TAX RELIEF PROGRAM PARTS I AND II (May & June 1974); Senator R. Garramone, Memorandum to the Legislature (Spring 1974); J. Russo, Tax Restructuring in New Jersey—An Alternative Plan (Spring 1974) (Memorandum from Senator John F. Russo to the Legislature).

<sup>2</sup> Eagleton Institute of Politics, Rutgers University New Jersey Poll 23, (Oct. 1976). The question and responses were as follows: "How good a job do you think the New Jersey

In the past decade, public opinion has been critical of all political institutions in the United States, not merely the New Jersey Legislature.<sup>3</sup> The traumas of Vietnam and Watergate undermined public confidence in the national government, and accounts of congressional impropriety frustrated attempts to rebuild it. The impact of national scandals was compounded in New Jersey by the conviction and imprisonment of various state and municipal officials. Although not directly involved in any of these events, the Legislature was victimized by this general decline of public confidence in governmental institutions.<sup>4</sup>

Apart from these recent affairs, however, the performance of state legislatures throughout the country has troubled informed citizens for decades.<sup>5</sup> Legislatures are frequently too poorly organized to do what is expected of them. They meet too infrequently and lack the physical space and professional assistance to focus adequately on the issues that come before them. Legislators are too often distracted from significant policy deliberations by trivial ceremonies, imposing local concerns, the pleadings of special interests and the imperatives of political survival. As part-time officials, they are hard pressed to cope with the profound societal transformations that have made governing states so difficult. Growing population density and interdependence, increasing technical complexity of policy issues, accumulating rigidity of bureaucratic organization, rising popular expectations and shifts in decision-making authority to the federal government have all made the burden of being a state legislator a heavy one, not merely for representatives in Trenton but for their colleagues in Albany, Harrisburg, Sacramento, and Boston as well.

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Legislature is doing—excellent, good, only fair, or poor?"

Excellent	0.6%
Good	17.9
Fair	53.7
Poor	20.4
Don't Know	7.4

n = 789

<sup>3</sup> See R. Boyd, *Electoral Trends in Postwar Politics*, reprinted in *CHOOSING THE PRESIDENT* (J. Barber ed. 1974); R. GILMORE & R. LAMB, *POLITICAL ALIENATION IN CONTEMPORARY AMERICA* (1975); U.S. SENATE SUBCOMM. ON INTERGOVERNMENTAL RELATIONS, *CONFIDENCE AND CONCERN: CITIZENS VIEW AMERICAN GOVERNMENT* (U.S. Gov't Printing Off. 1973).

<sup>4</sup> See, e.g., L. Harris, *Ratings of Congress At All-Time Low*, *The Harris Survey* (Feb. 11, 1974). The question and responses were as follows: "How do you rate the job Congress is doing—excellent, pretty good, only fair, or poor?"

Positive (good-excellent)	21%
Negative (only fair-poor)	69
Not sure	10

<sup>5</sup> See, e.g., *LEGIS - 50, THE SOMETIME GOVERNMENTS* (1971); *STATE LEGISLATURES IN AMERICAN POLITICS* (A. Heard ed. 1966).

Historically, the New Jersey Legislature has been dominated by party caucuses.<sup>6</sup> Under the caucus system, party members would gather in secluded State House meeting rooms before each day's session to decide which measures would pass. Committees met infrequently and rarely considered bills on their merits. Leadership positions in both chambers usually rotated each year so that no continuing expertise was acquired. While this system allowed the majority party to balance the interests of its important members, it robbed the Legislature of the capacity to formulate effective policy proposals on critical issues. Traditionally, major legislative programs initiated by the executive were enacted by the Legislature only if the governor had cultivated the necessary support among local party officials. Minor measures were usually drafted by the executive and enacted by the Legislature with nominal amendment. In short, the primary allegiance of members of the Senate and Assembly was either to the governor or to a local party organization.

Criticism of the New Jersey Legislature has frequently been heard from certain members of the New Jersey Bar Association, who have pointed out that the 1947 state constitution effectively reformed the judiciary and strengthened the executive, but left the Legislature untouched.<sup>7</sup> As one prominent attorney noted, "New Jersey has a good court system, a good but certainly not the best executive branch, but a punk legislature."<sup>8</sup>

Some statutes are so inartfully drawn that a resort to the courts is necessary to render them useful. When legislators ask for judicial recommendations of corrective legislation to remedy such problems, the judges' suggestions are ignored. Indeed, it has been suggested that the Legislature frequently scuttles the governor's programs because legislators lack the staff to understand policy issues and are primarily concerned with their parochial political interests. While this characterization rests upon a kernel of truth, it also reflects much that was a great deal truer a decade ago than it is today.

The past decade has seen active change in New Jersey politics.<sup>9</sup> State government has become more prominent with the assumption of new public service responsibilities and the receipt of expanded revenues. At the same time, increased population mobility, changing demographic patterns, legislative districting reforms, and aggressive criminal prosecutions have combined to reduce the power of local party organizations over the state government.

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<sup>6</sup> See D. McKean, *PRESSURES ON THE LEGISLATURE OF NEW JERSEY* (1938).

<sup>7</sup> W. Brennan III, Report: Constitutional Reforms; Focus on Legislature (Feb. 28, 1974) (Report to President of N.J. Bar Association).

<sup>8</sup> For a more extended discussion, see R. LEHNE, *THE QUEST FOR JUSTICE*, ch. 2 (David McKay, forthcoming).

<sup>9</sup> See *POLITICS IN NEW JERSEY* (A. Rosenthal & J. Blydenburgh eds. 1975); *NEW JERSEY LEAGUE OF WOMEN VOTERS, NEW JERSEY SPOTLIGHT ON GOVERNMENT* (1969).

The growing politicalization of normally quiescent citizen interest groups has further injected vitally needed diversity into this governing environment.

