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The Mississippi Legislature's Dominance over Budgeting Pre-Reform

by Brian Pugh

The Mississippi Legislature dominated the budget process for just over one hundred years following the end of Reconstruction in 1877, with the exception of a few decades in the early- to mid-twentieth century. The legislature did not control the budget process by giving itself blatant authority; instead, it controlled the budget process by weakening the influence of the executive branch of government. Mississippi governors lack the constitutional and statutory budgetary powers of chief executives in many other states. The Mississippi Legislature has allowed the governor to be a part of the budget preparation and proposal phase since the early 1900s, but it has rarely paid attention to the executive budget recommendation (EBR).

The legislature established the Commission of Budget and Accounting in 1955 to replace the Budget Commission, an executive commission created in 1932 that gave itself control over the budget process. The old Budget Commission had no legislators serving on it, while the new five-member Commission of Budget and Accounting was made up of four legislators and the governor. Today's budget process consists of two budget recommendations sent to the full legislative body, one sent by the governor and the other by the Joint Legislative Budget Committee (JLBC), which the legislature established in 1984. Historically, the latter budget recommendation has been used as the starting point for deliberation on appropriations when the legislative session begins. The JLBC membership currently consists of fourteen individuals, and they are all legislators except the lieutenant governor, an executive branch official who presides over the senate.

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Executive Involvement

The legislature gave the executive branch of government the authority to submit a budget recommendation when it approved Senate Bill (S.B.) 356 on March 27, 1918.¹ The senate bill empowered and directed the governor to prepare and submit to the legislature a budget for handling the state's affairs for the biennial period (today the legislature meets annually, and an annual budget is submitted). State agencies that were supported in whole or in part by state funds were required to submit to the governor's office a detailed estimate of expenditures necessary for the biennial period, along with an explanation of the changes compared to the previous year's appropriation. The governor was given the authority to revise the estimates submitted by the agencies and offer his own recommendation to the legislature.

S.B. 356 gave the governor the responsibility to evaluate planned expenditures to make sure they did not exceed anticipated revenue. The governor also had to provide detailed revenue sources for all of his recommended expenditures. In addition, the law mandated that the governor include as part of the budget an official statement by the auditor of public accounts. The auditor of public accounts was then directed to furnish an official budget document consisting of the state income from all sources and expenses, as well as disbursements, for all purposes as shown by the books in the auditor's office for each of the two preceding years. Finally, a detailed statement of the bonded and other indebtedness of the state had to be submitted, along with the revenue and expenditure statement, to show a true picture of the state's financial condition. The governor's budget had to be mailed to each member of the legislature ten days prior to the convening of the legislative session; the governor then had to present the budget on the first day of the session. For thirty-seven years after the passage of S.B. 356—1918 through 1955—the Mississippi budget was prepared by the executive branch and submitted to the legislative branch for consideration.²

Governor Theodore G. Bilbo was in office when S.B. 356 passed, and he was the first governor to submit an executive budget under that act. Bilbo was a very controversial governor, but he found ways to get the legislature to support his fiscal agenda. Bilbo believed that

¹ General Laws of Mississippi of 1918, Ch. 225.

² General Laws of Mississippi of 1918, Ch. 225; General Laws of Mississippi of 1932, Ch. 120; General Laws of Mississippi of 1952, Ch. 320.

the rich should pay more taxes and that the poor should pay less. In his inaugural address to the legislature in 1916, Bilbo explained that the remedy for the state's poor financial situation was "a complete revision of our whole fiscal system under which . . . the tax burden is not only not equal and uniform, as provided in the Constitution, but falls heaviest on those least able to bear it, and in its imposition is grossly unjust, unequal and inequitable."³ He inherited a large budget deficit when he entered office and was successful in recommending several tax measures to correct the situation.

Jackson Daily News editor Fred Sullens, a huge opponent of Bilbo, begrudgingly admitted that "we must give the devil his due and frankly admit that Theodore's administration has been one of substantial achievements."⁴ Eliciting positive words from Bilbo's editorial antagonist, Sullens, was no small feat. It was quite apparent that Sullens was no fan of Bilbo, describing him as "a pimp and frequenter of lewd houses." Bilbo's response to Sullens showed that the resentment was mutual when he retorted that Sullens "is a degenerate by birth, a carpetbagger by inheritance, a liar by instinct, an assassin of character by practice, and a coward by nature!"⁵ Bilbo proved to be both a filthy-mouthed orator as well as a governor who could balance a budget, at least during his first term (1916-1920). Bilbo later was elected to a second term (1928-1932) and had little budget success, leaving office with a huge budget deficit.

Bilbo accomplished his fiscal agenda during his first term while having a less-than-stellar relationship with many members of the legislature. Prior to becoming governor in 1916, a youthful Senator Bilbo was accused by fellow senators of taking bribes and was nearly expelled from the Mississippi Senate. The hearing to expel Bilbo was held on April 14, 1910, and the senate fell only one vote short of the two-thirds majority required to dismiss him, with a final tally of 28 to 15. The senate asked Bilbo to resign after they failed to remove him, but he refused. After Bilbo's refusal to resign, a resolution was adopted by a margin of 25 to 1 condemning his acceptance of a bribe and calling him

³ Nannie Pitts McLemore, "The Progressive Era" in *A History of Mississippi*. Vol. 2 (Hattiesburg, Mississippi: University and College Press of Mississippi, 1973), 61.

