

Senate Confirmation of the Governor's Appointments

Report of the

**SPECIAL COMMITTEE TO STUDY
CONFIRMATION PROCEDURE**

Senate of Pennsylvania

Session of 1973

It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature.

ALEXANDER HAMILTON
Essay Number 76
The Federalist

Special Committee to Study Confirmation Procedure

Appointed pursuant to 1973 Senate Resolution
Serial No. 11, adopted February 6, 1973

FRANKLIN L. KURY
Chairman

JOSEPH S. AMMERMAN
Majority Caucus Secretary

RICHARD C. FRAME
Minority Leader

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Majority Whip

STANLEY G. STROUP
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Letter of Transmittal

TO THE MEMBERS OF THE SENATE:

In Essay No. 51 of *The Federalist*, James Madison stated that “If angels were to govern men, neither external nor internal controls on government would be necessary. In forming a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

The confirmation requirement was placed in the Constitution of Pennsylvania as such an obligation of the government to control itself. However, as is often the case in a government “administered by men over men,” the most carefully devised provisions when carried out do not always effectively achieve the results intended.

Members of the Senate—aware of the inefficiencies and serious abuses that now undermine the confirmation process—by resolution established a special committee to conduct a study and suggest measures to improve the procedure. This report presents the committee’s findings and its unanimous recommendations for procedural change. The appendix includes a comprehensive study by the staff of the Joint State Government Commission. Since no other document is now available which intensively explores this topic, this publication will serve scholars in Pennsylvania and elsewhere as a prime reference for future research on the confirmation process.

In undertaking this assignment, the members of the committee agreed wholeheartedly that reforming the Senate’s confirmation procedure is not a matter to be handled on a partisan basis between two competing political parties. Rather, we agreed that this reform is an institutional problem for the Senate that bears equally on both parties and on every Senator. In short, we acted on the basis that reform of the confirmation procedure should be done with the idea of making the Senate a more effective and respected governmental body. In that spirit the committee submits this report.

The committee expresses thanks to Peter M. Coleman, special assistant to the Senate Majority Leader; Thomas W. Corbett, legal and research

counsel to the Senate Minority Whip; Donald C. Steele, research director of the Joint State Government Commission, and the staff of the commission for their substantial assistance.

Respectfully submitted,

FRANKLIN L. KURY, *Chairman*
Special Committee to
Study Confirmation Procedure
November, 1973

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Senate of Pennsylvania

Session of 1973

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Report of the Special Senate Committee

At the Federal Constitutional Convention of 1787 in Philadelphia, our country's Founding Fathers drafted into the Constitution the requirement of Senate confirmation of executive appointments. They developed the concept as a check and balance of the President's appointive power, to insure nomination of qualified men to positions of governmental responsibility.

In 1838 a limited version of the federal requirement was written into the Pennsylvania Constitution. The State provision mandated Senate confirmation of gubernatorial appointments to judicial offices of courts of record and permitted the Governor to fill without senatorial consent vacancies happening during recess of the Senate.

Exactly 100 years ago, on November 3, 1873, delegates to the State Constitutional Convention in Harrisburg adopted a Constitution extending the Senate confirmation requirement and interim appointment privilege to include all offices for which the Constitution or statutes required appointment by the Governor. In addition, they inserted the provision requiring a two-thirds vote of members of the Senate for confirmation, apparently agreeing with the delegate from Lycoming County who argued that this would lift the confirmation process further above the "influence of politicians" and guarantee that appointees were confirmed "upon their merit and not as a reward merely of political services."

As a result of the constitutional revisions made in 1967, Article IV, Section 8, of the Constitution now requires confirmation only for those appointed officers whose confirmation is specifically mandated by the Constitution or the statutes. Under this provision—which is substantially augmented by

general provisions in Section 207 of the Administrative Code of 1929, as amended, and 32 separate statutes—approximately 2,000 appointments are now subject to Senate confirmation.¹

Careful review of confirmations over the past decades reveals that actual practice has not always been in consistent compliance with the constitutional and statutory provisions governing confirmation of gubernatorial appointments. Confusion exists concerning which appointees require confirmation and why some positions require confirmation and others do not.

Furthermore, even the most casual observer of today's Pennsylvania government will sadly note that the confirmation process as it has evolved is not the effective check and balance originally envisioned. To the contrary, the process has become characterized by indefensible delay by the Senate, circumvention of the constitutional requirement by the Governor and excessive political maneuvering by the Senate and the Governor. It has opened both the executive and legislative branches of Pennsylvania government to deserved criticism.

Clearly, reform is needed. The Senate has recognized the need for change by creating the Special Senate Committee to Study Confirmation Procedure and directing it in particular to investigate "the entire Senate confirmation procedure that the Senate follows upon receipt of a nomination."²

Deliberations of the Committee

Following its appointment, the committee undertook a thorough study of the federal and state historical background of Senate confirmation of executive nominations and of current requirements and practices. Committee members also met to evaluate the confirmation history and the responsibility of each position required by the Constitution or by stat-

¹A detailed review of the current constitutional and statutory provisions pertaining to gubernatorial appointment and senatorial confirmation requirements are found in the appendix, pp. 23 to 48. The constitutional provisions are presented in full on pp. 63 to 64.

²Senate Resolution Serial No. 11, adopted February 6, 1973, is presented in full in the appendix, p. 67.

ute to be filled by gubernatorial appointment. The research of the Joint State Government Commission which served as a basis for much of the committee's study is found in the appendix of this report.

On May 3, 1973 the committee held a public hearing in the Capitol at which the following individuals testified (in order of appearance):

Ralph D. Tive, Esquire

The Governor's Special Assistant for Legislation

Honorable Ernest P. Kline

Lieutenant Governor of Pennsylvania

Jack R. Weinrauch, Esquire

Chief Counsel to the Senate Majority Leader

Mrs. Roberta Ehrenberg

Chairman of the Legislative Study for the League of Women Voters of Pennsylvania

Dr. Daniel J. Elazar

Professor of Political Science and Director of the Center for the Study of Federalism, Temple University

Honorable Helene Wohlgemuth

Secretary of Public Welfare

Honorable John C. Pittenger

Secretary of Education

Joseph E. Gallagher, Esquire

Chairman of the Pennsylvania Bar Association Judiciary Committee, who was assisted in responding to questions by

Frederick H. Bolton, Esquire

Secretary and Executive Director of the Pennsylvania Bar Association

While stressing the importance of Senate confirmation of the Governor's major appointments to Pennsylvania's system of checks and balances, all of the distinguished persons testifying suggested measures to improve the process. They generally

called for a reduction in the number of appointments requiring confirmation to include only offices of cabinet status and those involving important policy-making and discretionary powers. Most expressed preference for a constitutional majority vote for confirmation, and several recommended time limitations for the submission and confirmation of nominations. Also recommended were open committee meetings (whenever appropriate) and public hearings on major nominations, thorough screening of important nominations by appropriate standing committees of the Senate and stringent limitations on and Senate review of interim appointments.

Problem Areas Delineated

As a result of the public hearing and the committee's detailed study, members have pinpointed a number of current requirements and practices which interact to impede the confirmation process in Pennsylvania.

First of all, the statutes in a haphazard fashion require Senate confirmation for an extremely large number of positions, many of which vary greatly in importance and degree of responsibility. Altogether the Senate must advise and consent to at least 1,914 appointments to 264 boards, commissions and other bodies. Adding to this burden is the constitutional requirement of a two-thirds majority vote for the confirmation of each appointment, a difficult assignment indeed considering the political composition of the Pennsylvania Senate as well as the number of confirmations required. Little wonder that "gubernatorial appointments gather dust waiting for confirmation that never comes" (as Mr. Tive stated in his testimony) and that governors—frustrated by the time lag and inaction in the Senate—traditionally have grossly misused the interim appointment privilege.

These practices are highlighted by a review of the Session of 1971, during which Governor Shapp submitted 54 nominations to the Senate for confirmation. The Senate held these from one to 247 calendar days and had not yet considered 16 when the General Assembly adjourned. Subsequently, in the period from December 29, 1971 to January 4, 1972, the Governor made 864 interim appointments, thus practically

negating the senatorial role in the confirmation process.

The record for the 1972 Legislative Session is equally discouraging. During the 1972 Session, the Governor submitted 887 nominations and recalled three. The Senate confirmed 41. However, these statistics must be considered in light of the fact that during the first 10 months of the session only 58 nominations were submitted (with one recall) and the Senate confirmed 36 of these. But in the last 18 hectic days of the session—between November 13 and 30—829 nominations were submitted by the Governor and two recalled. During this period, the Senate confirmed five. Following the adjournment of the 1972 Session sine die on November 30 as provided by the Constitution, the Governor made 1,047 interim appointments.

No limitations or prohibitions have prevented these undesirable practices of the Governor and Senate. The Senate has no limitation on the amount of time it may take to confirm or reject a nominee submitted by the Governor. Rather than defeat a nominee, the Senate is more apt to “hold” the nomination. The Governor often has made interim appointments to vacancies that actually existed for many months while the Senate was in session. Interim appointees assume office, receive compensation and are reappointed—again on an interim basis—without senatorial consent.

In addition, no provisions specifically prohibit nominees rejected by the Senate from serving in office. For example, one appointee to an independent board was rejected by the Senate in 1970 but served in office for several years because the Governor reappointed him twice on an interim basis. In the absence of clear legal prohibitions to unconfirmed appointees taking office, one might conclude that confirmation by the Senate is a meaningless and unnecessary exercise.

Several internal Senate rules and procedures do not encourage a thorough, open and expeditious review of nominations.³ The present Senate rules provide that nominations are handled exclusively by the Committee on Rules and Executive Nominations. The standing Senate committees concerned

³Rule XXX on executive nominations is presented in full in the appendix, p. 65.

with legislation administered by administrative departments or agencies have no opportunity to review nominations to these executive bodies.

Public hearings on nominations are almost never held, and little information is made available to the individual Senators, let alone the public, on the background and qualifications of any except the most important and controversial nominations. Often only the Senator in whose district a nominee resides knows of his qualifications—or lack of them.

The present Senate rule dealing with “Information Concerning Nominations” (Rule XXX, Sec. 2) is of questionable value and has been criticized on the grounds that it is unfair to nominees and the public-at-large. This rule requires that information concerning the character and qualifications of a nominee be kept secret, except that specific charges against him may be revealed to the nominee at the discretion of the Rules and Executive Nominations Committee.