These changes are not unique to New Jersey, however, but are indicative of a nationwide movement of state legislatures into the modern era. Numerous national foundations and organizations have added impetus to this movement by committing their resources to the improvement of legislatures throughout the country.<sup>10</sup> To date, they have met with some notable successes. One student has concluded that in the last ten years, "legislatures have been developing their resources; they have been adding staff; they have been expanding facilities; they have been reorganizing and refashioning their procedures; . . . in short, they have been expanding their capacities to do a better job."<sup>11</sup> As a result, state legislatures may be among the few governmental institutions which are better able to manage their problems today than they were ten years ago.

Although the nationwide legislative reform movement and the shifting contours of statewide politics have both begun to affect the activities of the New Jersey Legislature, the inevitable tensions between legal and democratic standards for conducting public business make an evaluation of these changes difficult. Of the diverse criteria available for judging the activities of the New Jersey Legislature, the best standard is, of course, whether the Legislature has improved the quality of public life. However, given the wide range of interests and goals of those involved, this standard merely begs the question. Therefore, three simple, albeit not totally satisfactory, dimensions of legislative conduct will be explored to guide the evaluation contained herein. The first is potential, since institutional capacity is a prerequisite for undertaking any complex task; no legislature could adequately discharge its responsibilities without minimal resources. The next is procedure, as the quality of established operating procedures can help or hinder the realization of an institution's potential. The third criterion is legislative performance, which encompasses both the degree of independent initiative displayed in the enactment of programs and the degree of supervision provided for the administration of public policies. The examination of potential, procedure, and performance will permit a more detached evaluation of the recent conduct of the New Jersey Legislature.

### *Legislative Potential*

In 1956, the members of the New Jersey Senate and Assembly introduced 1037 bills for consideration; in 1966, this number increased to 1453; and in

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<sup>10</sup> E.g., Legis - 50, The National Conference of State Legislatures, The American Assembly, The Council of State Governments, The Ford Foundation, and The National Municipal League.

<sup>11</sup> A. Rosenthal, *Legislative Control*, reprinted in 1 LEGISLATORS AND THE LEGISLATIVE PROCESS 17 (Nov. 1976).

1976, Trenton lawmakers sought the consideration of 4247 bills.<sup>12</sup> This expanding number of proposals constitutes a burden which the Legislature must somehow shoulder. The New Jersey Legislature has expanded its institutional capacity dramatically in the past ten years to help it deal with this burgeoning workload. One indicator of this growth is the increase in the amount of funds appropriated for legislative operations. As shown in Table One, *infra*, the record compiled from fiscal expenditures from 1968 to 1976, as well as fiscal appropriations for 1977 and those recommended by the governor for 1978, indicates a consistent growth in all categories although some areas have increased more rapidly than others.<sup>13</sup>

In 1968, \$3.7 million was spent to support the Legislature; by 1978, this figure will grow almost three-fold to \$10.7 million. Although this increase in funding represents the expansion of legislative capacity, it does not necessarily indicate that this capacity is being utilized. Therefore, it is necessary to analyze the activities which these funds support to see if the Legislature has expanded the scope of its role in public life while at the same time discharging its traditional functions more efficiently.

Column two of Table One, *infra*, records the amount spent on salaries for the members of the Senate and Assembly. In 1968, each of the forty senators and eighty assemblymen and assemblywomen received \$7500 for their services. In addition, the Speaker of the Assembly and the President of the Senate received a supplementary payment of one third of the legislators' base salary. In 1970, legislative pay levels were increased to \$10,000, with the Speaker and the President of the Senate continuing to receive the additional stipend. Those pay scales have remained constant.<sup>14</sup> Of all categories of expenditures, that for member salaries has grown the slowest, 33%, between 1968 and 1978. In addition, New Jersey is one of the few states which does not grant its legislators travel allowances or other customary amenities, despite the fact that salaries have remained fixed at their 1970 levels.<sup>15</sup> Therefore, as the cost of serving in the Assembly and Senate has increased in recent inflationary years, a corresponding increase in legislative compensation should be expected in the near future.

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<sup>12</sup> 43 N.J. LEGIS. INDEX (1956), 53 N.J. LEGIS. INDEX (1966), 64 N.J. LEGIS. INDEX (1977).

<sup>13</sup> See N.J. Governor, Budget Messages (Trenton, N.J. 1968 to 1976).

<sup>14</sup> N.J. STAT. ANN. § 52:10A-1 (West 1970). The one year decline in 1976 does not reflect a peculiar legislative altruism, but a change in payroll procedures. Traditionally, lawmakers had received a check for their years of service when the Legislature first convened early in January. Beginning in 1976, however, this changed. Now legislators are paid twice each year, with a check for half of their salary arriving on January 1 and a second check for the other half early in July. The shift in payment dates pushed the need to fund one half of the costs of legislative salaries back six months and into a subsequent fiscal year, yielding a one-time reduction in expenditures of six hundred thousand dollars.

<sup>15</sup> 1 COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 50-53 (1977).

While increased expenditures for legislative salaries reflects increased costs for essentially the same commodity, growing expenditures for legislative staff signify augmented services. Between 1968 and 1978, expenditures for legislative staff assistance grew from \$778,000 to \$2.7 million, an increase of 240%. General legislative staff assist in the scheduling of bills, the conduct of the session and the overall housekeeping chores of running a legislature. More importantly, this category of expenditures supports staff provided to the majority and minority party leaders in both houses to aid in managing policy issues from their own partisan perspectives. This staff is selected by the legislative parties and is responsible to them. The notable expenditure increase in 1973 reflects a decision to expand the size and capacity of the staff responsible to the leadership itself. In 1975, however, a different decision was made. The additional expenditure of \$1.0 million for Senate and Assembly staff in that year resulted from a legislative decision to provide each legislator with \$15,000 to hire personal aides to assist in serving the day-to-day needs of constituents. Likewise, the increased expenditures for miscellaneous Senate and Assembly items for the same year recorded in column four of Table One, *infra*, was earmarked for grants of up to \$5000 to each legislator to rent and equip an office in the home district to improve constituent service. Before 1975, some lawmakers had access to legislative funds to help respond to district problems, but in that year the funding was established on a regulated basis. All legislators, not just leaders, would receive funds for constituency activities, and they would receive them in their own right, by way of positions in county party organizations. The establishment of this funding provision permitted members of the Senate and Assembly to become somewhat less dependent on party leaders and on party organizations.