⁴ David Sansing, *Mississippi Governors, Soldiers, Statesmen, Scholars, Scoundrels* (Oxford, Mississippi: The Nautilus Publishing Company, 2016).

⁵ Erle Johnston, "A White Suit and Red Necktie" in *Politics: Mississippi Style*. (Forest, Mississippi: Lake Harbor Publishers, 1993), 5.

“unfit to sit with honest, upright men.”⁶

During his first gubernatorial term, Bilbo was successful in getting the legislature to support his fiscal agenda to raise taxes on the rich, but the legislature did not fund his entire budget request. With Bilbo as with other governors, the final budget approved by the legislature, in most cases, was significantly different from what the governor had recommended. Legislatures in other states rarely ever approve executive budgets in their entirety, either, without some modifications.

Martin S. (Mike) Conner was inaugurated as governor of Mississippi on January 19, 1932, during the worst economic depression in American history. Governor Conner was fully aware that he could not dig Mississippi out of the financial crisis alone and knew that it would take a collaborative effort with the legislature. He acknowledged in his inaugural address the grim reality of the disruption in the state economy that he and the members of the legislature had to confront:

We assume our duties when men are shaken with doubt and with fear, and many are wondering if our very civilization is about to crumble. The problems presented to us by this unprecedented, worldwide condition demand for their solution sane minds, clear vision, and courageous hearts . . . In our deliberations here we must speak frankly and act justly.⁷

Conner became familiar with the state’s revenue problems when he served as Speaker of the House and had to work with Lieutenant Governor Lee Russell, who was thought to have “run the Senate for Bilbo.”⁸ Then-Speaker Conner and Russell did not get along well. “Despite their personal animosity, Conner and Russell served on a special committee between the 1916 and the 1918 legislative sessions with Alfred Stone, Bilbo’s appointee to the new tax commission. Bringing national experts to Jackson, they sought ways to end Mississippi’s chronic shortage of tax revenue . . .”⁹ Although Conner prided himself on his commitment

⁶ Ibid, 4.

⁷ David Sansing, *Mississippi Governors, Soldiers, Statesmen, Scholars, Scoundrels* (Oxford, Mississippi: The Nautilus Publishing Company, 2016), 173.

⁸ Dennis J. Mitchell, “War, Depression, and Environmental Restoration” in *A New History of Mississippi* (Jackson: University of Mississippi Press, 2014), 312.

⁹ Ibid.

to fiscal responsibility, he understood that drastic measures had to be taken to overcome the state's financial crisis.

Governor Conner inherited a bankrupt treasury and a \$13 million deficit from Bilbo's second term. The "Bilbo administration had bequeathed to its successors a near-empty treasury with a balance of only \$1,326."¹⁰ Conner proposed a three percent sales tax to the legislature to eliminate the deficit.¹¹ Conner did not hide his thoughts of what would happen should the legislature fail to pass a tax increase. He explained:

If you will enact a three percent tax upon sales, together with other revenue measures . . . I am prepared to accept full responsibility for the result . . . If you fail to adopt this program or neglect to make provisions for other suitable and fair means, and as a result, the state's obligations are not met, its credit not restored . . . I warn you now, in all kindness of spirit, and give notice to the people of Mississippi, that I decline to share the responsibility which will be yours."¹²

Connor knew that he would have to get support from key legislative leaders to enact the sales tax. He solicited help from four of the most influential legislators—Speaker of the House Thomas L. Bailey, and representatives Walter Sillers, Laurence Kennedy, and Joseph George, who were known as the "Big Four"—to essentially guarantee that the act would pass. Conner's relationship with members of the Big Four went back to his days as a legislator. "Sillers joined Conner and Bailey to form a clique to run the House of Representatives" before eventually bequeathing "the speakership to Bailey when he resigned to run for governor."¹³ Conner's relationship with the Big Four proved advantageous

¹⁰ J. Oliver Emmerich, "Collapse and Recovery" in *A History of Mississippi*. Vol. 2 (Hattiesburg, Mississippi: University and College Press of Mississippi, 1973), 97.

¹¹ David Sansing, "A Democratic University" in *The University of Mississippi, A Sesquicentennial History* (Jackson: University of Mississippi Press, 1999), 198.

¹² J. Oliver Emmerich, "Collapse and Recovery" in *A History of Mississippi*. Vol. 2 (Hattiesburg, Mississippi: University and College Press of Mississippi, 1973), 103.

¹³ Dennis J. Mitchell, "War, Depression, and Environmental Restoration" in *A New History of Mississippi* (Jackson: University of Mississippi Press, 2014), 322. Governor Martin Conner resigned as Speaker of the House to run for governor and was defeated in 1923 and 1927 before finally winning the gubernatorial election in 1931.

in getting the tax increase passed.