Committee Recommendations

It is the intent of the special Senate committee to formulate changes that will infuse efficiency and meaning into the confirmation process, preclude abuse by either the legislative or executive branches and increase public confidence in the Senate’s role as the confirming body on gubernatorial appointments. With these goals in mind the committee recommends that the Senate consider favorably measures which would:

(1) Amend the statutes to remove at least 473 positions with primarily advisory responsibilities from the confirmation requirement (see pp. 14 to 16). This would reduce by approximately 25 percent the number of positions now subject to Senate confirmation but would not remove from the requirement positions with significant administrative or regulatory duties.

One exception to the recommendation for a reduction in the number of appointments requiring Senate confirmation is that approximately 60 deputy secretaries in administrative departments—who are now appointed by department heads with the

approval of the Governor—are added to the list of offices for which confirmation is proposed. The committee recommends that in the future deputy secretaries be appointed by the Governor with Senate confirmation, paralleling the federal practice in which the President appoints, subject to Senate confirmation, certain departmental undersecretaries and assistant secretaries. Members of the committee feel that there is now a regrettable lack of communication between the individuals holding the policy-making deputy-secretary positions and the standing committees concerned with the programs they administer. Senate review and confirmation could result in a meaningful interchange of views regarding problems and goals and a closer relationship between the legislative committees and their correlative executive departments.

(2) Amend the Constitution to allow the designation by statute of certain positions as requiring a two-thirds confirmation vote and others as requiring a constitutional majority vote. It is recommended that, in contrast to the approximately 2,000 positions now subject to two-thirds confirmation, this requirement be confined to less than 200 positions. The confirmation process would be expedited and the interests of the public and all of the members of the Senate adequately protected by limiting the two-thirds confirmation requirement to the most important nominations. Although the committee members are in unanimous agreement concerning the types of positions which should be subject to a two-thirds confirmation vote and a majority vote and which should be excluded from the confirmation process, no attempt was made to obtain unanimous agreement on the status of each and every position. The 196 recommended for the two-thirds requirement include the heads of departments, judicial vacancies, members of powerful independent administrative boards and commissions and members of departmental administrative bodies with extraordinary discretionary or regulatory powers. All of the remaining—approximately 1,312—are recommended for confirmation by majority vote only. The committee's suggestions are presented on pp. 10 to 13.

(3) Amend the Constitution to remove provisions permitting

interim appointments and to insert time limits of 90 calendar days within which the Governor must submit a nomination following a vacancy (and not thereafter) and 25 legislative days within which the Senate must act on a nomination submitted by the Governor. If the Senate fails to act within 25 legislative days, the appointee would take office as if confirmed.

(4) Prohibit by statute an appointee from serving in office if his nomination has been rejected by the Senate.

(5) Amend the Senate Rules to encourage an expeditious, thorough and public examination of the qualifications and character of nominees. This would be accomplished by:

(a) Permitting the Rules and Executive Nominations Committee to refer nominations to appropriate standing committees of the Senate, which would hold public hearings when advisable, scrutinize the qualifications of nominees and report back their recommendations.

(b) Requiring each nominee to set forth under oath on a questionnaire prepared by the committee his qualifications and such other information as may be determined by the committee, which questionnaire shall be available for the use of any Senator and for inspection by the public.

(c) Requiring a confidential State Police report to be made on all nominees, which report shall be available for inspection by all Senators.

(d) Providing that all information concerning a nominee (except the State Police report) be available to the public unless the committee shall by majority vote determine that any information which is of an unsubstantiated but damaging nature shall be withheld.

(e) Enabling any three members of the Rules and Executive Nominations Committee to demand in writing that the chairman of the committee call a meeting for the purpose of taking action on a nomination which has been before the committee more than 15 legislative days. The committee's recommendation concerning the acceptance or rejection of the nomination shall be reported to the Senate

immediately thereafter.

The committee is preparing appropriate legislation and rule changes to implement these recommendations. The entire Senate confirmation procedure as it would result with the inclusion of the committee's recommendations is outlined on pp. 17 to 19.

In conclusion, members of the Special Senate Committee to Study Confirmation Procedure wish to point out that their work has been directed solely toward making the Senate confirmation process a truly effective check and balance of the gubernatorial appointive power. Neither partisan considerations nor present officeholders were taken into account in the conduct of this study and in the formulation of recommendations. To maintain this objective, bipartisan approach, the effective date of legislation and rule changes introduced to reform the confirmation process will be set for January 1975, when the next gubernatorial term will start. The committee intends that proposed constitutional amendments be submitted to the electorate at the earliest possible date—May 1975.

Positions Proposed for Two-Thirds Confirmation Requirement

Positions by Agency	Number of Appointed Positions
Appointed Heads of Administrative Departments and Commissioner of State Police	17
Judicial Vacancies	Indefinite
Board of Probation and Parole	5
Milk Marketing Board	3
Pennsylvania Fish Commission	9
Pennsylvania Game Commission	8
Pennsylvania Higher Education Assistance Agency	3
Pennsylvania Historical & Museum Commission	9
Pennsylvania Liquor Control Board	3
Pennsylvania Public Utility Commission	5
Pennsylvania Turnpike Commission	4
State Civil Service Commission	3
State Horse Racing Commission	3
State Tax Equalization Board	3
Pennsylvania Human Relations Commission <i>Governor's Office</i>	11
State Harness Racing Commission <i>Department of Agriculture</i>	3
Board of Arbitration of Claims <i>Department of Auditor General</i>	3
Pennsylvania Securities Commission <i>Department of Banking</i>	3
Pennsylvania Industrial Develop- ment Authority <i>Department of Commerce</i>	7

Positions Proposed for Two-thirds Confirmation Requirement—Continued

Positions by Agency	Number of Appointed Positions
State Board of Education	17
Board of State College and University Directors	15
Boards of Trustees of State-related Universities	18
Public School Employes' Retirement Board <i>Department of Education</i>	1
Environmental Hearing Board <i>Department of Environmental Resources</i>	3
Board of Pardons	3
Pennsylvania Crime Commission <i>Department of Justice</i>	4
Pennsylvania Labor Relations Board	3
The Industrial Board	4
Unemployment Compensation Board of Review	3
Workmen's Compensation Appeals Board <i>Department of Labor and Industry</i>	3
State Art Commission <i>Department of Property and Supplies</i>	5
State Lottery Commission <i>Department of Revenue</i>	5
Commissioner of Professional and Occupational Affairs	1
State Employes' Retirement Board <i>Department of State</i>	1
State Transportation Commission <i>Department of Transportation</i>	8
TOTAL	196

Positions Proposed for Majority Confirmation Requirement

Positions by Agency	Number of Appointed Positions
Vacancies in the office of the Justice of the Peace	Indefinite
Departmental Deputy Secretaries	60 (Approx.)
Delaware Valley Regional Planning Commission	1
Pennsylvania Public Television Network Commission	8
State Council of Civil Defense	4
Commonwealth of Pennsylvania Council on the Arts	15
State Planning Board <i>Governor's Office</i>	15
State Farm Products Commission <i>Department of Agriculture</i>	3
Pennsylvania Housing Finance Agency	6
Public Service Institute Board <i>Department of Community Affairs</i>	12
Boards of Trustees of State Colleges and Universities	126
Board of Trustees of Scotland School for Veterans' Children	9
Board of Trustees of Thaddeus Stevens Trade School <i>Department of Education</i>	9
State Conservation Commission <i>Department of Environmental Resources</i>	6
Pennsylvania Drug, Device and Cosmetic Board <i>Department of Health</i>	9

Positions Proposed for Majority Confirmation Requirement—Continued

Positions by Agency	Number of Appointed Positions
Armory Board	5
General Officers	11
<i>Department of Military Affairs</i>	
County Boards of Assistance (67)	477
State Board of Public Welfare	16
Board of Trustees of Eastern Mental Health Center	9
Board of Trustees of Eastern Penn- sylvania Psychiatric Institute	9
Boards of Trustees of Restoration Centers	27
Boards of Trustees of State General Hospitals	99
Boards of Trustees of State Schools and Hospitals	90
Boards of Trustees of State Hospitals	153
<i>Department of Public Welfare</i>	
Occupational Examining, Registration and Licensing Boards	120
State Athletic Commission	3
<i>Department of State</i>	
Hazardous Substance Transportation Board	7
Navigation Commission for the Delaware River and its Navigable Tributaries	3
<i>Department of Transportation</i>	
TOTAL	1,312

Positions Currently Requiring Confirmation for which No Confirmation Requirement Is Proposed

Positions by Agency	Number of Appointed Positions
Advisory Committee on Probation	9
Atlantic States Marine Fisheries Commission	1
Brandywine Battlefield Park Commission	10
Greater Pennsylvania Council <i>Governor's Office</i>	150
Advisory Board for Boating <i>Pennsylvania Fish Commission</i>	5
Joseph Priestly Home Advisory Board	5
Valley Forge Park Commission	13
Washington Crossing Park Commission <i>Pennsylvania Historical and Museum Commission</i>	10
Labor Management Advisory Committee	Indefinite
Panel of Arbitration Advisory Committee <i>Pennsylvania Public Utility Commission</i>	12
Weather Modification Board <i>Department of Agriculture</i>	3
Board of the Pennsylvania Science & Engineering Foundation <i>Department of Commerce</i>	9
Industrialized Housing Advisory Commission	15
Mobile Home Standards Advisory Commission <i>Department of Community Affairs</i>	9
Advisory Council on Library Development	12
Advisory Committee on Standards (School Building)	15
Minor Judiciary Education Board	7