Expenditures for the Legislative Services Agency<sup>16</sup> grew by almost 500% between 1968 and 1978. The Legislative Services Agency (LSA) is a non-partisan agency which drafts legislative proposals and continuously reviews the appropriateness of existing statutes, and part of the increased expenditures during these years reflects the heightened costs of these tasks. A large portion of the increased expenditures, however, was not devoted to traditional bill drafting function, but rather was used to underwrite a new policy of assigning individual aides to each of the Legislature's standing committees. Previously, most committees had no permanent staff resources, and as a result, made little independent contribution to the conduct of legislative business. Party caucuses discussed issues and reached agreements which were occasionally recorded in the names of committees, but the committees usually did little on their own. With the assignment of a professional staff, the

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<sup>16</sup> See generally N.J. STAT. ANN. §§ 52:11-6 to 42 (West 1970 & Supp. 1977-1978).

committees now have the resources to begin to review and organize the complex policy issues that come before the Legislature.

As shown in Table Two, *infra*, the number of staff members of the Legislative Services Agency increased sharply from thirty-five in 1968 to one hundred in 1975, and it has remained at that figure ever since.

The greatest proportionate increase in expenditures, however, was registered by the Office of Fiscal Affairs (OFA),<sup>17</sup> whose budget has grown to be seven times that of its predecessor, the Legislative Budget and Finance Office. Between 1968 and 1978, this budget has increased from \$151,000 to \$1.0 million.<sup>18</sup> One of the OFA's divisions reviews the governor's budget recommendations, prepares estimates of tax revenues and staffs the Legislature's Taxation and Appropriations Committees. A more recent program analysis division examines the administration of programs to assure compliance with legislative intent and to note successes in meeting program goals. As noted in Table Two, *infra*, the number of budgeted personnel in the Office of Fiscal Affairs has increased from fifteen to forty-nine during this period, with the greatest share of growth occurring in the program analysis area. Additional columns in both Tables One and Two describe the resources of the Division of State Auditing, which performs verification and post-auditing functions. The number of personnel in this division has expanded slightly during the past decade and its expenditures have grown commensurately, but its activities are basically the same today as they were in 1968.

New Jersey, more than most other states, has traditionally relied upon legislative commissions to examine and prepare for emerging public problems. In recent years, for example, funds were appropriated for legislative commissions to plan for the state lottery, fashion an open-space policy, study landlord-tenant relationships, review a variety of legal topics, develop the Hackensack Meadowlands, and study drug abuse. The expenditures for legislative commissions have grown dramatically in the past decade, but these commissions do not perform the same role they did in 1968. Today, the bulk of the funds supports the State Commission of Investigation (SCI) which is a legislative commission for budgetary convenience, but which does not assist in day to day legislative operations. Charged with investigating organized crime and official misconduct, the SCI receives 70% of monies appropriated for legislative commissions. The second largest recipient is the Intergovernmental Relations Commission, but this Commission serves primarily as a conduit for payments to such national organizations as the Council of State Governments, the National Governors' Conference, the National Conference of State Legislatures, and the Education Commission of the

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<sup>17</sup> See generally N.J. STAT. ANN. §§ 52:11-43 to 53 (West Supp. 1977-1978).

<sup>18</sup> This discussion will treat the Division of State Auditing as a separate institution although it has subsequently been incorporated in the Office of Fiscal Affairs.

States. Although important, these bodies are of no direct assistance to legislative operations. Fewer ad hoc legislative commissions are formed today, as their role in problem definition and policy formation has been preempted by the permanent staffs of the Legislative Services Agency and the Office of Fiscal Affairs.

It will cost almost \$7.0 million more to operate the New Jersey Legislature in 1978 than it did in 1968, \$10.7 million versus \$3.7 million. A categorical analysis of the percentage distribution of these funds, noted in Table Three, *infra*, shows that the percentage of expenditures for members' salaries and miscellaneous items has declined while funds for partisan staffs, the non-partisan staffs of the Legislative Services Agency and the Office of Fiscal Affairs and legislative commissions have increased. At the same time, the relative financial support for the auditing division has remained constant. Of the \$7.0 million in new expenditures, approximately \$2.5 million represents the effect of inflation while roughly \$4.5 million supports new or expanded programs and responsibilities undertaken in the past ten years. District aides and district offices are now a permanent feature of legislative operations. The LSA and the OFA have had their staff augmented by one hundred persons. Partisan leadership staffs have also increased their numbers and a State Commission of Investigation has been established. Thus, the New Jersey Legislature should be better able to marshal essential information and scrutinize relevant points of view than it was ten years ago. A process of institutional development and elaboration has occurred which has raised the level of legislative potential significantly. The activities of the SCI and the performance of individual legislators in their districts are beyond the scope of this paper, but the next section will explore the procedures of legislative operations which help determine whether increased potential is likely to be translated into improved legislative performance.

### ***Legislative Procedure***

In 1956, the New Jersey Legislature passed and the governor signed into law 233 new measures; by 1966, this number had risen to 327; and in 1976, approximately 175 proposals were adopted by the Legislature and approved by the governor.<sup>19</sup> Although the number of bill introductions has increased dramatically, no commensurate increase in the number of bills actually passed each year is shown. This is indicative of a growing trend of legislative restraint. In the twentieth century, the most prolific legislature served in 1948, and enacted 472 measures; the Legislature which showed the greatest restraint served in 1961 and passed only 145 bills.<sup>20</sup> The volume

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<sup>19</sup> 1956 N.J. Laws 802; 1966 N.J. Laws 1462; 1976 N.J. Laws 621.