The Emergency Revenue Act of 1932 was the “most spectacular fight during [the 1932 legislative] session,” and it became law with the passage of House Bill (H.B.) 328.¹⁴ “By a change of one vote the Emergency Revenue Act was passed and signed into law by Governor Conner on April 26, 1932. It provided for a 2 percent retail sales tax.”¹⁵ With the enactment of the sales tax, Mississippi became one of the first states in the nation to pass a sales tax. The tax increase eventually fixed the revenue problem, and when Conner left office in 1936, the state had a \$3 million surplus.¹⁶ Alfred Holt Stone, chairman of the State Tax Commission, was responsible for the administration of the sales tax, and he stated that “[t]he first six months of operation in Mississippi has resulted in the collection of revenues to the amount of \$1,173,721 . . . We have gone far enough, however, to justify the statement that the administration of the law has been satisfactory.”¹⁷ Conner contributed a great deal to the efforts of returning Mississippi to solvency during the Great Depression, but the state “could not have approached even partial success without the aid of the federal government.”¹⁸

Budget Commission

The financial crisis caused by the Great Depression, along with a critical report on Mississippi government issued by the Brookings Institution, led to legislation being passed to address the fiscal problems.¹⁹ The legislative reaction to the financial crisis and critical report resulted in the passage of H.B. 205 on May 5, 1932, that created the Budget Commission, which was charged with promoting economy and

¹⁴ J. Oliver Emmerich, “Collapse and Recovery” in *A History of Mississippi*. Vol. 2 (Hattiesburg, Mississippi: University and College Press of Mississippi, 1973), 102. Mississippi House of Representatives, *House Journal* 1932, p. 786.

¹⁵ J. Oliver Emmerich, “Collapse and Recovery” in *A History of Mississippi*. Vol. 2 (Hattiesburg, Mississippi: University and College Press of Mississippi, 1973), 104.

¹⁶ David Sansing, *Mississippi Governors, Soldiers, Statesmen, Scholars, Scoundrels* (Oxford, Mississippi: The Nautilus Publishing Company, 2016), 174.

¹⁷ J. Oliver Emmerich, “Collapse and Recovery” in *A History of Mississippi*. Vol. 2 (Hattiesburg, Mississippi: University and College Press of Mississippi, 1973), 104.

¹⁸ Westley F. Busbee, “The Depression Years” in *Mississippi: A History*. 2nd ed. (Malden, MA: Wiley Blackwell, 2015), 240.

¹⁹ Edward J. Clynch, “Mississippi’s Taxing and Spending: Have Things Really Changed?” in *Mississippi Government and Politics, Modernizers versus Traditionalists* (Lincoln, Nebraska: University of Nebraska Press, 1992).

efficiency in the management of the state's finances.²⁰ The legislation designated the governor as ex-officio director of the Budget Commission and the chairman of the State Tax Commission as the assistant director. The assistant director was given the duty of preparing and submitting to the governor a balanced state budget, consisting of all expenditures and revenue, for consideration every other year. The necessary clerical assistance needed to prepare the budget was provided by employees of the governor and the State Tax Commission's office without extra compensation. The attorney general was required to provide any necessary legal advice or services that the Budget Commission might need.

Governor Conner was the first director of the Budget Commission, and Alfred Holt Stone was the first assistant director since he chaired the State Tax Commission.²¹ Although the governor was responsible for appointing the chairman of the State Tax Commission, once he made his appointment, the chairman would serve six years in that position, outlasting the governor's four-year term.²² The State Tax Commission, like other state agencies, was heavily influenced by the legislature because it was dependent on the legislature for its appropriation. Knowing that the governor could not dismiss him after he was appointed, Stone was probably more likely to be loyal to the legislature because governors would come and go, while legislative leaders, who were involved in the budget process, were often there for a much longer period of time. Furthermore, the governor did not decide how much funding the State Tax Commission would receive because funding levels for agencies were determined by the legislature.

The structural make-up of the Budget Commission was clearly established to be an executive agency. However, agencies sometimes got confused when trying to determine who made some of the budget deci-

²⁰ General Laws of Mississippi of 1932, Ch. 120.

²¹ Alfred Holt Stone was 79 when he was reappointed to an unprecedented fourth term as Mississippi's Tax Commissioner in April 1950, making him one of the oldest officeholders in Mississippi's history. Hollandsworth, James G. "Alfred Holt Stone (1870-1955): His Unique Collection of Reading Material About People of African Descent," in *Mississippi History Now*. <http://mshistorynow.mdah.state.ms.us/articles/264/alfred-holt-stone-1870-1955-his-unique-collection-of-reading-material-about-people-of-african-descent> (accessed on February 19, 2019).

²² Until the Mississippi Constitution of 1890 was amended in 1986, governors served four-year terms and were ineligible for immediate succession, while members of the State Tax Commission served six-year terms. Kirk Fordice was the first governor elected to successive terms when he was reelected for a second term in 1995, and he served for a total of eight years. The only other governor in the 20th century, prior to Fordice, who served more than four consecutive years was Fielding Wright (1946-1952) because he filled the vacated governor's seat after the death of Thomas Bailey who died in office in 1946.

sions that were recommended to the legislature because some agencies believed that legislators had indirect involvement and influence over the Budget Commission. This claim was debatable, but confusion with regard to the status of the commission was undeniably evident. An article published in *The Clarion-Ledger* in June 1953 alluded to confusion concerning the Budget Commission when it explained that the commission "is considered something of an arm of the executive department on the one hand and of the legislature on the other."²³ H.B. 205 required the assistant director to submit a balanced state budget, and he was given the authority to demand any information or records from state entities that might be necessary for preparing the state budget. The legislature gave the assistant director supervision over every state agency and/or department that was supported in whole or in part by the state. This was done to secure uniformity and accuracy of accounts and efficient conduct of the state's financial affairs, according to the legislation.

The state budget was prepared by the assistant director and staff under the governor's instructions. Governors operating under H.B. 205 could have elected to be more involved in the budgeting process because they had the option to accept or reject the prepared budget recommendation, but in most cases, they simply endorsed the assistant director's plan.²⁴ The assistant director's influence basically ended at the conclusion of the budget preparation and proposal phase because the legislature did not have to seek assistance from the Budget Commission after receiving its recommendation.