Positions for Which No Confirmation Requirement Is Proposed—Continued

Positions by Agency	Number of Appointed Positions
Pennsylvania State Oral School for the Deaf <i>Department of Education</i>	9
Citizens Advisory Council	6
Great Lakes Commission	3
Ohio River Valley Water Sanitation Commission	2
State Board of Certification of Sewage Treatment Plant & Water- works Operators <i>Department of Environmental Resources</i>	5
Advisory Committee on Atomic Energy Development and Radiation Control	9
Advisory Committee on Solid Waste Management	22
Advisory Health Board	12
Renal Disease Advisory Committee <i>Department of Health</i>	11
Advisory Committees to the Bureau of Consumer Protection	Indefinite
Board of Commissioners on Uniform State Laws <i>Department of Justice</i>	3
Advisory Board on Problems of Older Workers	9
Advisory Board (Prevailing Wages)	6
Advisory Council on Affairs of the Handicapped	9
Governor's Advisory Committee on Manpower Development	Equal number of men and women
State Advisory Council (Unemployment Compensation) <i>Department of Labor and Industry</i>	Equal number of employer, employe, and public representatives
Board of Trustees of Pennsylvania Soldiers' and Sailors' Home	9
Military Advisory Commission	6

Positions for Which No Confirmation Requirement Is Proposed—Continued

Positions by Agency	Number of Appointed Positions
State Military Reservation Commission	2
State Veterans' Commission	9
<i>Department of Military Affairs</i>	
Joint Committee on Documents	2
<i>Department of Property and Supplies</i>	
Boards of Trustees of Youth	
Development Centers	27
Advisory Committee for:	
The Aging	3 to 9
The Blind	3 to 9
Children and Youth	3 to 9
General and Special Hospitals	3 to 9
Mental Health and Retardation	3 to 9
Public Assistance	3 to 9
<i>Department of Public Welfare</i>	
Pennsylvania Highway Traffic	
Advisory Committee	1
Pennsylvania Parkway Commission	2
State Transportation Advisory Committee	6
<i>Department of Transportation</i>	
TOTAL	473 (Minimum)

Proposed Confirmation Procedure

from submission of a nomination by the Governor to the advice and consent of the Senate

THE GOVERNOR	Must submit a nomination for which the Constitution or statutes require confirmation to the Senate within 90 calendar days of the vacancy and not thereafter.*
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THE SENATE	The presiding officer shall refer the nomination to the Committee on Rules and Executive Nominations after it has been read by the Chief Clerk, without a motion (except for nominations for Commissioners of Deeds, which may be confirmed forthwith).
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COMMITTEE ON RULES AND EXECUTIVE NOMINATIONS	<p>Shall direct and coordinate the review of the nomination.**</p> <p>May request the advice of the appropriate standing committee of the Senate and specify the time at which such advice shall be reported back.**</p> <p>Shall require the nominee to set forth under oath on a questionnaire his qualifications and such other information as may be determined by the committee.**</p> <p>Shall request a confidential State Police report on the nominee.**</p> <p>May hold public hearings or executive sessions on the nomination as deemed appropriate.**</p> <p>Shall make the questionnaire, the State Police report and all other information concerning the nominee available to any member of the Senate.**</p>
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* Proposed constitutional amendment

** Proposed addition to Senate Rules

COMMITTEE
ON RULES
AND EXECUTIVE
NOMINATIONS
(continued)

Shall make the questionnaire and all other information concerning the nominee (except the State Police report) available to the public, unless the committee shall by a majority vote determine that any information which is of an unsubstantiated but damaging nature shall be withheld.**

APPROPRIATE
STANDING
COMMITTEE

Shall review nomination submitted to it and advise Committee on Rules and Executive Nominations on or before the specified date.**

May hold public hearings or executive sessions on nominations as it deems appropriate.**

Shall make all information concerning a nominee available to any member of the Senate.**

Shall make all information (except the State Police report) concerning the nominee available to the public, unless the committee shall by a majority vote determine that any information which is of an unsubstantiated but damaging nature shall be withheld.**

COMMITTEE
ON RULES
AND EXECUTIVE
NOMINATIONS

Shall act on a nomination if, after 15 legislative days following submission of the nomination by the Governor, any three members of the Rules Committee demand in writing that the chairman call a meeting to make a recommendation concerning the acceptance or rejection of the nomination.**

Shall immediately thereafter report the nomination to the Senate with the committee's recommendation.**

THE SENATE

Must act on a nomination within 25 legislative days of submission by the Governor. If no action is taken, the nominee may take office as if confirmed.*

THE SENATE
(continued)

Shall meet in executive session, if such a motion by any Senator is agreed upon, for the purpose of confirming a nomination which has been reported from the Rules Committee at a previous session and, if unanimous consent is given, also those which may be reported on the day the motion is made. The nomination becomes the first order of the day until disposed of or postponed (for not more than five days) unless the Senate is adjourned for a longer period. The executive session may not adjourn pending the consideration of a nomination until a time is fixed to resume consideration.

Shall act on the final question: "Will the Senate advise and consent to this nomination?"

This question shall not be put on the date on which the nomination is reported from committee, unless by unanimous consent.

Shall confirm a nomination by a majority vote of the members elected to the Senate, unless a two-thirds vote is required by statute.*

May reconsider, upon motion by two Senators, a nomination once confirmed or rejected, on the same day or within the next two session days.

Appendix A

The Senate Confirmation Process in Pennsylvania

**A Staff Report of the
Joint State Government
Commission**

The Senate Confirmation Process in Pennsylvania

1. Current Requirements and Practices¹

The constitutional provisions relating to Senate confirmation of gubernatorial appointments, found in Article IV, Section 8(a), as last amended in 1967, read:

Section 8. (a) The Governor shall appoint an Attorney General, a Superintendent of Public Instruction and such other officers as he shall be authorized by law to appoint. The appointment of the Attorney General, the Superintendent of Public Instruction and of such other officers as may be specified by law, shall be subject to the consent of two-thirds of the members elected to the Senate.

This language has been construed by the Commonwealth Court in the recent case of *Crisconi v. Shapp*, No. 940 C.D. 1971 (decided April 17, 1972) as requiring senatorial approval “*only* in those instances where senatorial approval is *specifically* mandated by the Constitution or by statute.” In *Crisconi* Judge Kramer states:

It is clear to us that the adoption of Article IV, Section 8 as it presently reads [by vote of the electorate on May 17, 1967] was for the purpose of eliminating the previously required senatorial approval of appointments by the Governor to *all* appointed offices to which the Governor could appoint under the Constitution or by statute.

The Court’s view, therefore, is that prior to the adoption of the amendment in 1967 all gubernatorial appointments authorized by law required senatorial consent, but since its adoption the only appointments requiring consent are those for which the statutes mandate confirma-

¹This report does not deal with appointments to fill vacancies in certain state and local elective offices or appointments to judicial offices. Constitutional provisions regarding judicial vacancies in Article V, Section 13, are set forth on p. 64.

tion.² Actual practice over the past twenty years has neither consistently complied with this interpretation of the Constitution nor, for that matter, with any consistent interpretation of the various laws governing confirmation of gubernatorial appointments.

The principal source of statutory provisions relating to confirmation of appointments is the Administrative Code of 1929, April 29, P.L. 177, as amended. Section 207 provides as follows:

Section 207. Appointment.—The Governor shall nominate and, by and with the advice and consent of two-thirds of all the members of the Senate appoint:

(a) The Secretary of the Commonwealth, the Attorney General, the Superintendent of Public Instruction, the Adjutant General, the Insurance Commissioner, the Secretary of Banking, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of Health, the Commissioner of the Pennsylvania State Police, the Secretary of Property and Supplies, the Secretary of Revenue, the Secretary of Commerce, the Secretary of Community Affairs, the Secretary of Environmental Resources, and the members of all independent administrative boards and commissions . . .

(b) Except as in this act otherwise provided, the members of all departmental administrative bodies, boards and commissions, and the officers who shall fill the departmental administrative offices mentioned in this article.

(c) Except as in this act otherwise provided, the members of all advisory boards and commissions.

Aside from the Administrative Code, the statutes contain no general provisions relating to senatorial approval of gubernatorial appointments; but in some 32 separate statutes dealing with appointments to various agencies and positions, provisions exist which specifically require senatorial approval. In a few cases, confirmation requirements are duplicated, appearing both in the Administrative Code and in a separate statute.³

The following summary presents the number of agencies and positions—arranged by source of confirmation requirement—for which ap-

²Prior to the 1967 amendment, the Constitution in Article IV, Section 8, provided that the Governor “shall nominate and by and with the advice and consent of two-thirds of all the members of the Senate, appoint . . . such other officers of the Commonwealth as he is or may be authorized by the Constitution or by law to appoint.”

³In both the summary and the individual agency listing in Table 1, such duplicate cases are placed in the highest ranking of the several categories into which the agencies are grouped.

pointments are subject to senatorial confirmation requirement. In the summary and in the list of individual agency appointments in Table 1, page 30, it was necessary to determine the functional status of a number of agencies in order to apply the provisions of the Administrative Code requiring confirmation of the members of “all departmental administrative bodies, boards and commissions” and “of all advisory boards and commissions.” Accordingly, listed as subject to senatorial confirmation are agencies not specified in the Administrative Code but which, by virtue of specific statutory language or specific function, are departmental administrative bodies or advisory boards.

Summary of Confirmation Requirements of Gubernatorial Appointments

Confirmation Source	Number of Agencies	Number of Positions
(1)	(2)	(3)
CONFIRMATION REQUIRED		
I. CONSTITUTIONAL APPOINTMENTS ^a	3	5
II. APPOINTMENTS SPECIFICALLY AUTHORIZED IN THE ADMINISTRATIVE CODE:		
A-Heads of Executive departments, Commissioner of Pennsylvania State Police and members of independent administrative boards and commissions	20	49
B-Departmental administrative bodies, boards and commissions	107	825
C-Advisory boards and commissions	17	105 ^b
III. APPOINTMENTS AUTHORIZED BY STATUTES OTHER THAN THE ADMINISTRATIVE CODE AND SPECIFICALLY REQUIRING CONFIRMATION	97	657
IV. APPOINTMENTS DEEMED TO REQUIRE CONFIRMATION BY VIRTUE OF THE JOINT PROVISIONS OF THE ADMINISTRATIVE CODE AND INDIVIDUAL STATUTES:		
A-Requirement via specific language	5	27
B-Requirement via functional status or agency name	15	246 ^c
TOTAL	264	1,914

Confirmation Source	Number of Agencies	Number of Positions
(1)	(2)	(3)

CONFIRMATION NOT REQUIRED

Gubernatorial appointments not requiring confirmation either by specific statutory requirement or reasonable interpretation of several statutory provisions.	45	191 ^c
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^a Does not include appointments to vacancies in certain elective offices or any judicial appointments.