<sup>20</sup> 1976 N.J. LEGIS. MANUAL 294, 295.



of bills passed each year, of course, is no indication of the quality of policy judgments contained therein. Traditionally, many states strictly limited the number of days that state legislatures could meet to restrict legislative activity. Our concern here is not with the number of bills that have been enacted, but with the nature of the procedure that has informed legislative action.

As suggested above, perhaps the greatest development in legislative procedure that has occurred in New Jersey in the past decade has been the decline of party caucuses and the rise of standing reference committees. In the past, no measure would pass the Legislature until it had won the approval of the majority party caucus in each chamber. In the 1950's and 1960's, however, the caucus system came under severe attack as reformers charged that its closed meetings constituted an evasion of public accountability and that its broad subject matter purview prevented the emergence of any subject-matter expertise. Since the early 1970's, some bills have begun to be sent directly from standing committees to the floor, and the slowly declining importance of caucuses has been reflected in the fact that they are now called simply "conferences." Senate and Assembly rules have now both been amended to provide time for meaningful committee deliberations and to require the committees to append a statement to each bill reported describing its essential provisions.<sup>21</sup> While the decline of the caucus and the rise of committees has been somewhat more pronounced in the Assembly than in the Senate, the development has characterized both chambers.

Reformers argued that standing committees should thoughtfully review proposed legislation and serve as arenas where citizens could express opinions about emerging policy issues. Tables Four and Five, *infra*, provide some indication of how well committees are performing these two functions.<sup>22</sup>

Clearly, the public today has a greater opportunity to observe and contribute to legislative decision-making than it did a decade ago, and it is through committee operations that this has been accomplished. No comprehensive documents exist recording committee meetings in previous decades, but most sources agreed that in the past legislative committees "scarcely ever met."<sup>23</sup> New legislative rules now require that records be

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<sup>21</sup> N.J. Senate R. 83 B, reprinted in 1976 N.J. LEGIS. MANUAL 347; N.J. Assembly R. 10:10, reprinted in 1976 N.J. LEGIS. MANUAL 386-87.

<sup>22</sup> The year 1975 was selected for examination rather than 1976 because the Legislature now convenes for a two year term rather than two separate one year terms, and the action on many measures introduced in 1976 will not be completed until 1977. In both 1966 and 1975 the same party controlled both houses of the Legislature and the governor's office. The data in Table Five is derived from the weekly *Legislative Index*, which is not a foolproof record, but is sufficiently accurate for our purposes.

<sup>23</sup> A. Rosenthal, *The New Jersey Legislature: The Contemporary Shape of an Institution; Not Yet Good But Better Than It Used To Be*, reprinted in N.J. HIST. COMM'N, THE DEVELOPMENT OF THE NEW JERSEY LEGISLATURE 95 (1976).

kept of the frequency of committee meetings, the presence or absence of each member, and how members voted on each motion.<sup>24</sup> As noted in Table Four, *infra*, the number of meetings varied in 1974, 1975, and 1976, with fewer meetings held in election years, but the record remained one of significant committee activity. In 1974, the frequent meetings of the education and taxation committees reflected the Legislature's efforts to respond to the educational and fiscal ramifications of the *Robinson v. Cahill* decision.<sup>25</sup> In that year, Assembly committees held more than two hundred formal meetings, and although that number has declined in subsequent years, in 1976 the average Assembly committee still met a dozen times. For example, the Energy and Natural Resources Committee held only six meetings while the Judiciary, Law, Public Safety and Defense Committee convened on eighteen occasions. Furthermore, some Assembly committees, such as the Appropriations Committee, held many informal unrecorded meetings. Senate committees met during these years with comparable frequency. Senate and Assembly rules now require that advance notice be posted for committee meetings and that regular committee meetings be open to the public.<sup>26</sup> In addition to the normal sessions, many committees also hold periodic public hearings on general topics or specific legislative proposals where citizens, officials, and interest group representatives are invited to express their own policy preferences. Table Five reveals that between 1966 and 1975 the number of public hearings has doubled, increasing from twenty-three to forty-five.

The Legislature is more open today than it was a decade ago, and the public has a greater opportunity to participate in legislative activities, but this has not been an unmixed blessing. In many instances, the only "citizens" who attend committee meetings are organizational officials advocating their legitimate but nonetheless special causes. It is a rare occasion when the average New Jersey citizen appears at committee sessions simply to offer a disinterested opinion. The decline of the caucus has increased the level of public pressure on the Legislature by diluting the secrecy which once shielded lawmakers from scrutiny.

The creation of a committee system was intended not only to make the Legislature more accessible to the public, but also to improve the quality of consideration given to proposed bills. One indication of the attention accorded proposed legislation is the frequency with which committees amend bills. Only seven of the 327 bills enacted by the Legislature in 1966 were amended in committee, as shown in Table Five, *infra*. In contrast, in 1975,

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<sup>24</sup> N.J. Senate R. 83 A, *reprinted in* 1976 N.J. LEGIS. MANUAL 346-47; N.J. Assembly R. 10:8, *reprinted in* 1976 N.J. LEGIS. MANUAL 386.

<sup>25</sup> See generally 62 N.J. 473, 303 A.2d 273 (1973).

<sup>26</sup> N.J. Senate R. 76, *reprinted in* 1976 N.J. LEGIS. MANUAL 346; N.J. Assembly R. 10:5, *reprinted in* 1976 N.J. LEGIS. MANUAL 386.

committees amended forty-six of the 398 measures that become law. While only one type of committee action, amendments accurately reflect the increasing role that committees have come to play in legislative operations. Committees also contribute to the quality of legislative action by preparing statements describing the content of the bills they report to the floor. While helpful, the committee statement procedure is not foolproof. Some legislators complain that they are occasionally inaccurate or incomplete, and thus lawmakers can be misled as often as they are enlightened. Another weakness is the failure of the committee system to check the Legislature's growing tendency to short-circuit the deliberate lawmaking process through the use of emergency resolutions. The passage of an emergency resolution can override the delays which have been built into the legislative process to guarantee time for careful analysis of legislative proposals. In 1975, 18% of all bills enacted were done so under emergency procedures. The significance of emergency resolutions probably extends well beyond their sheer numbers because they are frequently employed to assist the passage of the most far-reaching and controversial legislation.