One power given to the Budget Commission that went beyond the budget preparation and proposal phase was the ability to allow state agencies to exceed their appropriation during emergencies. The legislature could deal with emergencies if it was in session, but this authority allowed the Budget Commission to address emergencies occurring at any time. During such emergencies, the governor had to justify his reasons for approving excess spending, and the commission had authority to limit the time and prescribe the conditions under which the emergencies applied.

In 1952, the legislature passed S.B. 613, which amended the statute

²³ "Ellis Becomes New Building Director," in the *Jackson Clarion-Ledger*, June 3, 1953.

²⁴ Edward J. Clynch, "Mississippi's Taxing and Spending: Have Things Really Changed?" in *Mississippi Government and Politics: Modernizers versus Traditionalists* (Lincoln, Nebraska: University of Nebraska Press, 1992).

pertaining to the Budget Commission.²⁵ The duties of the Budget Commission did not change; it was still charged with promoting economy and efficiency in the management of the state's finances. The purpose of amending the statute was to clarify and prescribe the methods of employing and fixing salaries of the personnel of the commission. The legislation gave significant power to the executive branch by giving the governor the authority to appoint an executive secretary who would be responsible for carrying out the provisions of all laws pertaining to the Budget Commission and running the Budget Commission office. The governor was not only given the authority to appoint the secretary, but he was also in charge of setting the secretary's salary.

Prior to the passage of S.B. 613, the staff of the State Tax Commission was responsible for most of the administrative work needed to formulate a state budget. But the amended statute now allowed the new executive secretary to employ his own staff, who were subject to dismissal by the secretary with the governor's approval. Altering the method of hiring the staff assured allegiance to the governor and took away all the power that was previously held by the chairman of the State Tax Commission while serving as assistant director of the Budget Commission.

Mississippi Commission of Budget and Accounting

The executive-centered Budget Commission was abolished in 1955 when the legislature passed H.B. 177 to create the Mississippi Commission of Budget and Accounting, which totally changed the budget process by transforming it into a legislatively-dominated one.²⁶ The legislature made it clear that budget decisions were best decided by members of the legislature since eighty percent of the new commission's members were legislators themselves.

The Commission of Budget and Accounting consisted of the governor serving as ex-officio chairman and four legislators. Governor Hugh White served as the first chairman of the commission, and the remaining members of the commission were the following legislators: J. O. (Click) Clark, president pro tempore of the Senate; Senator Earl Evans Jr., chairman of the Senate Finance Committee; Representative

²⁵ General Laws of Mississippi of 1952, Ch. 320.

²⁶ General Laws of Mississippi of the Extraordinary Session of 1955, Ch. 24.

H. Tyler Holmes, chairman of the House Appropriations Committee; and Representative Hilton Waits, chairman of the House Ways and Means Committee. The commission was later expanded to eleven members, and the additional six members were all legislators except the lieutenant governor, who presides over the senate.

Having members of the executive and legislative branches of government serving on the same commission that controlled both the budget preparation and proposal phase and other budgeting functions was very uncommon, in other states as well as in Mississippi. Prior to the creation of the new commission, Mississippi was similar to other states and allowed the executive branch to submit a budget recommendation to the legislature, and then the legislature accepted some of the recommendations while also rejecting others. It seemed odd that the legislature would want to be involved in recommending a budget to itself, and this new method was clearly outside the norm of other states. Charles Hills of *The Clarion-Ledger* explained that the legislative “act as adopted by both houses . . . has created a far-reaching system of checking state operational costs and estimating of new budgets.”²⁷

One could easily interpret the creation of the Commission of Budget and Accounting as legislative overreach, but Governor Hugh White did not seem to see it that way. When asked by reporters about his opinion of the bill and if he would sign it, White explained that he had not yet read the act and must study the bill before deciding to sign it or not. Although he admitted to not having read the bill, he indicated that he was fairly certain that he would sign it and create the new commission. White concluded to the reporters that he had not yet made his decision, but “[I] understand, however, that the act is a good one.”²⁸

Similar to the Budget Commission, the Commission of Budget and Accounting controlled spending authority and management of all state agencies, departments, and institutions. The new commission, like the previous one, was required to submit to the legislature an overall balanced budget of the entire expenditures and revenue of the state for each biennium. The commission had to submit the budget prior to the first day of December before the legislature convened for the legislative session. Although some of the authority was the same as the Budget Commission, the Commission of Budget and Accounting was given much

²⁷ Charles M. Hills, “Affairs of State,” in the *Jackson Clarion-Ledger*, March 28, 1955.

²⁸ *Ibid.*

greater duties.

The Commission of Budget and Accounting's business and day-to-day operations were administered by an executive secretary who was appointed by the commission and served at the will and pleasure of the commission. The legislation also gave the secretary the authority to appoint a staff. The secretary was required to consult with the Senate Finance Committee, the House Ways and Means Committee, and House Appropriations Committee whenever those committees needed assistance during the legislative session. The staff responsible for administrative support that was needed to create the budget recommendation answered directly to the secretary.

The commission selected W. R. Carbrey of Columbia, Mississippi, as the first executive secretary of the Commission of Budget and Accounting; prior to being appointed, Carbrey had served as executive secretary of the Budget Commission.²⁹ Soon after his appointment to the newly created commission, Carbrey fell ill and Frank W. Ellis Jr. (serving as acting secretary) and Joe B. Keith (chief accountant) had to "perform immediate initial preparation for the setting up of the new budget."³⁰ Carbrey eventually resigned the executive secretary position in 1956, and the commission named Ellis to replace him.

