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State Legislative Oversight: **Delaware**



Capacity and Usage Assessment

Oversight through Analytic Bureaucracies:	Minimal
Oversight through the Appropriations Process:	Moderate
Oversight through Committees:	Limited
Oversight through Administrative Rule Review:	Minimal
Oversight through Advice and Consent:	Minimal
Oversight through Monitoring Contracts:	Limited
Judgment of Overall Institutional Capacity for Oversight:	Moderate
Judgment of Overall Use of Institutional Capacity for Oversight:	Moderate

To read the full 50 state study report or to discuss the Delaware state report, please contact Benjamin.Eikey@wayne.edu.



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Legislative Oversight in Delaware

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Summary Assessment

Delaware appears to emphasize resolving agency performance problems rather than punishing or eliminating poorly performing programs. One element that may explain this solution-driven approach is the nature of Delaware’s general assembly itself--a small legislature with no term limits. This allows legislators to serve for long periods of time and to become better acquainted with their counterparts across the aisle, producing a more collegial environment where partisan confrontation on every issue is not always desirable. We were told that there are “a lot of relationships in a small legislature, so it is better to pick your battles than to oppose every measure.” (interview notes, 7/25/18).

Major Strengths

Delaware’s legislature possesses several tools to conduct oversight, foremost among them the Joint Legislative Oversight and Sunset Committee (JLOSC). This committee works with staff to conduct a very thorough review of a small number of government entities. The committee rarely eliminates these entities, although it has the power to do so. Rather it tries to determine how to improve the entities’ performance. Based on its recommendations for improvement, the committee staff and the entity help draft legislation to resolve performance problems. The emphasis the committee places on enacting legislation to resolve performance problems that it identifies ensures that oversight hearings are more than merely public scolding. It is more difficult to tell whether other committees adopt a similar approach given the lack of recordings, lack of posted minutes, and general dearth of available information. The budget documents posted by the Legislative Analysis Office list very detailed questions about agency performance as part of the budget process, suggesting that oversight through the appropriations process could be vigorous.

Challenges

Lack of staff resources for JLOSC hinders wider and more in-depth oversight. The Division of Research and Office of the Controller General conduct only a small number of in-depth fiscal reviews and performance audits. The relationship between the state auditor and the legislature does not appear to be close. Therefore, lack of funding and limited staffing of legislative analytic support agencies constrains the ability of the legislature to engage in oversight. The lengthy study sessions of interim committees that some part-time legislatures use to conduct oversight appear to be absent in Delaware. One state representative stated that when it came to issues with which he was unfamiliar instead of turning to legislative staff, he would approach fellow caucus members who had career experiences in that policy area (interview notes, 7/25/18). While the intimacy of a small legislature has its advantages in terms of creating social capital and a familiarity across the aisle, the lack of investment in professional staff, who can help legislators perform their duties more effectively, constrains Delaware's legislature.

Relevant Institutional Characteristics

The Delaware General Assembly consists of 41 representatives and 21 senators. Senators serve 4 year-terms and representatives serve a 2 year-term, with no term limits. The National Conference of State Legislatures (NCSL) classifies Delaware's legislature as a hybrid, where legislators spend approximately 2/3^{rds} of their time being legislators and are not in session all year.⁴¹⁶ Most other states with hybrid legislatures have medium-sized populations, intermediate staffing levels and salaries for legislators that would require a second income. In this regard, Delaware is an outlier. Delaware is one of the smallest states in terms of population, with less than a million residents. Legislators are paid a substantial \$45,291 per year, but the staff resources for the legislature are low. Delaware has 158 legislative staffers, with only 79 of those permanent positions. Legislators have no dedicated personal staff, except for leadership positions.⁴¹⁷ The Delaware general assembly recent session met from January 9th thru July 1st. Special or extraordinary sessions can be called by either the governor or the legislature, but usually result from a joint call of the presiding officers of the legislature.⁴¹⁸ Unlike other part-time legislatures, Delaware does not regularly have special sessions and has not had a special session since 2011. Based on these and other factors, Squire (2017) ranked the Delaware General Assembly as the 27th most professional legislature in the country.⁴¹⁹