^b A minimum number since six agencies have at least three but not more than nine members each, and three agencies have an indefinite number of appointees.

^c A minimum number since one agency has an indefinite number of appointees.

The preceding tabulation may be more easily understood if several examples are given of situations necessitating statutory interpretation. The State Tax Equalization Board is placed in category IV(A) because the statute creating the Board specifically terms it an “independent administrative board” (Act of June 27, 1947, P.L. 1046), and Section 207 of the Administrative Code specifically requires that “the members of all independent administrative boards” be appointed by the Governor “with the advice and consent of two-thirds of all the members of the Senate.”

While the *Crisconi* decision lists the State Tax Equalization Board among 30 agencies “in which the appointment of members are not subject to any statutory requirement of Senate approval,” the Commonwealth Court in the case of *Stroup v. McNair*, No. 37 C.D. 1972 (decided 10 days after *Crisconi*) ruled in favor of the defendant’s right to serve as a member of the State Tax Equalization Board in a proceeding which would have been meaningless were there not a statutory requirement for Senate confirmation of members of the Board.

Similarly, the State Board of Landscape Architects and the State Board of Motor Vehicle Salesmen are placed in category IV(B) as requiring confirmation by reasonable interpretation of the Administrative Code’s requirement for confirmation of the members of all departmental administrative boards. The activities of these boards in no way differ from those of other professional licensing boards which are, in fact, listed in the Administrative Code as departmental administrative boards requiring confirmation. Reference to Table 1 indicates that members of these boards have been confirmed. As with the term “departmental administrative

board,” the Administrative Code nowhere specifies the characteristics which may be used to identify an “advisory” board or commission. Therefore, all bodies with a purely advisory function, whether or not the word *advisory* is in the title, are placed in category IV(B).

The final line of the preceding summary tabulation contains the number of agencies *not* requiring Senate confirmation of members either by specific statutory provision or reasonable interpretation of the Administrative Code. In the main, these agencies are public authorities (General State Authority), public corporations and government instrumentalities (Pennsylvania Higher Education Assistance Agency) and interstate compact commissions. Neither by their function nor their impact upon State affairs do most of these agencies appear to be inferior to the agencies requiring senatorial consent listed in categories I through IV. Consequently, one may conclude that the importance of the position to be filled has had little bearing upon the legislative decision to require confirmation.

Tables 1 and 2 list all agencies and positions which a thorough search of the statutes indicates are subject to gubernatorial appointment. In Table 1 the agencies and positions are arranged according to the categories of confirmation sources set forth in the preceding summary. Within a category, agencies are listed by department with which they are affiliated, if any. Table 2 lists the agencies and positions for which confirmed appointments are *not* required. The final three columns of Tables 1 and 2 contain information concerning confirmation of appointees to the listed agencies over the period since 1951. Columns 3 and 4 show the dates of the earliest and most recent Senate confirmation of an appointee to the listed agency, and column 5 indicates whether an appointee was included in the list of interim appointments made by the Governor subsequent to sine die adjournment of the General Assembly on November 30, 1972, but prior to 12:00 p.m., January 2, 1973, when the General Assembly reconvened.

Although actual confirmation practices generally conform to the statutory requirements, numerous exceptions exist. These involve positions appearing to require confirmation but having no history of confirmation and positions not appearing to require confirmation but having confirmed appointees. For example, the Pennsylvania Crime Commission is listed in Section 202 of the Administrative Code as a departmental administrative commission in the Department of Justice, and Section 207 of the code, as previously noted, requires senatorial approval of the members of “all departmental administrative bodies, boards and commissions.” As far as can be determined, the initial members of the Pennsylvania Crime Commission, which the Governor appointed “within 30 days of the effective date” of the act (July 31, 1968), were never submitted to the Senate for confirmation. On the other hand, the appointees to several

agencies listed in category V due to the absence of any statutory requirement for senatorial consent—such as the Banking Board, the State Council of Civil Defense and the Local Governments Records Committee—actually have been confirmed both prior and subsequent to 1967.

Table 1

**Gubernatorial Appointments
Requiring Senatorial Confirmation
as of January 2, 1973**

Agency, Department and Source of Confirmation Requirement	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		
		Year of Earliest Confirmation	Year of Most Recent Confirmation	With 1972-1973 Interim Appointments
(1)	(2)	(3)	(4)	(5)
I. Constitutional appointments ¹				
Attorney General and Superintendent of Public Instruction ²	2	1951	1972	Yes
Board of Pardons	3	1967	1970	Yes
II. Appointments specifically authorized in the Administrative Code				
A. HEADS OF EXECUTIVE DEPARTMENTS, COMMISSIONER OF PENNSYLVANIA STATE POLICE AND MEMBERS OF INDEPENDENT BOARDS AND COMMISSIONS				
Heads of executive departments and Commissioner of Pennsylvania State Police	15	1951	1972	Yes

Pennsylvania Fish Commission	9	1953	1968	Yes
Pennsylvania Game Commission	8	1951	1970	Yes
Pennsylvania Historical and Museum Commission	9	1953	1969	Yes
Pennsylvania Public Utility Commission	5	1957	1971	Yes
State Civil Service Commission	3	1953	1970	Yes
B. DEPARTMENTAL ADMINISTRATIVE BODIES, BOARDS AND COMMISSIONS				
<i>Department of Agriculture</i>				
State Farm Products Commission	3	1955	1970	...
<i>Department of Banking</i>				
Pennsylvania Securities Commission	3	1953	1969	Yes
<i>Department of Education</i>				
State Board of Education	17	1953	1970	Yes
Board of State College and University Directors	15	(created in 1970)	1972	Yes
Public School Employes' Retirement Board	1	...	1959	Yes
Boards of Trustees of State Colleges and Universities:				
Bloomsburg	9	1951	1972	Yes
California	9	1953	1972	Yes

¹Excludes appointments to vacancies in certain elective offices and all judicial appointments.

²Also referred to in the statutes as the Secretary of Education.

Table 1—Continued

Agency, Department and Source of Confirmation Requirement	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		With 1972-1973 Interim Appointments
		Year of Earliest Confirmation	Year of Most Recent Confirmation	
(1)	(2)	(3)	(4)	(5)
II. B. Continued				
Cheyney	9	1953	1972	Yes
Clarion	9	1955	1972	Yes
East Stroudsburg	9	1953	1972	Yes
Edinboro	9	1953	1970	Yes
Indiana University	9	1953	1972	Yes
Kutztown	9	1951	1972	Yes
Lock Haven	9	1957	1972	Yes
Mansfield	9	1951	1972	Yes
Millersville	9	1951	1972	Yes
Shippensburg	9	1953	1972	Yes
Slippery Rock	9	1953	1972	Yes
West Chester	9	1951	1970	Yes
Boards of Trustees of:				
Pennsylvania State Oral				
† School for the Deaf	9	1951	1970	...
Scotland School for Veterans' Children	9	1953	1969	Yes
Thaddeus Stevens Trade School	9	1951	1970	Yes
Public Service Institute Board	12	1953	1966	...
<i>Department of Environmental Resources</i>				
State Board of Certification				
Sewage Treatment Plant				

and Waterworks Operators	5	...	1972	Yes
Environmental Hearing Board	3	(Created in 1970)		Yes
State Conservation Commission	6	1955	1969	Yes
<i>Department of Justice</i>				
Pennsylvania Crime Commission	4	...	...	Yes
<i>Department of Labor and Industry</i>				
The Industrial Board	4	1955	1969	Yes
Pennsylvania Labor Relations Board	3	1953	1969	Yes
Unemployment Compensation Board of Review	3	1951	1970	Yes
Workmen's Compensation Appeals Board	3	1951	1969	Yes
<i>Department of Military Affairs</i>				
Armory Board	5	1951	1968	Yes
Board of Trustees of Pennsylvania Soldiers' and Sailors' Home	9	1953	1970	Yes
<i>Department of Property and Supplies</i>				
State Art Commission	5	1953	1969	Yes
<i>Department of Public Welfare</i>				
Boards of Trustees of State Hospitals:				
Allentown	9	1951	1968	Yes
Clarks Summit	9	1955	1969	Yes
Danville	9	1953	1970	Yes
Embreeville	9	1951	1969	Yes
Farview	9	1951	1970	Yes
Harrisburg	9	1957	1968	Yes
Haverford	9	1964	1970	Yes

Table 1—Continued

Agency, Department and Source of Confirmation Requirement	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		
		Year of Earliest Confirmation	Year of Most Recent Confirmation	With 1972-1973 Interim Appointments
(1)	(2)	(3)	(4)	(5)
II. B. Continued				
Boards of Trustees of State				
Hospitals (Continued):				
Hollidaysburg	9	1953	1970	Yes
Mayview	9	1951	1969	Yes
Norristown	9	1951	1970	Yes
Philadelphia	9	1951	1970	Yes
Retreat	9	1953	1970	Yes
Somerset	9	1955	1969	Yes
Torrance	9	1959	1969	Yes
Warren	9	1953	1970	Yes
Wernersville	9	1951	1969	Yes
Woodville	9	1951	1970	Yes
Boards of Trustees of State				
General Hospitals:				
Ashland	9	1951	1969	Yes
Blossburg	9	1951	1969	Yes
Coaldale	9	1951	1970	Yes
Connellsville	9	1953	1970	Yes
Dixmont	9	1955	1970	Yes
Hazleton	9	1955	1969	Yes
Locust Mountain	9	1953	1970	Yes
Nanticoke	9	1960	1970	Yes
Phillipsburg	9	1953	1969	Yes

Scranton	9	1951	1972	Yes
Shamokin	9	1955	1967	Yes
Boards of Trustees of State				
Schools and Hospitals:				
Cresson	9	...	...	Yes
Eastern	9	1964	1970	Yes
Ebensburg	9	1957	1970	Yes
Hamburg	9	1960	1970	Yes
Laurelton	9	1951	1968	Yes
Pennhurst	9	1953	1970	Yes
Polk	9	1953	1970	Yes
Selinsgrove	9	1953	1968	Yes
Western	9	1964	1970	Yes
White Haven	9	1964	1970	Yes
Boards of Trustees of				
Restoration Centers:				
Central	9	...	...	...
Eastern	9	...	...	...
Western	9	...	1969	...
Boards of Trustees of Youth				
Development Centers:				
Central	9	1965	1969	...
Eastern	9	1965	1972	Yes
Western	9	1965	1970	Yes
Board of Trustees of Eastern				
Mental Health Center				
	9	1965	1970	...
Board of Trustees of Eastern				
Pennsylvania Psychiatric				
Institute				
	9	1951	1969	...
<i>Department of State</i>				
State Athletic Commission	3	1951	1969	Yes