Ellis was quite candid about the Commission of Budget and Accounting's influence on the legislature. Agencies were rarely ever thrilled about the commission's recommendations and were accustomed to appealing to the legislature to get their way. Ellis explained that most agency heads end up going to the legislature "either to say how glad [they are] or how mad [they are]" and went on to add that "history shows that the legislature usually accepts the recommendations of the [. . .] commission."³¹ The reason that the legislature generally took the advice of the commission was due to the makeup of the commission. Most of the legislators serving on the commission were experienced legislative leaders and usually more knowledgeable on budgeting matters, which is why their legislative peers were more likely to accept their recommendation. Additionally, the full legislative body dealt with many issues throughout the legislative session and simply had no time to review all of the agency requests, therefore making them quite dependent on their

²⁹ The *Jackson Clarion-Ledger* and the *Columbian-Progress*, May 27, 1955. The *Jackson Clarion-Ledger*, June 9, 1953.

³⁰ The *Jackson Clarion-Ledger* and the *Columbian-Progress*, May 27, 1955.

³¹ Tim Parker, The *Delta Democrat-Times*, Greenville, Mississippi, July 15, 1957.

legislative colleagues who were members of the commission. Governor J. P. Coleman, chairman of the commission, explained in 1957 how he did not see any prospects for salary increases for state employees and went on to mention that some agencies might have to cut their budgets. It was not uncommon for governors to make premature, broad statements pertaining to budget increases or decreases, similar to the statement made by Coleman, knowing that the final decision would be left up the legislature.

The commission's first biennial report clearly showed that the legislature listened to the Commission of Budget and Accounting more so than it had to the Budget Commission. The executive budget recommendation (EBR) submitted by the Budget Commission for the 1954-1956 biennial period was \$137,251,000, and the final amount approved by the legislature was \$168,030,877, a difference of \$30,779,877 or a whopping twenty-two percent. The Commission of Budget and Accounting submitted its first recommendation for the 1956-1958 biennial period for \$183,003,897, and the final amount approved by the legislature was \$186,125,587, a difference of only \$3,121,690 or slightly less than two percent.³²

The commission had its critics, especially when it came to revenue estimating. Three years after the creation of the commission, State Auditor Boyd Golding thought that the commission did a very poor job of anticipating incoming revenue. Golding explained that the auditor's office handles all of the "incoming money" and "outgoing money" and is in a "better position" to determine the financial picture of the state. Furthermore, Golding stated that the commission and its predecessor, for the past decade, has "consistently missed" its revenue estimates, and he predicted that the general fund would be depleted by July 1, 1958, although the state will actually have a surplus of "around \$28 million."³³

Today, a professional revenue estimating committee consisting of the state economist, who is employed at the University Research Center, and professional staff members of the Department of Revenue (previously known as the State Tax Commission), predicts revenue estimates for the upcoming fiscal year and makes a recommendation to the legislature

³² Biennial Report of the State Budget Commission from July 1, 1955 through June 30, 1957.

³³ "Golding Says Budgeteers Find Figures By Motions," in the *Jackson Clarion-Ledger*, May 2, 1958.

and governor to be jointly adopted.³⁴ The revenue estimate is then used as a starting point for the legislative budget recommendation (LBR) and EBR. Although Mississippi law gives revenue estimating authority to the University Research Center and the Department of Revenue only, three other agencies assist in this process: the Legislative Budget Office (LBO), the Office of the State Treasurer, and the Department of Finance and Administration (DFA). It is ironic that the agencies that informally assist with revenue-estimating today do not include the Office of the State Auditor, which was quite critical of the revenue estimating process in 1958.³⁵

Legislative Encroachment on Executive Functions

Mississippi's budget process consists of three formal phases: budget preparation and proposal, legislative budget approval, and budget execution. Budget proposal and control are both responsibilities of the executive branch in most states, and the legislatures are responsible for the approval phase. With the creation of the Commission of Budget and Accounting, Mississippi became unique because the legislative branch of government was now involved in all three phases of the budget process. There is also an informal fourth phase, the review/reporting phase, which will not be discussed because it is not mandatory for all Mississippi agencies.³⁶

First, the commission was in charge of the budget preparation and proposal phase because agencies had to submit their budget requests to the commission, and the commission then submitted a budget recommendation to the full legislative body. Second, Mississippi statutes and judicial decisions give the legislature the sole responsibility for adopting budgets and appropriating funds, which is still the case today. The legislative approval phase is best explained as a time when it is

³⁴ Mississippi Code of 1972, *Annotated*, Sections 27-103-125, 27-103-139, 27-103-211, and 27-104-13, available at <http://www.lexisnexis.com>. The law does not specify which professional staffers from the Department of Revenue are to assist the revenue estimating committee, so that decision is made by the State Tax Commissioner. The revenue estimating committee makes a recommendation to the Joint Legislative Budget Committee (not the entire legislature) and governor to be jointly adopted.

³⁵ "Golding Says Budgeteers Find Figures By Motions," in the *Jackson Clarion-Ledger*, May 2, 1958.