The Delaware governor is considered a moderately strong executive. Ferguson (2015) ranks the Delaware governor as the 18th most powerful governor in the country.⁴²⁰ Delaware's governors are limited to two 4 year terms, but while they are in office they have extensive veto and budgetary powers, including the line-item veto for all bills, not just the budget. A vote to override gubernatorial vetoes requires support from 2/3^{rds} of the legislators present.⁴²¹ The

⁴¹⁶ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#gray>, accessed 7/22/18

⁴¹⁷ <http://www.ncsl.org/research/about-state-legislatures/legislative-staff.aspx>, accessed 7/22/18

⁴¹⁸ <http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx>, accessed 7/22/18

⁴¹⁹ Squire, Peverill. 2017. "A Squire Index Update." *State Politics and Policy Quarterly*. 17(4): pp 361-371

⁴²⁰ Ferguson, Margaret. 2013. "The Governors and the Executive Branch." Chap. 7 in *Politics in the American States*, edited by Virginia Gray, Russel Hanson and Thad Kousser, 194-231.

⁴²¹ Beyle, T. 2008. The Council of State Governments. *The Book of States 2008*. Table 4-4.

governor has the sole responsibility for proposing the budget; legislature can only revise and edit this proposal. In addition, the governor has the power to reorganize state agencies and create advisory or investigative commissions.⁴²² Many other executive branch officials are separately elected: Lt. governor, attorney general, auditor of accounts, treasurer, and insurance commissioner.

Political Context

Democrats dominate state government in Delaware. Democrats currently control the governorship and both chambers of the Delaware General Assembly. The last Republican governor of Delaware was Mike Castle in 1992. Democratic dominance also extends to the legislature where Democrats have controlled the Senate from 1992-2018 and the House of Representatives since 2009.⁴²³ In presidential elections Delaware tends to outperform the overall Democratic U.S. vote percentages by roughly 5%.

Despite the dominance of the Democratic Party and the lack of special sessions, friction arises sometimes. The budget can trigger a standoff between the legislative and executive branches. As recently as 2015 Delaware had a budget shortfall of \$600 million, which is a large amount for such a small state and forced painful budget cuts.⁴²⁴ During the last legislative session the general assembly failed to pass its annual budget bill before the fiscal year expired for the first time in 40 years.⁴²⁵ The problem was a projected \$350 million budget surplus. After years of cutting spending, there were budget battles over how to appropriate the somewhat unexpected surplus.⁴²⁶ Despite this budget battle, the Delaware General Assembly and its governor worked together on contentious issues like gun control⁴²⁷ and banning the practice of “conversion therapy” on LGBTQ minors.⁴²⁸ This generally cooperative approach is reflected within the chamber as well according to Shor and McCarty’s (2015) assessment of polarization in both chambers. They rate the upper chamber among the 10 least polarized in the country (ranking it 41st) and the lower chamber is almost as low, ranking 37th.

⁴²² The Council of State Governments. 2014. *The Book of States 2014*. Table 4-5.

⁴²³ <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx>

⁴²⁴ <https://delawarebusinessnow.com/2015/09/no-easy-solutions-emerge-after-release-of-report-on-state-budget-gap/>, accessed 7/23/18

⁴²⁵ <https://www.delawareonline.com/story/news/politics/2017/07/01/marijuana-transperfect-budget-addressed-final-legislative-day/442489001/>, accessed 7/23/18

⁴²⁶ <https://delawarebusinessnow.com/2017/07/no-state-budget-deal-general-assembly-reconvene-sunday/>, accessed 7/23/18

⁴²⁷ <http://thehill.com/homenews/state-watch/384829-delaware-lawmakers-unanimously-pass-new-gun-control-bill>, accessed 7/23/18

⁴²⁸ <https://www.metroweekly.com/2018/06/delaware-lawmakers-approve-ban-conversion-therapy/>, accessed 7/23/18

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The primary analytic bureaucracy is the Office of Auditor of Accounts (AOA), which is an independently elected office that serves as the primary fiscal watchdog for the state. The AOA conducts the comprehensive annual state audit and performs a variety of other fiscal audits, financial investigations, and inspections in an attempt to identify fraud or waste and improve the effectiveness and efficiency of state programs.⁴²⁹ The state auditor position is not a term limited office and the current Auditor R. Thomas Wagner Jr. has served seven 4 year terms, giving the office a high level of independence from outside political pressures.