Table 1—Continued

Agency, Department and Source of Confirmation Requirement	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		With 1972-1973 Interim Appointments
		Year of Earliest Confirmation	Year of Most Recent Confirmation	
(1)	(2)	(3)	(4)	(5)
II. B. Continued				
State Dental Council and Examining Board	6	1953	1970	Yes
State Employees' Retirement Board	1	1965	1967	Yes
State Real Estate Commission	6	1953	1969	Yes
State Registration Board for Professional Engineers	5	1951	1970	Yes
Commissioner of Professional and Occupational Affairs	1	...	...	...
State Boards of Examiners of:				
Architects	5	1953	1972	Yes
Auctioneers	5	(created in 1972)		Yes
Nursing Home Administrators	10	...	1970	Yes
Public Accountants	5	1951	1969	Yes
State Boards of:				
Barber Examiners	5	1953	1968	Yes
Chiropractic Examiners	5	1953	1970	Yes
Cosmetology	5	1953	1970	Yes
Funeral Directors	5	1953	1969	Yes
Medical Education and Licensure	5	1953	1972	Yes
Nurse Examiners	5	1951	1970	Yes
Optometrical Examiners	7	1951	1970	Yes

Osteopathic Examiners	7	1953	1970	Yes
Pharmacy	5	1951	1966	Yes
Podiatry Examiners	6	1965	1970	...
Veterinary Medical Examiners	5	1951	1967	Yes
<i>Department of Transportation</i>				
Hazardous Substance Transportation Board	7	1966	1970	Yes
Navigation Commission for the Delaware River and its Navigable Tributaries	3	1955	1970	...
State Transportation Commission	8	1966	1970	Yes
<i>Pennsylvania</i>				
<i>Historical and Museum Commission</i>				
Valley Forge Park Commission	13	1953	1969	Yes
Washington Crossing Park Commission	10	1951	1970	Yes
<i>Department of Commerce</i>				
Board of the Pennsylvania Science and Engineering Foundation	9	...	1968	Yes
C. ADVISORY BOARDS AND COMMISSIONS				
<i>Department of Environmental Resources</i>				
Citizens Advisory Council	6	(created in 1970)		...
<i>Governor's Office</i>				
State Planning Board	15	1953	1970	Yes

Table 1—Continued

Agency, Department and Source of Confirmation Requirement	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		
		Year of Earliest Confirmation	Year of Most Recent Confirmation	With 1972-1973 Interim Appointments
(1)	(2)	(3)	(4)	(5)
<i>II. C. Continued</i>				
<i>Department of Health</i>				
Advisory Health Board	12	1953	1970	Yes
<i>Department of Justice</i>				
Board of Commissioners on Uniform State Laws	3	1951	1970	Yes
Advisory Committees to the Bureau of Consumer Protection	Indefinite	...	...	...
<i>Department of Labor and Industry</i>				
Advisory Council on Affairs of the Handicapped	9	...	1955	...
Advisory Board (Prevailing Wages)	6	...	...	...
Advisory Board on Problems Of Older Workers	9	1957	1969	Yes
<i>Department of Military Affairs</i>				
State Military Reservation Commission	2	...	1959	...
State Veterans' Commission	9	1951	1972	...

Department of Public Welfare

Advisory Committee for:

The Aging	3 to 9	...	1970	...
The Blind	3 to 9	...	1970	...
Children and Youth	3 to 9	...	1970	...
General and Special Hospitals	3 to 9	...	1970	...
Mental Health and Retardation	3 to 9	...	1970	...
Public Assistance	3 to 9	...	1970	...
State Board of Public Welfare	16	1963	1972	Yes

III. Appointments authorized by statutes other than the Administrative Code and specifically requiring confirmation

Department of Agriculture

State Harness Racing Commission	3	1965	1970	Yes
Weather Modification Board	3	...	1968	...

Department of Commerce

Pennsylvania Industrial Development Authority	7	1957	1972	Yes
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Department of Community Affairs

Industrialized Housing Advisory Commission	15	(created in 1972)		Yes
Mobile Home Standards Advisory Commission	9	(created in 1972)		Yes

Table 1—Continued

Agency, Department and Source of Confirmation Requirement	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		
		Year of Earliest Confirmation	Year of Most Recent Confirmation	With 1972-1973 Interim Appointments
(1)	(2)	(3)	(4)	(5)
III. Continued				
Pennsylvania Housing Finance Agency	6	...	...	...
<i>Department of Education</i>				
Boards of Trustees of State-related Universities:				
Lincoln	4	(created in 1972)		Yes
Pennsylvania State	6	1951	1970	Yes
Pittsburgh	4	1966	1972	Yes
Temple	4	1967	1970	Yes
Minor Judiciary Education Board	7	...	1970	...
<i>Department of Environmental Resources</i>				
Great Lakes Commission	3	1957	1970	...
Ohio River Valley Water Sanitation Commission	2	1953	1970	...
<i>Governor's Office</i>				
The Commonwealth of Pennsylvania Council on the Arts	15	1966	1969	Yes
Pennsylvania Human Relations Commission	11	1962	1970	Yes

<i>Department of Health</i>					
Pennsylvania Drug, Device and Cosmetic Board	9	1965	1970	Yes	
Renal Disease Advisory Committee	11	...	1970	Yes	
<i>Department of Military Affairs</i>					
General Officers	11	1951	1972	...	
<i>Department of Public Welfare</i>					
67 County Boards of Assistance	477 ^a	1961	1972	Yes	
<i>Department of Revenue</i>					
State Lottery Commission	5	...	1972	...	
<i>Department of State</i>					
Pennsylvania Board of Psychologist Examiners	6	(created in 1972)		Yes	
<i>Department of Transportation</i>					
Pennsylvania Parkway Commission	2	1966	1967	...	
<i>Other Agencies</i>					
Advisory Committee on Probation	9	1966	1970	Yes	
Atlantic States Marine Fisheries Commission	1	1959	1967	...	
Delaware Valley Regional Planning Commission	1	1965	1970	Yes	
Milk Marketing Board	3	1953	1970	Yes	
Pennsylvania Board of Probation and Parole	5	1955	1969	Yes	
Pennsylvania Liquor Control Board	3	1953	1970	Yes	

^aActual number of boards' appointees. Statute permits a maximum of 15 members per board or 1,005 positions.

Table 1—Continued

Agency, Department and Source of Confirmation Requirement	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		With 1972-1973 Interim Appointments
		Year of Earliest Confirmation	Year of Most Recent Confirmation	
(1)	(2)	(3)	(4)	(5)
III. Continued				
Pennsylvania Public Television Network Commission	8	...	1970	Yes
Pennsylvania Turnpike Commission	4	1953	1972	...
State Horse Racing Commission	3	1968	1970	Yes
IV. Appointments deemed to require confirmation by virtue of the joint provisions of the Administrative Code and individual statutes				
A. REQUIREMENT VIA SPECIFIC LANGUAGE				
<i>Department of the Auditor General</i>				
Board of Arbitration of Claims	3	1953	1970	...
<i>Department of Health</i>				
Advisory Committee on Atomic Energy Development and Radiation Control	9	1966	1969	...

<i>Department of Property and Supplies</i>					
Joint Committee on Documents	2	...	1968	...	
State Tax Equalization Board	3	1953	1968	Yes	
Brandywine Battlefield Park Commission	10	1953	1970	Yes	
B. REQUIREMENT VIA FUNCTIONAL STATUS OF AGENCY NAME					
<i>Department of Education</i>					
Advisory Council on Library Development	12	1962	1969	...	
Advisory Committee on Standards (School Building)	15	...	...	...
<i>Governor's Office</i>					
Greater Pennsylvania Council	150	...	...	...
<i>Department of Health</i>					
Advisory Committee on Solid Waste Management	22	...	...	...
<i>Department of Labor and Industry</i>					
Governor's Advisory Committee on Manpower Development		Equal number of men and women	...	...	...
State Advisory Council (Unemployment Compensation)		Equal number of employer, employe, and public representatives	1951	1970	...

Table 1—Continued

Agency, Department and Source of Confirmation Requirement	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		With 1972-1973 Interim Appointments
		Year of Earliest Confirmation	Year of Most Recent Confirmation	
(1)	(2)	(3)	(4)	(5)
IV. B. Continued				
<i>Department of Military Affairs</i>				
Military Advisory Commission	6	1951	1959	...
<i>Department of State</i>				
State Boards of:				
Landscape Architects	5	...	1966	Yes
Motor Vehicle Salesmen	7	1966	1970	Yes
<i>Department of Transportation</i>				
Pennsylvania Highway Traffic Advisory Committee	1	...	...	...
State Transportation Advisory Committee	6	(created in 1970)		...
<i>Pennsylvania Fish Commission</i>				
Advisory Board for Boating	5	...	...	Yes
<i>Pennsylvania Historical and Museum Commission</i>				
Joseph Priestly Home Advisory Board	5	...	...	...
<i>Pennsylvania Public Utility Commission</i>				
Labor Management Advisory Committee	Indefinite	...	...	...
Panel of Arbitration Advisory Committee	12	...	...	...

Table 2

**Gubernatorial Appointments
Not Requiring Senatorial Confirmation
as of January 2, 1973**

Agency and Department	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		With 1972-1973 Interim Appointments
		Year of Earliest Confirmation	Year of Most Recent Confirmation	
(1)	(2)	(3)	(4)	(5)
<i>Department of Banking</i>				
Banking Board	10	1953	1970	...
Savings Association Board	8	1953	1970	...
<i>Department of Commerce</i>				
Bicentennial Commission of Pennsylvania	10	...	...	...
<i>Department of Education</i>				
State Advisory Council for Vocational Education	1 or more	...	...	Yes
<i>Department of Environmental Resources</i>				
Anthracite Mine Drainage Commission	6	...	1957	...
Delaware River Basin Commission	1 alternate	...	...	...
Interstate Commission on the Potomac River Basin	3 and 3 alternates	1953	1967	...