³⁶ The reviews and reports stage involves various people looking at a budget year to see what can be learned, and producing required and perhaps optional reports in connection with or independent of reviews. Parties internal and external to an organization conduct reviews.

the executive branch's job to "step back and leave it in the hands of the legislature."³⁷ Finally, the budget control component of the budget execution phase, which was by far the most controversial in Mississippi, had extensive legislative involvement because legislators were serving as board members for key executive branch agencies and participated in the control and administration of agency programs. Additionally, the commission itself, which was also dominated by legislators, exercised budget control functions over executive agencies. The executive agencies that were dominated by legislative members were in violation of the state constitution's separation of powers. Because of legislative influence over the budget process, agency directors who were selected by boards and commissions (and non-legislative members of those boards) were more likely to take their cues from . . . legislative board members.³⁸

Legislative Power Weakened

It was clear that the Commission of Budget and Accounting held a substantial amount of power over the budget process because it was heavily involved with the preparation and control of the budget. Although the executive branch was annoyed with legislative domination over the process, it recognized the rights granted by law for the legislature to be a part of the preparation and approval phases. However, legislative involvement in the budget control component of the budget execution phase was beginning to draw negative attention because most spending decisions were decided at this phase, allowing the legislature to function "as a de facto quasi-parliamentary system with state agencies responsible to the legislature."³⁹ In the early 1980s, a total of thirty-six legislators were serving on the Commission of Budget and Accounting and eight executive boards and commissions that were directly responsible for implementing government services to citizens of Mississippi. The constitutionality of legislators serving on executive boards and commissions was eventually challenged when Attorney General Bill Allain filed suit on April 7, 1982, to have the legislators removed from

³⁷ Dall W. Forsythe, "Memos to the Governor: An Introduction to State Budgeting," 2nd ed. (Georgetown University Press, Washington D.C., 2004), 65.

³⁸ Edward J. Clynch, "Mississippi's Taxing and Spending: Have Things Really Changed?" in *Mississippi Government and Politics, Modernizers versus Traditionalists* (Lincoln, Nebraska: University of Nebraska Press, 1992), 178.

³⁹ *Ibid.*

those boards.

Hinds County Circuit Court

Judge Charles Barber of the Circuit Court of the First Judicial District of Hinds County heard the “separation of powers” case for three days in November 1982 with testimony from Attorney General Allain and Ed Brunini, the Jackson attorney representing the legislators. Oddly enough, the legislators never denied the fact that the constitution clearly separates the powers of government among the three branches of government. Brunini explained to Judge Barber that there is “no such thing as the schoolboy notion of a complete separation of powers” because each case has to be viewed “in its own situation.” Allain responded that the legislators are “not even denying that these are executive boards. They just keep talking about this blending, this melding of responsibilities. Their idea of cooperation is that there should be a member of the legislature sitting right up there with you [pointing to Judge Barber] . . . When do you start this blending . . . Where are you going to stop?” implying that the legislature will next start interfering with judicial functions.⁴⁰ On February 3, 1983, Judge Barber declared the controverted statutes unconstitutional to the extent they authorized legislators to sit on the executive boards. Furthermore, Judge Barber’s order removed legislators from executive boards and commissions, with the exception of Representative Charles Young (who served on the Board of Corrections before he became a legislator), and ousted them from the legislature (legislators never actually vacated their legislative seats).⁴¹ The court’s final judgment was to become effective on January 1, 1984.

Supreme Court

The thirty-six legislators appealed the verdict to the Mississippi Supreme Court, and they were taken by surprise when all nine justices

⁴⁰ Cliff Treyns, “Allain’s Legislators Suit Is Heard,” the *Jackson Clarion-Ledger*, November 16, 1982.

⁴¹ According to House legislative attorney, Ronny Frith, Charles Young was not ousted from the legislature because he was already serving on the Board of Corrections before he became a member of the legislature. Because the other legislators became members of the executive boards and commissions after they were in the legislature, they vacated their office in the legislature by accepting their appointments in the executive branch. Mississippi Constitution of 1890 (Section 2).

joined in a unanimous opinion on November 23, 1983, that upheld the lower court's decision. The case, *Alexander v. State of Mississippi by and Through Allain* (1983), was concerned with the rights and prerogatives of the executive and legislative branches of state government. The separation of powers lawsuit was taken to the supreme court for an interpretation of Article I, Sections 1 and 2 of the Mississippi Constitution of 1890. The two debatable sections in need of clarification were:

“Section 1. The powers of government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

Section 2. No one person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others . . .”⁴²

The Mississippi Supreme Court's sentiment for upholding the lower court's verdict was not surprising based on Chief Justice Neville Patterson's simple opening paragraph of his opinion describing the situation. He explained that “[i]n broad terms the issue presented is whether Article I, Sections 1 and 2 should be interpreted faithfully . . . or whether it should be interpreted loosely so that efficiency in government through permissive overlapping of departmental functions becomes paramount to the written word.”⁴³

The supreme court declared that a loose interpretation of the Mississippi Constitution, for the sake of efficiency, is clearly a violation of the law and gave the legislature seven months, until July 1, 1984, to remove its members from the boards and commissions in the executive branch. The supreme court's separation of powers decision gave the executive branch authority over the budget control, while the legislature continued to control the budget proposal and legislative approval phases in the budget process. Although the separation of powers lawsuit made it clear that the governor was responsible for budget control, the legislature still would be able to influence and control agencies indirectly

⁴² *Alexander v. State of Mississippi By and Through Allain*, 441 So. 2d 1329 (Miss. 1983).