For FY15 the AOA office had an overall budget of \$4.5 million and a staff of 20 full-time employees (NASACT 2015). In 2018 it conducted 5 investigations and 19 financial audits of various state agencies and revolving funds.⁴³⁰ All performance audits are mandated by law rather than requested by the legislature, the governor, or chosen by the auditor. In addition to these investigations and audits, the AOA contracted out with accounting firms to conduct 23 attestation agreements, of which 16 focused on the school districts construction contracts, to ensure that the various agencies were in compliance with state and federal regulations. There is no evidence that the general assembly utilizes AOA reports or that AOA staff appear as witnesses before legislative committees.

The AOA reports are often publicized by the media, leading to changes in audited agencies. One of the AOA most recent reports focused on the Developmental Disabilities Council (DDC), specifically the actions of the executive director. In its report, the AOA found that contracts were awarded improperly and in some cases without the required matching funds from the vendor from 2015-2017 and that the DDC staff did not follow proper guidelines regarding travel paid by the state.⁴³¹ As a result of the report, the director was placed on administrative leave.⁴³² But this appears to involve internal monitoring with the executive branch rather than legislative oversight.

In addition to the state auditor, there are two other analytic support agencies that work more closely with the legislature: the Office of the Controller General (OCG) and the Division of Research (DoR). Both of these units report to the Legislative Council, which consists of 10 legislators, 5 from each chamber. The house speaker and the senate president pro tempore chair the committee. The other members consist of the top caucus leaders in each party for the two chambers. Therefore, currently the committee consists of six Democrats and four Republicans.⁴³³

The OCG performs financial analyses for the Joint Finance Committee and the Joint Legislative Committee on the Capital Improvement Program. Additionally, it staffs standing committees and participates in budget hearings, writes fiscal notes analyzing the economic impact of legislation, and represents the legislature on various state economic task forces and committees. The Controller, three legislative analysts, and three support

⁴²⁹ <https://auditor.delaware.gov/auditor-mission-statement/>, accessed 7/23/18

⁴³⁰ <https://auditor.delaware.gov/reports/fiscal-year-2018/>, accessed 7/23/18

⁴³¹ <https://auditor.delaware.gov/wp-content/uploads/sites/40/2018/06/Developmental-Disabilities-Council-Special-Investigation.pdf>, accessed 7/23/18

⁴³² <https://delawarestatenews.net/news/developmental-disabilities-council-executive-director-placed-on-paid-leave-following-audit/>, accessed 7/23/18

⁴³³ <https://legis.delaware.gov/Committee/LegislativeCouncil>, accessed 10/9/18.

staff are responsible for this wide array of tasks.⁴³⁴ It does not publish any reports or conduct any performance or fiscal audits and was appropriated \$2.66 million for FY19.⁴³⁵

The OCG participates in the Delaware Economic and Financial Advisory Committee, which was created by executive order over 40 years ago and provides periodic financial and revenue forecasts. It is viewed as a model organization for budget projections⁴³⁶ and is one reason Standard's and Poor have given Delaware a AAA bond rating.⁴³⁷ DEFAC is a vital resource that legislators depend on for professional independent assessments of revenue. While DEFAC itself does not conduct audits or fiscal reviews, it does provide reliable forecasts for appropriators and allows key leaders the opportunity to collaborate on the budget.

The DoR, a nonpartisan confidential legislative agency, provides legislative staff support, legislative and legal research, bill drafting, and the development and distribution of public information concerning the general assembly.⁴³⁸ The DoR works closely with the Joint Legislative Oversight and Sunset Committee (JLOSC). It has a staff of fourteen, and, in addition to supporting JLOSC, is responsible for publishing regulations and providing legal counsel for the legislature. The budget for the Division of Research for FY19 is \$1.87 million.⁴³⁹

Oversight Through the Appropriations Process

Delaware's appropriation process involves three distinct and separate spending bills, the Budget Bill, the Bond Bill, and the Grants-in-Aid Bill. The Budget Bill is the general government spending bill for the annual fiscal year and for FY19 was \$4.32 billion. This bill is under jurisdiction of the Joint Finance Committee (JFC). The Bond Bill sets spending for all capital improvement projects like roads, bridges, and school construction and is under the jurisdiction of the Joint Committee on Capital Improvements. For FY19, the Bond bill was \$816 million, the highest in over 13 years.⁴⁴⁰ The Grants-in-Aid Bill allocates funds to non-profit organizations that provide state services and is under the jurisdiction of the JFC.