Table 2—Continued

Agency and Department	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		With 1972-1973 Interim Appointments
		Year of Earliest Confirmation	Year of Most Recent Confirmation	
(1)	(2)	(3)	(4)	(5)
<i>Department of Environmental Resources</i>				
<i>Continued</i>				
Susquehanna River Basin Commission	1 alternate	...	...	...
Wheeling Creek Watershed Protection and Flood Control Commission	1	...	1968	...
<i>Governor's Office</i>				
Executive Board	6	...	...	...
Governor's Council on Drug and Alcohol Abuse	6	(created in 1972)		...
Pennsylvania Public Safety Commission	at least 2	...	...	...
<i>Department of Justice</i>				
Juvenile Court Judges' Commission	9	1961	1968	...
<i>Department of Labor and Industry</i>				
Appeals Board (Prevailing Wage Act)	6	1965	1967	...
State Apprenticeship and Training Council	11	...	1965	...
State Board of Vocational Rehabilitation	7	1965	1970	...

<i>Department of Military Affairs</i>				
Assistant Adjutant General for Air	1	...	...	...
Assistant Adjutant General for Army	1	...	...	...
Deputy Adjutant General for Veterans' Affairs	1	...	...	...
Judge Advocate	1	...	...	...
<i>Department of Public Welfare</i>				
Board of Trustees of the Commonwealth Mental Research Foundation	12	1959	1970	...
<i>Department of State</i>				
Commission on Charitable Organizations	3	1965	1968	...
Medical Advisory Board to the State Athletic Commission	9	...	...	Yes
Municipal Employees' Retirement Board	3	1951	1970	...
<i>Authorities</i>				
General State Authority	1	...	...	...
Parent Assistance Authority	5	...	...	...
State Highway and Bridge Authority	1	...	...	...
<i>Independent Agencies</i>				
State Council of Civil Defense	4	1951	1970	...
Local Organizations for Civil Defense	1 each	...	...	...
Commonwealth Compensation Commission	2	...	...	...
Judicial Inquiry & Review Board	4	...	...	...
Pennsylvania Commission on Interstate Cooperation	7	...	...	...
Pennsylvania Higher Education Assistance Agency	3	1965	1968	...

Table 2—Continued

Agency and Department	Number of Appointed Positions	Record of Senatorial Confirmations, 1951-1972		With 1972-1973 Interim Appointments
		Year of Earliest Confirmation	Year of Most Recent Confirmation	
(1)	(2)	(3)	(4)	(5)
<i>Independent Agencies</i>				
<i>Continued</i>				
Pennsylvania Historical and Museum Commission:				
Board of Trustees of Conrad Weiser Memorial Park	1	...	...	...
County Records Committee	13	...	...	...
Local Government Records Committee	5	...	1969	...
Pennsylvania Liquor Control Board-Liquor and Alcohol License Hearing Examiners	11	...	...	...
<i>Interstate Compacts</i>				
Delaware River Joint Toll Bridge Commission	2	1955	1961	...
Delaware River Port Authority Interstate Compact Commission	6	1953	1968	...
for Education	2	...	1967	...
Interstate Compact on Juveniles	1	...	...	...
Interstate Mining Commission	1 alternate	...	...	...
Interstate Oil Compact Commission	1 alternate	...	...	...
Interstate Compact Concern- ing Parole	1	...	...	...
Transportation Board of the Metropolitan Area	1	...	...	...

II. Federal and State Historical Background

The origin of the appointing power of governors of the states dates back to the early days of Colonial America. The appointing power in Great Britain was a prerogative of the sovereign. In the American colonies, governors had power to make some appointments but other appointments were made either by the legislature or a council.

In Pennsylvania under the Constitution of 1776, the free men of the Commonwealth elected a Supreme Executive Council of 12 members. A president of the council was chosen annually from the members of the council by the General Assembly and the council. The president with the council—five of whom constituted a quorum—had power to appoint and commission judges, naval officers, judges of the admiralty, attorneys general and all other officers—civil and military—except those chosen by the General Assembly or the electorate. Since the Constitution does not specifically state otherwise, it is presumed the required vote of the president with the council, once the quorum of five was present, was a majority vote. This would mean that a minimum of five members or 40 percent of the council, including the president, could take action on the appointment and commissioning of certain state officers and that as few as three consenting votes could secure the appointment.

The method of appointment of ambassadors, judges and all other officers of the new national government was an important consideration of the Federal Constitutional Convention held in Philadelphia at the State House in 1787. As Alexander Hamilton later noted in *The Federalist*, the convention members “debated in which of those ways the power of appointment in ordinary cases ought to be modified.” They considered whether it ought either be vested in a single man or in a select assembly *of a moderate number* or in a single man with the concurrence *of such an assembly*.⁴

Among the proposals made to the Convention was one by Mr. Nathaniel Gorham, the delegate from Massachusetts, that “judges be

⁴*The Federalist, A Commentary on the Constitution of the United States* (New York: The Modern Library), p. 491.

nominated and appointed by the executive, by and with the advice and consent of the second branch.” This mode, he said, had the benefit of the experience of 140 years in Massachusetts.⁵

As adopted by the convention and approved by the nine original states, the U.S. Constitution contains the following provisions on the appointment of public officers:

[The President of the United States] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Pennsylvania Constitutional History

Under the Pennsylvania Constitution of 1790, the Governor “shall appoint all officers whose offices are established by this constitution or shall be established by law and whose appointments are not . . . other-

⁵The commercially oriented charters granted to the Plymouth and Massachusetts Bay Colonies in 1628 by Charles I (1625-1649) provided for a council consisting of the Governor, Deputy Governor and 18 councilors elected annually by the freemen of the colony and charged with certain legislative, administrative and judicial duties. The two colonies were united a half-century later in the province of Massachusetts Bay, established by the Royal Charter of 1691. This charter created an executive branch including a Governor and a Lieutenant Governor, both appointed by the Crown, and a 28-member Governor’s council, chosen annually by the House of Representatives of the General Court. This council was given the power to confirm gubernatorial appointments of judges, justices of the peace and other judicial officers. The Royal Charter of 1691 provided that the council was in effect to function legislatively as a second branch of the General Court.

A century later the outbreak of the American Revolution in 1775 brought the flight of the King’s Governor, whereupon the Governor’s Council assumed the powers of the governorship. The Massachusetts Constitution of 1780, the present constitution, established a two-branch executive as part of a plan of checks and balances. As reconstituted, the Governor’s Council became the Executive Council, which shared important executive authority with the Governor. The council was to serve as a restraining influence upon the exercise of gubernatorial authority, which had been a source of abuses during the last days of British rule. All judicial officers, the attorney general, the solicitor-general, all sheriffs, coroners and registers of probate were to be nominated and appointed by the Governor, by and with the advice and consent of the council.

wise provided for.” No confirmation of another body was required. The Pennsylvania Constitution of 1838 provided:

[The Governor] shall appoint a secretary of the commonwealth during pleasure, and he shall nominate and, by and with the advice and consent of the senate, appoint all judicial officers of courts of record, unless otherwise provided for in . . . [the] constitution. He shall have power to fill all vacancies that may happen in such judicial offices during the recess of the senate, by granting commissions, which shall expire at the end of their next session; Provided, That in acting on executive nominations the senate shall sit with open doors, and in confirming or rejecting the nominations of the governor the votes shall be taken by yeas and nays. (*Article II, Section 8*)

All officers whose election or appointment is not provided for in this constitution shall be elected or appointed as shall be directed by law. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, . . . (*Article VI, Section 8*)

While this constitution was in force in Pennsylvania, many offices were subject to popular election. This procedure of itself did not produce qualified public officers.

It was proposed in the Constitutional Convention of 1873 that

[The Governor] shall nominate and, by and with the advice and consent of two-thirds of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General during pleasure, a Superintendent of Public Instruction for four years, and such other officers of the Commonwealth as he is or may be authorized by the Constitution or by law to appoint; he shall have power to fill all vacancies that may happen, in offices to which he may appoint, during the recess of the Senate.

William H. Armstrong of Lycoming County, a delegate to the Convention, arguing in favor of the two-thirds vote provision said:

Now, if we are to have a government in this State which is to exercise its function for the best interests of all its people, it should be lifted so far as it can be out of the mere influence of politicians. If the Senate is composed of a mere majority of either party, and the Executive is of the same party, he could scarcely make a nomination which would not be confirmed by a majority of the Senate. The purpose of this provision is that men shall be selected for these positions upon their merit and not as a reward merely of political services. The Senate of our State is at present composed of 33 members. A majority would be 17. It would

require 22 members in a Senate of 33 to concur in approving a nominee suggested by the Governor. Is it too much to suppose that five members of an opposing party would give their assent to a nomination which was eminently fitting and proper to be made? And if it be said that they might refuse their assent to a person who is merely to be rewarded for political services, I say it is right, and it is the very thing and purpose which this section is intended to advance. I think there is no danger in it. It would compel the Governor to recommend for office persons of admitted ability and fitness, and if such persons are recommended I cannot conceive that there would not be found five members of the opposition party willing to concede such an appointment to the majority of the Senate and to the Executive of the State. But it would be conservative and would prevent these offices from being made the mere reward of political service; not but what persons of political influence and political service ought to be in many instances appointed, but they ought to be persons whose fitness would commend them in some degree to the approbation of the opposition party, whichever side it might chance to be.