⁴³ *Ibid.*

in this phase because they could always retaliate against disobedient agencies by providing less funding in the next fiscal year.

The Final Budget Proposal by the Commission of Budget and Accounting

The Commission of Budget and Accounting submitted its final budget proposal to the legislature in the fall of 1983 for the 1984 session. This particular budget proposal was not only unique in the fact that it was the last one ever to be submitted by the soon-to-be obsolete commission, but it was also peculiar because the commission elected to present two budgets for the legislature's consideration. The law at that time required the commission to prepare a balanced budget in which the general fund expenditures could not exceed the estimated revenues.⁴⁴ Because of the sluggish economy at the time, the commission was forced to reduce budgets by over \$240 million from legislative appropriations since FY 1981 in order to comply with the law requiring a balanced budget. The commission explained that "[t]hese funding reductions, taken to maintain a balanced budget, have seriously eroded the state's ability to provide basic essential services that the citizens of Mississippi need and deserve."⁴⁵ The commission decided that it wanted to recommend the appropriation of more funds than the anticipated revenue would cover, so it submitted a balanced budget and an alternate, unbalanced budget. A statute that has since been repealed allowed the commission, at the time, to propose an alternative budget that was approximately \$68 million higher than the anticipated revenue estimate.⁴⁶ The commission felt that it fulfilled its statutory obligation by adopting the balanced budget, in which the general fund expenditures and revenues both totaled \$1.36 billion. However, the alternate budget totaling \$1.43

⁴⁴ Mississippi Code of 1972, *Annotated*, Section 27-103-13 (repealed). The successor provision for the Legislative Budget Office is found in Section 27-103-113, available at <http://www.lexisnexis.com>.

⁴⁵ Commission of Budget and Accounting. State of Mississippi Budget Report for FY July 1, 1984 to June 30, 1985.

⁴⁶ Mississippi Code of 1972, *Annotated*, Section 27-103-27 (repealed). The last sentence of the paragraph of the referenced section was used by the Commission of Budget and Accounting in 1984 to propose an alternative budget. The sentence read "the commission may recommend additional taxes or sources of revenue if in its judgment such additional funds are necessary to adequately support the functions of the state government." The successor provision for the Legislative Budget Office is found in Section 27-103-125, available at <http://www.lexisnexis.com>.

billion was the commission's preferred budget.

The alternate budget proposal was used in a way to recommend additional funding that could only come from the legislature and not the commission. It was a consensus among the committee members that the estimated revenue that would be collected during the next fiscal year would not adequately support the essential functions of state government. The commission felt that the alternate budget was necessary because it believed that the functions of state government would be severely harmed under the commission's statutorily required budget of \$1.36 billion. The alternate budget did not include any new programs, and it was intended to provide the same level of services as provided in FY 1984.⁴⁷

Mississippi Administrative Reorganization Act of 1984

The supreme court's decision in the *Alexander* case temporarily set the legislature back in the budget process. The court's order to remove the legislature from the budget control component of the budget execution phase instantly increased the executive branch's power in the budget process. The legislature responded to the supreme court's decision by passing S.B. 3050 during the 1984 legislative session, a 350-page bill that removed all legislators from all executive branch boards and commissions, while simultaneously consolidating a number of agencies under the governor's office.⁴⁸ That act, known as the Mississippi Administrative Reorganization Act of 1984, abolished the Commission of Budget and Accounting and created the Joint Legislative Budget Committee (JLBC) to make recommendations regarding budget making to the entire legislative body and the state Fiscal Management Board (FMB) to carry out budget control. The JLBC and FMB were both responsible for the budget preparation and proposal phase. The creation of the FMB, which was composed of the governor and two other members appointed by the governor with the advice and consent of the senate, enhanced the power of the governor in the budget process. The governor was made chairman of the board, and no board action could be valid without the governor's approval along with one other member,⁴⁹

⁴⁷ Commission of Budget and Accounting. State of Mississippi Budget Report for FY July 1, 1984 to June 30, 1985.

⁴⁸ General Laws of Mississippi of 1984, Ch. 488.

⁴⁹ General Laws of Mississippi of 1984, Ch. 488, Section 75.

which basically gave the governor veto power over FMB actions. The governor also was given the authority to hire the FMB director and six analysts, which strengthened his control over FMB actions. In addition to implementing the budget through budget control, the FMB was also given the responsibility of producing an EBR.⁵⁰

The FMB was given jurisdiction over the functions of state government that were previously under the Commission of Budget and Accounting, placing them under a Bureau of Budget and Fiscal Management and a Bureau of Administration. The Bureau of Budget and Fiscal Management consisted of the following three divisions: budget, fiscal management, and bond advisory. The divisions that made up the Bureau of Administration included purchasing, insurance, and administrative. The reorganization act also centralized and placed a number of governmental units within the Office of the Governor that were not previously there.⁵¹

The legislature preserved as much power as possible by establishing a legislative budget process and creating JLBC to administer the process. The JLBC consisted of the lieutenant governor and the same legislative members that made up the constitutionally infirm Commission of Budget and Accounting and excluded the governor. The JLBC consisted of eleven members when first established and was later increased to fourteen members in 1999. The initial JLBC members, post reorganization, consisted of the following: Brad Dye, lieutenant governor; Thomas L. Brooks, president pro tempore of the Senate; Bob Montgomery, chairman of the Senate Finance Committee; Glenn Deweese, chairman of the Senate Appropriations Committee; Senator Robert L. Crook; C. B. (Buddy) Newman, Speaker of the House of Representatives; F. Edwin Perry, chairman of the House Appropriations Committee; H. L. Meridith, chairman of the House Ways and Means Committee; Representative Ted J. Millettee; and Representative James C. Simpson. The JLBC was now responsible for producing a legislative budget proposal that was completely independent of the executive budget produced by the FMB.