Increased committee activity has been made possible by the growth of the Legislative Services Agency, as well as of the Office of Fiscal Affairs, which latter was designed to improve legislative supervision of budget and tax measures. The Annual Reports of the Office of Fiscal Affairs regularly record the number of audits that have been completed, the program analyses that have been published, the leases that have been examined, the special reports that have been prepared and the fiscal notes that have been assembled.<sup>27</sup>

The numbers unquestionably reflect substantial activity, but the utility of this activity is sometimes disputed. For example, legislative rules stipulate that fiscal notes estimating the dollar amounts involved should be prepared by the Office of Fiscal Affairs to accompany any bill which would alter state revenues or increase state expenditures.<sup>28</sup> Legislators point out, however, that fiscal notes frequently do not appear at the appropriate times in the legislative process and that sometimes they do not appear at all. In fact, a separate analysis of legislative proposals affecting the state's pension programs reveals that fiscal notes were prepared on only 35% of the measures, cost estimates were provided by the executive on 10% of the bills, 5% of the bills had no significant fiscal implications and no fiscal information was provided on the balance of the proposals, which constitutes almost 50% of the total number introduced.<sup>29</sup>

The largest single activity of the Office of Fiscal Affairs is the annual review of the governor's budget recommendations. Traditionally, the Legisla-

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<sup>27</sup> See OFFICE OF FISCAL AFFAIRS ANN. REP. (1976).

<sup>28</sup> N.J. Senate R. 137 to 142, *reprinted in* 1976 N.J. LEGIS. MANUAL 361-63.

<sup>29</sup> OFFICE OF FISCAL AFFAIRS, NEW JERSEY'S CONTRIBUTORY PUBLIC EMPLOYEE PENSIONS PROGRAMS: PROGRAM ANALYSIS OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM 112 (1976).

ture adjourns each March while its Joint Appropriations Committee hears presentations from executive departmental commissioners defending their programs and budgetary requests. After these presentations, the committee conducts a series of meetings to evaluate hundreds of "resolutions" proposing adjustments in the line items of the budget. The Office of Fiscal Affairs prepares extensive analysis of specific programs and revenue estimates to assist the Joint Committee in making independent judgments about the Administration's recommendations.

One indirect way to appraise the impact of the efforts of the Joint Appropriations Committee and the Office of Fiscal Affairs Budget Review Division is to examine the magnitude of changes made in the governor's budget recommendations. Informed review of the detailed expenditures proposed by the governor may not persuade lawmakers to alter those proposals, but actual changes in the recommendations do suggest a degree of legislative vigor in the appropriations process. Table Six, *infra*, displays the proportionate differences between gubernatorial recommendations and legislative appropriations for budgetary categories or program elements for fiscal years 1968 and 1977.<sup>30</sup> Forty-four separate budgetary program elements covering the full range of executive activities were defined for fiscal 1968, and sixty-two program elements were isolated for fiscal 1977. An examination of the two distributions reveals that the Legislature has had a significantly greater impact on the actual appropriations in 1977 than in 1968. In 1968, amounts actually appropriated by the Legislature were within 6% of the governor's recommendation in 84% of the cases, while in 1977 only 40% of the fiscal appropriations were within that range. Consideration of the fiscal 1977 budget proceeded in unique circumstances with the governor appending a list of suggested increases to his formal budget recommendations, but legislative action was notable nonetheless. While many program elements were increased that year, a number of other elements were slashed.

An examination of changes in selected legislative procedures tells a mixed story. Undoubtedly, there is a greater openness and more committee activity in the Legislature today than a decade ago, but these changes have not thoroughly permeated legislative behavior. It is apparent that the Legislature sometimes ignores the potential contributions of reformed procedures and reverts to traditional forms when critical issues arise. Lawmakers are amending policy proposals and adjusting budgetary recommendations with increased frequency, but at present the motivations for these actions are not always clear. To appraise the quality of legislative activity, the next section

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<sup>30</sup> The Table was constructed by comparing the funding level recommended by the governor for each program element, with the amount that is subsequently appropriated by the Legislature and then computing the percentage difference between the two.

of this article moves beyond tabulations of data to explore two specific instances of legislative performance.

### *Legislative Performance*

On April 3, 1973, the New Jersey Supreme Court delivered its long awaited decision in *Robinson v. Cahill*.<sup>31</sup> This ruling declared the state's program for funding elementary and secondary education unconstitutional and ordered the state legislature to devise a new school finance plan which would pass constitutional muster. The decision was a complex one with wide-ranging implications, and many citizens and not a few legislators were not sure that they understood it. An appropriate legislative program would undoubtedly affect school governance, school finance, and the state's revenue system, but no one knew precisely how.

Two talented lawmakers elected in November 1973 would spearhead legislative efforts to reply to the *Robinson* decision, but on election day neither of the two would have predicted that involvement. Senator Stephen B. Wiley had hoped to become Chairman of the Law and Public Safety Committee rather than of the Education Committee, and Assemblyman Albert Burstein had sought to become an assistant majority leader rather than Chairman of the Assembly Education Committee. Capable, well-regarded and not content to accept a passive role for the Legislature in responding to the court decision, Wiley met with Burstein to consider possible ways to fashion a school finance program. Considered first was the creation of a forum chaired by the governor and composed of legislative officers and members of the executive branch, but both legislative and executive officials were reluctant to intermingle their activities so closely. Wiley and Burstein then agreed to combine their separate committees into a joint education committee, so as to pool their resources and the prevent duplication of effort. With Wiley as Chairman and Burstein as Vice Chairman, the Joint Education Committee was formally established in mid-April 1974 and promptly became the focal point of the Legislature's efforts to respond to the educational aspects of the *Robinson* decision.