For the first time in 40 years the legislature failed to pass all of the necessary spending bills by June 30th. The last session dealt with an unexpected additional \$350 million in revenue as projected by the Delaware Economic and Financial Advisory Council (DEFAC).⁴⁴¹ Decisions about what to do with this additional \$350 million embroiled the general assembly in a budget fight. Complicating the decisions Delaware has a legal requirement that all tax increases receive

⁴³⁴ <https://legis.delaware.gov/Offices/ControllerGeneral>, accessed 10/9/18

⁴³⁶ <http://www.delawarebusinesstimes.com/can-defac-take-larger-role-fiscal-policy/>, accessed 7/23/18

⁴³⁷ https://finance.delaware.gov/publications/Bonds/sp_14.pdf, accessed 7/23/18

⁴³⁸ <https://legis.delaware.gov/Offices/DivisionOfResearch>, accessed 7/23/18

⁴⁴⁰ <https://delawarestatenews.net/government/delaware-panel-oks-769m-bond-bill-highest-in-13-years/>, accessed 7/24/18

⁴⁴¹ <https://www.delawareonline.com/story/news/politics/2017/07/01/marijuana-transperfect-budget-addressed-final-legislative-day/442489001/>, accessed 7/24/18

support from two third of all legislators.⁴⁴² In addition, the state can only spend up to 98% of projected revenues, essentially forcing the state to put money into the rainy day fund.⁴⁴³ Democrats wanted to raise the minimum wage and restore funding to programs cut in previous budgets; Republicans wanted to prevent tax increases and change funding mechanisms. These competing agendas were not supported by two thirds of the general assembly, thus, June 30th arrived before legislators were able to craft a compromise. However, the impasse lasted only one day and an agreement was struck on the \$4.3 billion budget and a one-time \$49 million supplemental spending bill that provided for state worker salary increases and one-time bonuses.⁴⁴⁴

The lack of detailed minutes and audio/video archives of hearings make it is difficult to ascertain the use of the appropriations process to oversee executive branch agencies in Delaware. We did locate the annual written budget requests submitted to the legislature for the state agencies prepared by the Office of Management and Budget (OMB). There is a Budget Review for the Department of Health and Human Services.⁴⁴⁵ This is a 135-page document with charts, tables, graphs, and a detailed description of the various programs in the department. There is also a Budget Review Summary for the Department of Health and Human Services. This is a document prepared by a OCG analyst with a series of questions that list page numbers by each question that correspond to the OMB Budget Review for DHHS.⁴⁴⁶ These documents correspond to a date on which the JFC met. That is to say that the OCG Budget Review Summary for DHHS is dated 2/7/17 and the agenda for the JFC meeting held on 2/7/17 lists Health and Social Services – Base Budget Review on the agenda at 10:40 a.m. Moreover, it appears that the committee devoted approximately four hours to the review of this agency’s budget, because the next agenda item is scheduled for 3:00. This indicates to us that these budget requests and OCG questions are supporting materials for legislators to use during a JFC meeting. Although we have no way to assess the quality of the questions asked by legislators, the questions in the OCG document include requests performance measures and outcomes associated with various programs.

The following text appears on page 7 of the Budget Review Summary and is typical of the questions asked about each program:

8. Developmental Screening (pg. 16)
 - a. Is this funding associated with the other child development programs (for example Birth to Three)?
 - b. Are fees paid by the providers to use this tool?
 - c. What are the performance measures and outcomes associated with this screening?