The JLBC employed a professional staff, called the Legislative Budget Office (LBO), consisting of a director and seven analysts. Bobby Greenlee was selected by JLBC to serve as the director of LBO, and

⁵⁰ General Laws of Mississippi of 1984, Ch. 488, Section 76. Clynch, Edward J. "Mississippi's Taxing and Spending: Have Things Really Changed?" in *Mississippi Government and Politics: Modernizers versus Traditionalists* (Lincoln, Nebraska: University of Nebraska Press, 1992), 179.

⁵¹ General Laws of Mississippi of 1984, Ch. 488, Section 76.

a many of the budget analysts on his new staff previously served as analysts for the Commission of Budget and Accounting. Other budget analysts who had previously worked for the Commission of Budget and Accounting went to work for FMB after the commission was dissolved. When Jim Cofer served as the director of the Commission of Budget and Accounting, Greenlee had served as one of the deputy directors. The duties of LBO included providing fiscal support necessary to enable JLBC and the legislature to adopt a balanced state budget. In order for LBO staff to assist JLBC in adopting a state budget, it was necessary for LBO analysts to work closely with state agencies to understand their budget needs. Prior to making a staff recommendation to JLBC, Greenlee explained that his staff “worked with the 175 state agencies presenting budget proposals and came up with recommendations.”⁵² The JLBC then reviewed the staff recommendation, made changes, and then made their own recommendation based on information compiled and analyzed by their staff. The JLBC proposal was known as the legislative budget recommendation (LBR), which was one of the two budget proposals presented to the full legislative body. The other budget proposal was the executive budget recommendation (EBR), recommended by FMB. Having the two budget recommendations proposed for the 1985 legislative session was the first time that competing recommendations had ever been made in Mississippi’s history.⁵³ Although the legislature increased the executive involvement in the budget process substantially in S.B. 3050, legislative leaders were intentional in drafting the bill in a way to preserve the legislature’s dominance over the budget preparation and proposal phase. Governor Bill Allain was the first governor post reorganization to present a budget proposal, and his passive approach to his recommendation was likely because he thought that the “legislature would disregard his budget.”⁵⁴ Allain was correct in his assumption that legislators would place little emphasis on his executive budget and that they would pay more attention to the budget prepared by the JLBC.

Prior to the passage of the reorganization act, the Commission of Budget and Accounting, which consisted of legislative leaders and the

⁵² Peggy Austin, “Two Government Units Arrive at Budget Proposals,” *Jackson Daily News*, November 28, 1984.

⁵³ *Ibid.*

⁵⁴ Edward J. Clynych, “Mississippi’s Taxing and Spending: Have Things Really Changed?” in *Mississippi Government and Politics: Modernizers versus Traditionalists* (Lincoln, Nebraska: University of Nebraska Press, 1992), 180.

governor, adopted an annual general fund revenue estimate that was used as a starting point for the budget recommendation, and the commission also adopted the final revenue estimate (known as the “sine die estimate”) that was used to build the next fiscal year’s budget during the legislative session. A year after the reorganization act was passed, the legislature passed a law specifying that the legislature’s sine die estimate was the official state estimate.⁵⁵ Although the law gave sole authority to the legislative branch—more specifically the Legislative Budget Office—for adopting the sine die estimate, the state fiscal officer, under the guidance of the governor, was given the responsibility of reducing budgets if revenue estimates failed to meet projections.⁵⁶

The legislature would not have abolished the powerful Commission of Budget and Accounting if it had not been forced to do so by the courts. Legislation has been passed in the years following the 1984 supreme court decision that tweaked the budget process, but none was on the scale of the Mississippi Administrative Reorganization Act of 1984. The legislative branch enjoyed many years of budget domination before the constitutionality of legislators serving on executive boards and commissions was challenged, and although some budget powers were lost, the legislature was the one charged with coming up with a solution to the problem. The legislature passed S.B. 3050 in 1984, which satisfied the court’s separation of powers issue while simultaneously preserving as much legislative power as legally allowed. Although the legislative branch fared well post reorganization, many legislators were not happy that they were forced to reorganize the budget process in the first place. The reorganization act remains the most drastic change to the budget process to this day, and while it was a small setback for the legislative branch at the time, the legislature has continued to find ways to keep the upper hand over the process.

No individual was more affected by the Mississippi Administrative Reorganization Act of 1984 than Bill Allain. Allain was the attorney general who brought the suit against the legislators who were serving on executive boards and commissions, which resulted in the demise of the Commission of Budget and Accounting. Allain was ironically elected governor a few weeks before the Mississippi Supreme Court rendered its decision that upheld the Hinds County Circuit Court’s earlier decision

⁵⁵ General Laws of Mississippi of 1985, Ch. 525, Section 7. The current provision is found in Mississippi Code of 1972, *Annotated*, Section 27-104-13.

⁵⁶ Mississippi Code of 1972, *Annotated*, Section 27-104-13.

declaring the practice of legislators serving on executive boards and commissions as an unconstitutional violation of separation of powers. The supreme court's decision on November 28, 1983, made Allain the first governor to serve under the reorganization act.