I believe that this section is right, as it stands, that it can work no injury to the Commonwealth, but will greatly improve the quality and the fitness of the officers by whom these functions are to be exercised.⁶

In opposition to this view, Wayne MacVeagh of Dauphin County, another delegate, stated:

It seems to me quite clear that the result of this provision will be very much as the gentlemen from Lycoming has stated; the only difficulty is whether that is a desirable result—that is, that whoever is Governor shall be required to select, for his confidential advisers, such members of his own party as are not obnoxious to his political opponents. That is the proposition; it goes just that far. In times of great political excitement it is asking a great deal of Senators of one political party to vote to confirm in places of high trust and power obnoxious political opponents. Think of the political divisions through which this country has passed, and think of the gentlemen who would have been nominated by any Governor of this State with great credit as his Attorney General or as his Secretary of the Commonwealth, and how many gentlemen of the opposite political party would have thought of voting for them? Are there not lawyers in this body to whose legal opinions we all listen almost with reverence, whom gentlemen of one political party never could have voted to confirm as Attorneys General if their vote was necessary to their confirmation; not that we had any doubt of their capaci-

⁶*Debates of the Convention to Amend the Constitution of Pennsylvania Convened at Harrisburg*, November 12, 1872 (Harrisburg: Benjamin Singerly, State Printer, 1873); vol. 5, pp. 208-209.

ty, not that we had any doubt of their integrity; but because we differed so radically upon fundamental questions, vital radical questions upon their legal interpretation, that we ought not to be asked to take responsibility of voting against them or for them. And yet this puts it in the power of a minority in the Senate to dictate positively the appointees of the Governor. That is what it amounts to; . . . the Governor would be driven to form a “ring” with his political opponents, or a small section of them, for their votes to confirm his appointees. I submit we have never gone so far as this to prevent the Governor from having confidential officers of his own selection unless they were acceptable to a considerable section of his political opponents.⁷

William Bigler, delegate at large, observed that “we are endeavoring to throw around . . . the executive, unusual restraint.”⁸

It was the former arguments that prevailed in the convention, and the section of the Constitution relating to executive appointments was approved, requiring the advice and consent of two-thirds of all the members of the Senate. The same convention recommended that the Governor be ineligible immediately to succeed himself for a second term.⁹

The Two-thirds Vote Requirement

Texas is the only other state that requires the advice and consent of two-thirds of the Senate to confirm gubernatorial nominees. However, there are certain limitations and party alignments present in Texas not prevailing in Pennsylvania that would mitigate the power of the two-thirds provision. For example, in the legislative session of 1971, the Texas Senate was composed of 31 members—29 Democrats and 2 Republicans. In addition, the Texas legislature meets in regular sessions only in odd-numbered years, and its regular session is limited to 140 calendar days. The Texas constitution provides that “all vacancies in state or district offices . . . shall be filled unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present.”

Since 1920 three gubernatorial commissions and the Pennsylvania Bar Association have recommended that only a majority of the members of the Senate be required to consent to gubernatorial appointments.

The Act of 1919, June 4, P.L. 388, authorized the Commission on Constitutional Amendments and Revision to study the Pennsylvania

⁷*Ibid.*, pp. 210-211.

⁸*Ibid.*, p. 211.

⁹This provision was contained in the Constitution of Pennsylvania from 1874 to 1968.

Constitution. The commission has come to be known as the Sproul Commission, taking its name from Governor William C. Sproul who appointed its members. This commission recommended that only a majority of the members of the Senate be required to consent to gubernatorial appointments. The commission stated it believed that to require consent of two-thirds of the Senate is to increase the probability of deadlocks, and the majority rule, as established by the Constitution of the United States, is preferable.

The commission further believed the Governor should, so far as possible, obtain the consent of the Senate to all appointments. The working of the present system was described as follows: If the Secretary of the Commonwealth were to die while the Senate is in recess, the Governor could immediately make an appointment to fill the vacancy. During its next session, the Senate might refuse to consent to the appointment. Under present constitutional provisions, the Governor can wait until the end of the session and can then reappoint his nominee for two more years (since 1960 for one year).

A second example: A vacancy is filled as described. During the next session of the Senate the Governor fails to send any nomination for the office. Under present constitutional provisions the Governor can wait until the end of the session and can then reappoint the same person or name another appointment.¹⁰

The Act of 1957, July 15, P.L. 927, authorized the Commission on Constitutional Revision. Identified with its chairman, Robert E. Woodside, then judge of the Pennsylvania Superior Court, this commission recommended that the requirement for a two-thirds majority for Senate confirmation be removed, a simple majority being sufficient. The commission stated the resulting "trading situation" which developed within the Assembly when it is necessary to secure a two-thirds vote is "not healthy" and the time-honored custom that the majority rule should be maintained.¹¹ The commission classified this recommendation as very desirable but not vital for the efficient conduct of state government.

The Pennsylvania Bar Association made studies of the Pennsylvania Constitution in 1963 and 1966.¹² In these studies it was recommended

¹⁰*Report of the Commission on Constitutional Amendment and Revision* (Harrisburg: December 15, 1920), pp. 232-233.

¹¹*Report of the Commission on Constitutional Revision, 1959* (Harrisburg: March, 1959), p. 69.

¹²*A Revised Constitution for Pennsylvania, "Project Constitution," 12 Resolutions*, Submitted to the Governor's Commission on Constitutional Revision, December 17, 1963. *Report of the Special Committee on Project Constitution to the Annual Meeting of the Pennsylvania Bar Association*, January, 1966.

that the two-thirds vote of the Senate necessary to confirm a Governor's appointments be changed to a majority. It was noted this change would bring Pennsylvania in line with practically every other state.

In December 1963, the Governor's Commission on Constitutional Revision was appointed. This commission also recommended that the appointments of the Governor should be subject to the consent of a majority of the members elected to the Senate.

Proposals to effect this recommendation were introduced in the session of 1963, 1964, 1965 and 1966.¹³ In the House in 1964 it was argued that the change to a majority would increase executive power. The House Majority Leader countered:

This has to do with the sterilization of the executive power. It is worked this way under both Democratic and Republican administrations, but the closest thing we have had in our memory is the present situation we have had since the change of administration, in which the Senate with the small majority that the administrative party has, has completely held up and, in some cases, has completely sterilized any action of the executive, and this is wrong.¹⁴

It was also averred this change would weaken the strength of the parliamentary power and add to the strength of executive power. The Majority Leader replied,

The point is that he [Governor] has to have people who feel the same way he does, to get the job done. . . . If he can be blocked for some silly reason by a group of people who have nothing constructive in mind other than to block him, then he will not be able to carry out the duties of his job. That is in pure, plain and simple language the purpose of this amendment.¹⁵

In the discussions of the proposal in the Senate in 1965, the Minority Leader (Mr. Devlin) said, . . . "We are taking away from the Senate its prerogative of advice and consent, by removing the two-thirds vote requirement. . . . Mr. President, I see no reason for this kind of legisla-

¹³House Bill No. 1075, Pr. No. 1207 (Session of 1963), referred to House Judiciary Committee. House Bill 121, Pr. No. 249 (Session of 1964), defeated in final passage in the House by a vote of 98-76. Senate Bill 533, Pr. No. 949 (Session of 1965), passed the Senate by a vote of 26-19, referred to but not reported from the House Judiciary Committee. Senate Bill 190, Pr. No. 201 (Session of 1966), passed the Senate by a vote of 28-20, referred to but not reported from the House Judiciary Committee.

¹⁴Statement of Kenneth B. Lee, Majority Leader, *Legislative Journal - House*, Vol. 1, No. 24 (June 8, 1964), pp. 285-286.

¹⁵*Ibid.*, p. 286.

tion and, therefore, would ask my colleagues to vote 'no' on this bill."¹⁶

In the same session, a bill was amended essentially effecting the recommendations of the Governor's Commission on Constitutional Revision of 1964 and the Pennsylvania Bar Association relative to the executive but retaining the two-thirds vote of the Senate to confirm gubernatorial appointees. Legislation in this form to amend the Constitution passed the sessions of 1966 and 1967 and was approved by the electorate in May 1967.¹⁷

Federal Procedures

In the 91st Congress from January 3, 1969 to January 2, 1971, there were submitted by the President to the Senate 134,464 executive nominations in all fields. Of these, 126,404 were military nominations and 8,060 were civilian. Table 3—which presents data on the confirmation, nonconfirmation, withdrawal and rejection of these nominations—shows that 99.5 percent of all nominations were confirmed. The same percentage of confirmations prevailed for two classes of nominations—namely, military nominations and civilian nominations in the area of foreign relations. Only 88 percent of the civilian nomination other than those for foreign relations posts were confirmed. The two nominations rejected by the Senate in this Congress were in this classification.

In addition to constitutional provisions, Senate rules, committee rules and federal statutes also govern confirmation procedure in the U.S. Senate. Under Senate Rule XXXVIII, "when nominations shall be made by the President of the U.S. to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees." The nomination may neither be acted upon by the Senate on the same day on which it is received nor on the day on which it may be reported by a committee, unless by unanimous consent. All business in the Senate relative to confirmation shall be transacted in open session, unless the Senate in closed session by majority vote shall determine that a particular nomination shall be considered in closed executive session. Any senator may make public his vote in closed executive session.

Nominations neither confirmed nor rejected during the session at which they have been made shall not be acted upon at any succeeding session without being again made to the Senate by the President. If the Senate adjourns or takes a recess for more than 30 days, all nominations pending and not finally acted upon at the time of taking the adjournment

¹⁶*Legislative Journal—Senate*, vol. 1, no. 47 (June 16, 1965), p. 727.

¹⁷Senate Bill 5, Pr. No. 5 (Session of 1967). House Bill 401, Pr. No. 571 (Session of 1966).

Table 3

Disposition of Executive Nominations Submitted to the United States Senate by the President - 91st Congress - January 3, 1969 to January 2, 1971

Type	Total	Percent	Con- firmed	Percent	Nonconfirmed	Percent	Withdrawn	Percent	Rejected	Percent
Military	126,404	100.00	126,368	99.97	35	00.03	1	*	0	
Civilian Foreign Relation	2,754	100.00	2,744	99.64	10	00.36	0		0	
Other	5,306	100.00	4,685	88.29	133	2.51	486	9.16	2	00.4
Total	134,464	100.00	133,797	99.50	178	00.13	487	00.36	2	*

*Less than 00.1%.

Source: (1) *Congressional Record*, vol. 116, no. 213 (January 19, 1971), p. D1344.
 (2) *The Senate Role in Foreign Affairs Appointments*, Committee on Foreign Relations, U.S. Senate, 92nd Congress, 1st Session.

or recess are returned to the President and are not again considered, unless they are again submitted to the Senate by the President.

Each standing committee of the Senate shall adopt rules not inconsistent with the standing rules of the Senate governing the procedures of the committee. Three committees have provisions in their rules for guiding their consideration of nominations.