The efforts of the Joint Education Committee matched the complexity of the issues. The director of a university research center was retained as committee secretary, four full-time legislative aides were provided to assist the committee's research and three dozen consultants were hired to prepare position papers on specific topics under consideration. In spring 1974, committee members held dozens of formal meetings and informal conferences and took the testimony of more than one hundred people at public hearings throughout the state. Members of the committee had hired capable staff and

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<sup>31</sup> 62 N.J. 473, 303 A.2d 273 (1973) See R. LEHNE, *supra* note 8, chs. 4, 5.

had worked into the night to prepare a program to respond to the *Robinson* ruling, but when their program emerged it was clear that although these activities reflected the trappings of legislative initiative they lacked its substance.<sup>32</sup> The members of the committee had immersed themselves in the Byrne administration's recommendations and almost unanimously persuaded themselves of their validity, and thus had not prepared a program that was genuinely their own. Despite the committee's long hours, its report served as the vehicle to introduce the Byrne Administration's proposal rather than as a mechanism to explain a legislative package.

Following the administration's recommendations, the Joint Committee sought to base the state's education program, not on specific standards, but on a process in which the State Board of Education and individual local school districts would define a series of educational goals, design a curriculum to meet these goals and then assess the progress the schools were making. In districts where educational programs were found deficient, the Commissioner of Education would be authorized to order remedial action. Despite the committee's efforts, this program was set aside later in 1974 when the administration's companion proposal for the adoption of a personal income tax was rejected by the Senate. It was back to the educational drawing boards for Wiley, Burstein and the Joint Education Committee.

Even though the administration's program had been set aside, it was soon clear that the committee's efforts had not been wasted. During its deliberation, members and staff became familiar with the detailed issues involved in the proposal, the important concerns of the affected professional associations, and the viewpoints of legislators. On its own, the committee's leadership began to discuss the educational governance and school aid provisions of the original program with the legislators and groups involved, and they had soon assembled a catalogue of objections to the original proposal. Some claimed that the original program made educational promises the state could not keep, others protested the cost of the Byrne Administration's plan and still others feared that the Department of Education would administer the new program in precisely the wrong way. Gathering these objections together, the Joint Education Committee then drafted a new bill reflecting the policy positions, organizational pressures and constituency perspectives of a broad spectrum of legislators. On September 29, the committee's program passed the Assembly<sup>33</sup> and became the Public School Education Act of 1975,<sup>34</sup> but the *Robinson v. Cahill* controversy remained unresolved in its most critical aspect; there was still no revenue plan to finance the court-mandated educational reforms.

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<sup>32</sup> See generally JOINT EDUCATION COMMITTEE, 196TH N.J. LEGIS., 1ST SESS., REPORT TO THE NEW JERSEY LEGISLATURE (June 13, 1974).

<sup>33</sup> 1975 N.J. Assembly Minutes 568.

<sup>34</sup> Ch. 212, 1976 N.J. Laws 871 (codified at N.J. STAT. ANN. §§ 18A:7A-1 to 33 (West Supp. 1977-1978)).

In New Jersey, revenue bills originate in the Assembly. In January 1976, the Assembly which was elected the previous November took office without a record of its own on the protracted tax disputes which has poisoned the state's politics for the two previous years. The Assembly elected a new speaker, Assemblyman Joseph LeFante of Bayonne, and a new Majority Leader, Assemblyman William Hamilton of Middlesex County. The new leadership team began meeting with small groups of two to four legislators in their districts to try to find that combination of proposals which would be acceptable to "the folks at home." Meeting at Howard Johnson's or spending Saturday mornings at Hamilton's law office, the leadership soon recognized that property tax relief was as important to members as funding the state's schools, and increased financial support for the operations of the state government was far down on almost everyone's list of essential elements for a new revenue program.

Departing from traditional practice, the leadership turned to the Assembly Taxation Committee rather than to the executive branch to put its tax package together, and a complicated program it was. The proposals included homestead rebates to reduce residential property taxes, tax credits and rebates for renters. Other sections created a state program to share tax revenues with localities on a per capita basis and authorized the state to pay the full costs of the extraordinary tax exemptions given senior citizens and veterans. To guarantee that new revenues would not merely subsidize increases in costs of existing government services, percentage limitations were placed on the permissible increases in expenditures by municipalities, counties and the state itself. A number of specialized taxes were repealed under the program and tax deductions were authorized for college or private school tuition. All new revenues would be used to either reduce local property taxes or pay the \$375 million tab now attached to the Public School Act of 1975,<sup>35</sup> but not to support the activities of the state government itself.

The Assembly leadership and tax committee first worked on the details of the property tax relief schemes because they wanted to concentrate early press coverage on the attractive aspects of the program. Eventually, the price would have to be paid, however, and taxation proposals formulated. The leadership needed approximately \$700 million in new revenue to increase school funding, reduce local property taxes and repeal the specialized levies for the first year and \$800 million for the same purposes in the second year. An increase in the state retail tax from 5% to 7% would come close to providing the funds needed for the first year, but it would fall approximately \$100 million short in subsequent years. The most reasonable alternative was to recommend the adoption of a personal income tax; the tax proposed by the leadership utilized a graduated rate of from 2% to 4% of gross income.

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<sup>35</sup> *Id.*

While securing support for the program, it was agreed that the tax would be a temporary measure which would "self-destruct" on June 30, 1978, unless reenacted by a subsequent Legislature. In addition, another element of the tax package, which was included to win needed support, authorized the holding of a tax convention in the spring of 1978 to reconsider the full range of available tax alternatives. Finally, for the many legislators who doubted that the program of goals, curriculum and assessment would improve the quality of instruction in the state's schools, an amendment to the Public School Act of 1975<sup>36</sup> was accepted which directed the Department of Education to establish statewide minimum standards for the performance of basic skills.

