GUBERNATORIAL APPOINTMENT PROCESS

The selection of qualified individuals to serve in state governmental positions excepted or exempted from state civil service is a responsibility shared by the executive and the legislative branches of government. This joint participation in the appointment process is mandated by the Constitution of the State of Michigan of 1963, which accords the governor certain powers to appoint officials subject to the advice and consent of the Michigan Senate.

Historical Developments

To gain a broader perspective of the governor's appointment powers and the use of advice and consent, it is useful to trace the historical development of the executive/legislative relationship regarding appointments. Due to the deep-seated distrust of, and contempt for, British-imposed colonial governors, many early state constitutions greatly limited the power of the office of the governor. **Michigan's first constitution (1835)**, however, did not follow that pattern — it gave the governor substantial power. The governor had the power to appoint the secretary of state, judges of the supreme court, the auditor general, the attorney general, and prosecuting attorneys for each county. These appointments were subject to Senate confirmation. The only state officers popularly elected were the governor, lieutenant governor, and state legislators.

In contrast, the **1850 constitution** reflected the influence of "Jacksonian democracy," ultimately producing the so-called "long ballot." Among the principles of Jacksonian democracy was the belief that public officials should be chosen by election rather than by appointment. The 1850 constitution provided for the election of all principal state officials, including the secretary of state, state treasurer, attorney general, auditor general, superintendent of public instruction, regents of the University of Michigan, state board of education, and supreme court justices. Accordingly, the governor's appointment power was reduced to filling vacancies.

While the adoption of a **new constitution in 1908** did little to either erode or enhance the governor's appointment power, other developments led to a substantial increase in the number of state officials appointed by the governor. Ironically, it was the legislature that played the most significant role in expanding the gubernatorial appointment power. Of the more than 2,000 appointments for which the governor is responsible today, most are to the approximately 250 boards, commissions, and other advisory bodies, which, in most cases, have been established by statutes enacted by the legislature. Some are created on an ad hoc basis, but many are permanent. As rapidly changing social and economic conditions brought about the emergence of new and more complex problems, state government began to expand. Prior to the adoption of the 1963 constitution there were no limitations on the number of state agencies that could be established and no restrictions on the power of the legislature to assign administrative duties to newly created agencies or positions independent of gubernatorial supervision. Even the **1963 constitution** does not preclude the creation of new agencies. However, article V, section 2 of that document does limit the number of principal departments to ". . . not more than 20 . . . ." Moreover, all executive offices, excluding the offices of governor and lieutenant governor and the university governing boards, are to be allocated within those principal departments.

Many newly created agencies were responsible to **boards or commissions** comprised of individuals appointed by the governor. Boards and commissions are common to the administrative structure of many businesses as well as to all levels of government. Proponents of the system argue that by creating a degree of independence, a board or commission can be insulated from political manipulation. The use of staggered or overlapping terms for the members of a board encourages continuity of policy while making it difficult for an executive to appoint a majority of board members during any one term. In addition, the application of bipartisan representation on these bodies ensures some degree of minority representation and input.

Critics of the board or commission role in government object to the lack of accountability of appointees and the possibility of stalemates in the decision-making process. Moreover, perhaps due to the fact that boards and commissions in Michigan state government have evolved gradually over the years, there appears to be little consistency in the internal structure of these bodies, the method used to appoint members, or their functions.

Types of Appointments

In addition to appointing a personal executive staff, the governor currently appoints most executive department heads with the **advice and consent of the Senate**. Two department heads, the

secretary of state and attorney general, are popularly elected. The remaining department directors are appointed by the respective board or commission that heads the department.

The governor is also authorized to appoint a limited number of other positions, particularly of a policymaking nature, within most of the principal departments. Those positions, along with the positions within the Office of the Governor, are exempted from civil service. Certain regulatory officials, such as the racing commissioner, are also appointed by the governor with Senate confirmation. The members of the boards or commissions that head departments are appointed by the governor with Senate confirmation, but the terms for these officials overlap so that a majority of the members cannot be appointed in any one year.

Some of these boards, such as the State Administrative Board, are composed exclusively of state officers serving ex officio (ex officio means "by virtue of office or position"). In some cases the governor serves as an ex officio member of a board or commission. For example, the governor serves as an ex officio member of the State Board of Education and the Michigan Historical Commission. On a number of boards, the heads of executive departments serve as ex officio members.

The governor also appoints the heads of other autonomous agencies such as the lottery commissioner and the director of the Bureau of Workers' and Unemployment Compensation. Most of these appointments require Senate confirmation.

Pursuant to Sec. 1104 of the Revised Judicature Act (MCL 600.1104), stenographers for each circuit court of the state ". . . shall be appointed by the governor after having first been recommended by the judge or judges of the court to which he is appointed . . . ." Senate confirmation is not required.

Limitations on Gubernatorial Appointment Power

The common requirement that gubernatorial appointments be confirmed by the Senate is the most significant limitation imposed on the appointment power. In addition, in some cases the legislature has brought both the speaker of the House and the Senate majority leader into the appointment process.

There are a number of other ways in which a governor is limited in appointing individuals to boards and commissions. Many limitations relate to **statutory conditions** regarding those eligible for appointment. For instance, pursuant to article V, section 5, of the state constitution, ". . . A majority of the members of an appointed examining or licensing board of a profession shall be members of that profession." Furthermore, during the mid-1970s, the legislature amended various laws establishing licensing boards to assure each board had at least one member representing the interests of the general public.

Some of the statutes creating boards and commissions are very specific in dictating the membership qualifications and experiences required. Some sections of law require the governor to appoint members from a **list of nominees** submitted by nongovernmental groups. Also, certain **territorial divisions** of the state must be represented on certain boards and commissions.

Advice and Consent

A primary concern of the framers of the U.S. Constitution was preventing a concentration of power in any one branch of government. Accordingly, a system of **checks and balances** was incorporated into the federal constitution. A key component of this is legislative review of appointments through the mechanism of advice and consent. In Michigan, this is provided for in the state constitution. Article V, section 6, states:

> Appointment by and with the advice and consent of the senate when used in this constitution or laws in effect or hereafter enacted means appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 session days after the date of such appointment. Any appointment not disapproved within such period shall stand confirmed.

The incorporation of this provision in the 1963 constitution effectively reversed the advice and consent process practiced under previous constitutions, none of which provided a definition of advice and consent. Rather than the Senate approving an appointment by positive action, this provision requires the Senate to disapprove an appointment within 60 session days after submission for consideration. In other words, no action by the Senate constitutes a confirmation of an appointment after 60 session days. The count of 60 session days commences when the secretary of the Senate receives written notification of an appointment from the governor's office.

The advice and consent provision incorporated into the 1963 constitution was designed to provide the Senate with reasonable time to reject an appointee while at the same time making confirmation definite should the senate choose not to act on an appointment.

Michigan's advice and consent process contrasts with the concept as practiced by the U.S. Senate. Individuals named to federal positions cannot assume the office until they are confirmed. On the federal level, the President nominates and the U.S. Senate appoints. In Michigan, the governor appoints, and the Senate confirms or rejects the appointment.