COMMITTEE ON FOREIGN RELATIONS—(1) Unless otherwise directed by the chairman, the Committee on Foreign Relations shall not consider any nomination until six days after it has been formally submitted to the Senate; (2) Nominees for any post who are invited to appear before the committee shall be heard in public session, unless a majority of the committee decrees otherwise; and (3) No nomination shall be reported to the Senate unless the nominee has been accorded security clearance on the basis of a full field investigation by the Federal Bureau of Investigation.

The six-day rule was adopted by the committee in 1953 in order to give interested persons an opportunity to learn of the nomination and make their views known. Since 1959, with the President's consent the committee has received a confidential letter from the Department of State which sets forth the qualifications of the prospective diplomatic appointee which the department took into account when it made its recommendation to the President.

In recent years, the committee has aimed at having hearings on all important nominations. The public hearings on January 13, 1949 on Dean Acheson's nomination as Secretary of State were the first ever held for the office. During the 91st Congress, the committee examined 138 nominees out of 2,754 in open session, seven in executive session and two in both public and executive session. Nominees previously publicly examined for confirmation are voted upon without a new hearing. In a hearing on the nomination of Nicholas deB. Katzenbach to be Under Secretary of State, as is frequently the custom, the late Senator Everett M. Dirksen, as the Senator from Mr. Katzenbach's state of Illinois, spoke in his favor, stating: "I vouch for him without reservation." When the chairman of the committee said, "That does not mean you necessarily agree with everything he thinks about foreign relations," Senator Dirksen said, "Oh, no. I disagree violently with him and I have had occasion to do that only recently as the history books will indicate."

In the 85th Congress, the committee began the practice of interviewing a sampling of new foreign service officers chosen by lot to give the committee opportunity to evaluate the qualifications of persons just entering the foreign service. The committee found the practice useful

and it was continued for several years although no public hearings of this nature were held in the 90th or 91st Congress.

COMMITTEE ON AERONAUTICAL AND SPACE SCIENCE—
Under its rules, “unless otherwise ordered by the committee, nominations referred to the committee shall be held for at least seven days before presentation in a meeting for action. Upon reference of nominations to the committee, copies of the nomination references shall be furnished each member of the committee.”

COMMITTEE ON POST OFFICES AND CIVIL SERVICE—
Under its rules,

... when a nomination for an appointment is referred to the Committee, the name of the nominee shall be referred to both Senators from the State in which the nominee resides. If no objection is made by either Senator within 30 days of the date of referral or if no response is received during that period, the nomination shall be considered as not having been contested.

The Chairman may name standing or special subcommittees to which a ... nomination may be referred, which subcommittee shall consist of not less than three members, one of whom shall be the minority. ...

Meetings of the Committee shall be open to the press except (1) executive meetings to consider nominations for public offices, or (2) when otherwise directed by the chairman or majority vote of the members present.

Federal Law Affecting Confirmation

As has been noted, under the U.S. Constitution the President has power to fill all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session. Under the Act of September 6, 1966, Pub. L. No. 89-554, §5503, 80 Stat. 475, the following provisions apply relative to payment for services with reference to recess appointments:

(a) Payment for services may not be made from the Treasury of the United States to an individual appointed during a recess of the Senate to fill a vacancy in an existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until the appointee has been confirmed by the Senate. This subsection does not apply—

(1) if the vacancy arose within 30 days before the end of the session of the Senate;

(2) if, at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent; or

(3) if a nomination for the office was rejected by the Senate within 30 days before the end of the session and an individual other than the one whose nomination was rejected thereafter receives a recess appointment.

(b) A nomination to fill a vacancy referred to by paragraphs (1), (2), or (3) of subsection (a) of this section shall be submitted to the Senate not later than 40 days after the beginning of the next session of the Senate.

This statute prevents the President from filling a position subject to the advice and consent of the Senate, with a recess appointee, if the vacancy existed more than 30 days before adjournment and the President had not submitted a nomination to the Senate.

Appendix B

Documents

Constitutional Provisions Mandating Senate Confirmation

Article IV—Executive

Section 8—Appointing Power

Section 8. (a) The Governor shall appoint an Attorney General, a Superintendent of Public Instruction and such other officers as he shall be authorized by law to appoint. The appointment of the Attorney General, the Superintendent of Public Instruction and of such other officers as may be specified by law, shall be subject to the consent of two-thirds of the members elected to the Senate.

(b) Except as may now or hereafter be otherwise provided in this Constitution as to appellate and other judges, he may, during the recess of the Senate, fill vacancies happening in offices to which he appoints by granting commissions expiring at the end of its session and fill vacancies happening in the office of Auditor General or State Treasurer or in any other elective office he is authorized to fill. If the vacancy happens during the session of the Senate except as otherwise provided in this Constitution, he shall nominate to the Senate, before its final adjournment, a proper person to fill the vacancy. In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the vacancy happens within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office.

(c) In acting on executive nominations, the Senate shall sit with open doors. The votes shall be taken by yeas and nays and shall be entered on the journal.

Section 9—Pardoning Power; Board of Pardons

* * *

(b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of two-thirds of the members elected to the Senate, one for two years, one for four years, and one for six years, and thereafter for full terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania and shall be recognized leaders in their fields; one shall be a member of the bar, one a penologist, and the third a doctor of medicine, psychiatrist or psy-

chologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

Article V— Judiciary

Section 13—Election of Justices, Judges and Justices of the Peace; Vacancies

Section 13. (a) Justices, judges and justices of the peace shall be elected at the municipal election next preceding the commencement of their respective terms of office by the electors of the Commonwealth or the respective districts in which they are to serve.

(b) A vacancy in the office of justice, judge or justice of the peace shall be filled by appointment by the Governor. If the vacancy occurs during the session of the Senate, the appointment shall be with the advice and consent of two-thirds of the members elected to the Senate, except in the case of justices of the peace which shall be by a majority. If the vacancy occurs during sine die adjournment of the Senate such appointment shall not require the advice and consent of the Senate. The person so appointed shall serve for an initial term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs.

(c) The provisions of section thirteen (b) shall not apply either in the case of a vacancy to be filled by retention election as provided in section fifteen (b). In case of a vacancy created by failure of a justice or judge to file a declaration for retention election as provided in section fifteen (b). In case of a vacancy occurring at the expiration of an appointive term under section thirteen (b), the vacancy shall be filled by election as provided in section thirteen (a).

Senate Rule XXX

Executive Nominations

Presentation and Reference

1. When nominations shall be made by the Governor to the Senate, they shall, after being read by the Chief Clerk, without a motion, be referred by the presiding officer to appropriate committee (except nominations for Commissioners of Deeds which may be confirmed forthwith), and after having been reported by the committee, the final question on every nomination shall be: "Will the Senate advise and consent to this nomination?" Which question shall not be put on the day on which the nomination or nominations are reported from committee, unless by unanimous consent.

Information Concerning Nominations

2. All information, communication or remarks made by a Senator when acting upon nominations in committee, concerning the character or qualifications of the person nominated, shall be kept secret. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such charges shall not be disclosed.

Consideration

3. When the consideration of executive nominations is reached in the order of business, a Senator may make a motion to go into executive session for the purpose of confirming the nominations which have

been reported from a committee at a previous session and, if unanimous consent be given, also those which may be reported on the day the motion is made; and on the motion being agreed to, such nomination or nominations shall be considered the first order of the day until finally disposed of, unless the same shall be postponed by a majority of the Senate; but such business when once commenced shall not be postponed for more than five days, except in case of an adjournment of the Senate for a longer period.

Executive Session

4. When in executive session, no message shall be received from the Governor, unless it be relative to the nomination under consideration, nor from the House of Representatives, nor shall any other business be considered, except executive business, and the executive session shall not adjourn pending the consideration of the nomination until a time fixed by a majority vote of those present for the next meeting of the executive session to resume the consideration thereof.

Reconsideration

5. When a nomination is confirmed or rejected by the Senate, any two Senators may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual session of the Senate; but if a notification of the confirmation or rejection of a

nomination shall have been sent to the Governor before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the Governor to return such notification to the Senate. A motion to reconsider the vote on a nomination may be laid on

the table without prejudice to the nomination.

Vote on Confirmation

6. A two-thirds majority is required for the confirmation of all the Governor's appointments authorized by law and the Constitution of Pennsylvania.

Senate Resolution Serial No. 11

(Adopted February 6, 1973)

RESOLUTION

Serial No. 11 (Not Printed)

Senate Journal Page 64

By Senators KURY, MURRAY,
FRAME, LAMB and
AMMERMAN

SENATE COMMITTEE TO STUDY SENATE CONFIRMATION PROCEDURE

In the Senate, January 22, 1973

Each session, hundreds of names of persons are submitted to the Senate for confirmation of an appointment made by the Governor to a particular board, commission, the judiciary, or agency of the State. The reason behind the submission of the names is that the act that created the particular board, commission, judicial position, or agency authorized the appointment of its members by the Governor but only with the advice and consent of the Senate.

In order to properly evaluate every name that comes before the Executive Nominations Committee of the Senate, thousands of man-hours and dollars would have to be spent. On nominations to important positions in State Government this might be advisable but the question arises as to whether or not it is feasible in every case AND WHETHER OR NOT THERE ARE TOO MANY OFFICERS SUBJECT TO THE REQUIRE-

MENT OF SENATE CONFIRMATION. In order to answer this question and many others that have been raised about the procedure presently being used in considering executive nominations, a study of the system should be undertaken; therefore be it

RESOLVED, That the President Pro Tempore of the Senate appoint a committee of five members, three from the majority party and two from the minority party to review and study the entire Senate confirmation procedure that the Senate follows upon receipt of a nomination; and be it further

RESOLVED, That the committee may hold hearings, take testimony, and make its investigation at such places as it deems necessary within this Commonwealth. It may issue subpoenas under the hand and seal of its chairman commanding any person to appear before it and to answer questions touching matters properly being inquired into by the committee and to produce such books, papers, records and documents as the committee deems necessary. Such subpoenas may be served upon any person and shall have the force and effect of subpoenas issued out of the courts of this Commonwealth. Any person who wilfully neglects or refuses to testify before the committee or to produce any books, papers, records or documents, shall be subject to the

penalties provided by the laws of the Commonwealth in such case. Each member of the committee shall have power to administer oaths and affirmations to witnesses appearing

before the committee; and be it further

RESOLVED, That the committee report its findings to the Senate as soon as possible.