The fifteen-part legislative package was complicated, and still needed some fine adjustment, but it did possess a basic coherence. It stressed that the adoption of a personal income tax would not increase the size of the public sector but, rather, would reduce local property taxes, repeal specialized taxes, and support public schools and no taxes were to pay for new state government activities. Both the Republican and Democratic leaders in the Assembly joined in a bi-partisan effort to enact the separate pieces of legislation, during a session that began on Monday afternoon, March 15, 1976, and extended many hours into Tuesday morning. After additional months of crisis and controversy, the Legislature passed and the governor signed an amended version of this program into law. After three and one half years, New Jersey had finally responded to the supreme court decision of April 1973.

The New Jersey Legislature had been increasing its capacity and improving its procedures before the *Robinson* decision was rendered, but the ruling highlighted fundamental issues at a critical time and thereby accelerated the transition which was then occurring. The original program to respond to the educational and fiscal component aspects of *Robinson* was formulated by the executive branch, but that draft was set aside in the wake of the defeats of the governor's tax proposals in the summer of 1974. When the attention of the governor's office turned elsewhere, Senator Wiley and Assemblyman Burstein worked with committee staff to revise the administration recommendations to conform more closely to legislative preferences. After prolonged contention and controversy, the Wiley-Burstein program was finally enacted, and its passage recorded one of the first occasions in which the Legislature had displayed significant initiative in the preparation of a comprehensive program affecting the provision of a major public service.

The history of the 1976 taxation program was even clearer evidence that institutional development had occurred in the New Jersey Legislature. After two years of bitter debate over administration proposals, 1976 dawned with a widespread feeling that tax problem was one that could only be resolved

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<sup>36</sup> *Id.*



by the supreme court. Where administration leaders and administration technicians had failed to devise a package which would win the support of the Senate and the Assembly, legislative leaders and legislative technicians had succeeded. Whether good or bad, the final solution to the 1976 taxation dilemma was a genuinely legislative solution, developed with the direct advice of the people's representatives. The actual formulation of the complex tax package became an institutional accomplishment of rare magnitude, and it constituted persuasive evidence of the development that had occurred in the New Jersey Legislature in the past decade.

Numerous examples of legislative initiative can be collected from recent sessions of state legislatures in all regions of the country. Nationally, a renewed legislative energy is being channeled into the formulation of new governmental programs designed to respond to pressing public problems. The political incentives for authoring new programs are often compelling to legislators: their efforts win widespread media attention, earn the gratitude of clientele groups and establish a concrete record that can be displayed to constituents. In many instances, expanded staff resources have made it too easy for lawmakers to reap the benefits which accrue to the sponsors of new programs. Congress frequently serves as an unconscious model for state legislatures, and some have adopted its propensity to enact another new program before the dust has settled from the last new initiative. Increasingly, legislatures at both the state and national level are being characterized as "bill factories" which pass programs with such bewildering frequency that administrative agencies are scarcely able to establish a structure to implement one program before it is amended or replaced by another. This caricature probably exaggerates the disruption currently produced by legislative energy at the state level, but it does indicate that policy initiation is not the only standard to evaluate legislative performance.

Reviewing the implementation of statutes is a legislative task as important as the initiation of new programs for without legislative oversight, poorly conceived programs might continue unattended and well-designed policies might be undone by administrative bungling. Legislative surveillance can also serve as an antidote to the normal bureaucratic tendency to become increasingly responsive to internal considerations at the expense of original program goals and clientele groups. The incentives for monitoring the implementation of programs are usually less attractive to legislators than those for creating new programs. Few newspaper stories are written about the battles waged to improve the performance of existing programs, even though the social consequences may be quite far-reaching. Furthermore, elected officials run the risk of jeopardizing their relationships with established interest groups when they review the conduct of existing programs and of alienating the leaders of major administrative agencies. In addition, it is almost always quicker and easier to create a new organization than

to reform an entrenched one, and legislators usually devote their efforts to activities which will have visible results within a relatively short time.

Legislative efforts to respond to *Robinson* were not confined to the formulation of the new statute but extended as well to the creation of a mechanism for the ongoing review of the implementation of the newly authorized program. A permanent Joint Committee on the Public Schools was established with responsibility to:

[C]onduct a continuing study of the system of free public schools, its financing, administration, and operations, and to make recommendations for legislative action as it deems practicable and desirable for the maintenance and support of a thorough and efficient system of free public schools.<sup>37</sup>

Some elements of the education community in New Jersey welcomed the new committee because they believed that it would become an impartial forum where troublesome problems could be candidly discussed. When some expressed fear about the consequences of growing legislative involvement in the conduct of education in the state, others replied that the legislators would soon lose interest in monitoring education and turn to more pressing issues. Whatever the eventual results and achievements of the Joint Committee on the Public Schools, its creation testifies to the concern of New Jersey legislators for the effective implementation of new programs.

Well-motivated individuals differ in their evaluation of the Legislature's response to the *Robinson* decision. Even though policy disagreements persist, the Legislature performed at least as well in this situation as the state's other governing institutions. Policy options were carefully presented and intelligently discussed, and then the lawmakers expressed their preferences. This is what textbooks tell us legislatures are supposed to do.

### *Conclusion*

Today, as a decade ago, the New Jersey Legislature remains easy to ridicule. It is often inefficient, occasionally foolish and frequently distracted from important policy judgments by its own members and by the roadblocks of the executive branch. Sometimes its programs are poorly conceived, and sometimes they are poorly administered. Measured against a set of reasonable expectations, however, the New Jersey Legislature is a different place than it was a decade ago. While far from perfect, its potential, its procedures and its performance display abundant signs of improvement and occasional evidence of distinction. Careful examination of the evolution of the Legislature will temper the harsh criticisms that are frequently heard and enrich the quality of the recommendations that are made to improve the institution.

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<sup>37</sup> N.J. STAT. ANN. § 52:9R-3 (West Supp. 1977-1978).

TABLE ONE  
NEW JERSEY LEGISLATIVE EXPENDITURES, 1968-1978  
(in thousands)

Fiscal Year	Total	Member Salaries	Senate and Assembly Staff	Miscellaneous			Legislative Services Agency	Office of Fiscal Affairs	Legislative Commissions	Division of State Auditing
				Senate and Assembly Items						
1968	\$ 3,742	\$ 905	\$ 778	\$ 869	\$ 374	\$ 151	\$ 206	\$ 458		
1969	4,057	905	794	841	418	179	424	495		
1970	5,147	1,207	809	978	544	208	807	595		
1971	5,429	1,182	748	1,142	635	231	874	617		
1972	5,940	1,207	891	1,047	870	354	840	730		
1973	7,266	1,198	1,455	1,379	952	614	865	803		
1974	7,414	1,207	1,465	1,191	1,026	761	869	896		
1975	9,727	1,207	2,418	1,798	1,484	905	938	978		
1976	9,372	603	2,667	1,720	1,464	859	981	1,077		
1977	10,107	1,207	2,650	1,432	1,638	936	1,031	1,213		
1978	10,667	1,207	2,650	1,704	1,730	1,048	1,198	1,152		

Source: N.J. Governor, Budget Messages (Trenton, N.J. 1970-1977). Member salaries consist of the sum of salaries of senators and assemblymen. Senate and Assembly Staff includes: members, staff services, and officers and employees of the Senate and Assembly. The miscellaneous items are materials and supplies, nonpersonal services, maintenance of property, district offices, and compensation awards. Prior to the establishment of the Office of Fiscal Affairs (OFA) in 1971 the Legislature relied upon the Office of Legislative Budget and Finance. The figures under OFA until 1971 are the expenditures for this office. Although the Division of State Auditing was transferred to the OFA in 1971, it is treated here as a separate expenditure category.

TABLE TWO  
NON-PARTISAN STAFF OF THE NEW JERSEY LEGISLATURE  
1968-1978

Fiscal Year	Total	Legislative Services Agency	Office of Fiscal Affairs	Division of State Auditing
1968	110	35	15	60
1969	116	40	16	60
1970	118	40	18	60
1971	137	59	18	60
1972	143	65	18	60
1973	166	65	39	62
1974	181	65	48	68
1975	216	100	47	69
1976	222	100	55	67
1977	216	100	48	68
1978	216	100	49	67

Source: N.J. Governor, Budget Messages (Trenton, N.J. 1970-1977).

TABLE THREE  
PERCENTAGE OF NEW JERSEY LEGISLATIVE EXPENDITURES BY CATEGORY, 1968-1978

Fiscal Year	Total	Member Salaries	Senate and Assembly Staff	Miscellaneous Senate and Assembly Items	Legislative Services Agency	Office of Fiscal Affairs	Legislative Commissions	Division of State Auditing
1968	100%	24%	21%	23%	11%	4%	5%	12%
1969	100	22	20	21	10	4	11	12
1970	100	23	16	19	10	4	16	12
1971	100	22	14	21	12	4	16	11
1972	100	20	15	18	15	6	14	12
1973	100	17	20	19	13	8	12	11
1974	100	16	20	16	14	10	12	12
1975	100	12	25	18	15	9	10	10
1976	100	6	28	18	16	9	11	12
1977	100	12	26	14	16	9	10	12
1978	100	11	26	15	16	10	11	11

Source: N.J. Governor Budget Messages (Trenton, N.J. 1970-1977).

TABLE FOUR  
ASSEMBLY COMMITTEE MEETINGS, 1974-1976

<u>Committee</u>	<u>Formal Meetings</u>		
	<u>1974</u>	<u>1975</u>	<u>1976</u>
Agriculture and Environment	16	10	15
Appropriations	5	4	8
Banking and Insurance	17	9	12
Commerce, Industry and Professions	15	10	16
County Government	16	12	7
Education	22	9	11
Institutions, Health and Welfare	17	10	12
Judiciary, Law, Public Safety and Defense	17	11	18
Municipal Government	18	11	10
State, Federal, Interstate Relations	19	8	14
Taxation	20	7	15
Transportation and Communication	17	7	12
Energy and Natural Resources	—	—	6
Labor	17	8	—
Total Committee Meetings	<u>216</u>	<u>116</u>	<u>156</u>
Average Per Committee	16.6	8.9	12.0

Source: Committee records of the New Jersey General Assembly.

TABLE FIVE  
ACTIVITIES OF THE NEW JERSEY LEGISLATURE, 1966 and 1975

	<u>1966</u>	<u>1975</u>
Bills Enacted	<u>327</u>	<u>398</u>
Public Hearings Held	23	45
Bills Enacted with Committee Amendment	7	46
Bills Enacted under Emergency Resolution	38	73

Source: 53 N.J. LEGIS. INDEX (1966), 62 N.J. LEGIS. INDEX (1976).

TABLE SIX  
LEGISLATIVE CHANGES IN GOVERNORS  
BUDGET RECOMMENDATIONS'  
1968 and 1977

<u>Magnitude of Change</u>	<u>1968</u>	<u>1977</u>
Increase by over 10%	7%	32%
Increase by 6 to 10%	9	15
Increase by 2 to 6%	41	32
Change between +2 to -2%	39	6
Decrease by 2 to 6%	4	2
Decrease by 6 to 10%	0	0
Decrease by over 10%	0	13
	<u>100%</u>	<u>100%</u>
Number of program elements	44	62

Source: N.J. Governor, Budget Messages (Trenton, N.J. 1967-1977). The magnitude of change is the difference between the amount the governor recommends and the Legislature appropriates for executive operations for the fiscal years. All budget categories over \$4 million in 1968 and over \$5 million in 1977 were treated as program elements. If a department did not continue at least one program element, the departmental total was treated as a single element. State aid to local governments has been excluded from this examination.