These documents suggest that the JFC actively monitors state agency performance by asking about the uses that are made of public dollars. It is not clear what transpires in committee hearings nor can we link budget adjustments to these documents or the hearings. In

⁴⁴² <https://www.delawareonline.com/story/news/politics/2017/07/01/marijuana-transperfect-budget-addressed-final-legislative-day/442489001/>, accessed 7/24/18

⁴⁴³ https://finance.delaware.gov/publications/defac/06_18/FY19_Appr_Limit.pdf, accessed 7/24/18

⁴⁴⁴ <http://delmarvpublicradio.net/post/delaware-lawmakers-pass-budget-just-time>, accessed 7/24/18

⁴⁴⁵ <https://legis.delaware.gov/docs/default-source/JFCDocuments/FY1735DHSSBaseBudgetReview.pdf?sfvrsn=2>, accessed 10/9/18.

⁴⁴⁶ <https://legis.delaware.gov/docs/default-source/JFCDocuments/FY1735DHSSBaseBudgetReviewSummary.pdf?sfvrsn=2>, accessed 10/9/18.

conversations with people familiar with the budget process in Delaware, the procedure described above is a fairly representative example of how legislators approach budget reviews of state agencies (interview notes, 10/12/18). However, it is important to note that many legislators rely on input and expertise of fellow members for guidance on complex issues that may fall outside their career or background experience (interview notes, 7/25/18). In particular, one legislator noted the small collegial nature of the Delaware legislature lends itself to direct member to member contact and conversations about issues and policy domains that they are not familiar (interview notes, 7/25/18).

Oversight Through Committees

The most active committee regarding oversight is the JLOSC, which reviews agencies, boards, and commissions to determine if there is a need for the agency or whether the agency is performing effectively.⁴⁴⁷ JLOSC is comprised of 10 members equally divided between the house and senate, but the committee makeup is not equal in terms of partisanship with Democrats holding a 6-4 majority. In 2018, JLOSC met thirteen times and reviewed seven different boards and agencies. This committee is specifically tasked with both oversight and sunset reviews. Given the committee's hybrid mission of oversight and sunset reviews, we discuss its activities, based on its annual report here, but we return to it again in the section on *Automatic Mechanisms of Oversight*.

JLOSC's 2018 Final Report (206 pages long) was submitted to the legislature and the governor. We inferred the committee's activities from its annual report. It describes the committee's review and action during the year on seven different public entities that were reviewed. The JLOSC holds public hearings during the months of February and March, but there are no records, transcripts or minutes available. The committee's analyst works on these throughout the 10-12 month long investigation of these entities.⁴⁴⁸ These investigations include the investigated entity's responses to a questionnaire, which form the basis for the analyst's report.

During 2018, the committee held public hearing on four of the entities under review: the Board of Occupation Therapy, the Child Protection Accountability Commission, the Council on Correction, and the Division of Waste and Hazardous Substance's Management of the Hazardous Substance Control Act Fund. Public hearings do not appear to have been held for the three other entities described in the report. Two entities, the Council on Correction and Division of Waste and Hazardous Substance's Management of the Hazardous Substance Control Act Fund, were not released from review and were held over until the 2019 legislative session for action.⁴⁴⁹ One of these "holdovers" resulted from legislation that the JLOSC had recommended that the legislature pass, but that had not been enacted. Two other entities, the Board of Clinical Social Work Examiners and the State Board of Education, were released from review contingent on the legislature enacting legislation that JLOSC recommended. One entity was released contingent on its implementation of JLOSC recommendations and a report confirming implementation. Another entity, the Diamond State Port Corporation, was released based on its

⁴⁴⁷ <https://legis.delaware.gov/Committee/Sunset>, accessed 7/24/18

⁴⁴⁸ https://legis.delaware.gov/docs/default-source/JLOSCDocuments/JLOSC_FinalReports/2018FinalReport.pdf?sfvrsn=2, accessed 10/10/18.

⁴⁴⁹ https://legis.delaware.gov/docs/default-source/JLOSCDocuments/JLOSC_FinalReports/2018FinalReport.pdf?sfvrsn=2, accessed 10/10/18

compliance with additional reporting requirements. The final entity of the seven reviewed, the Child Protection Accountability Commission, was released from review based on a letter of support from the JFC assuring it would fund the commission.

The final report suggests a great deal of committee involvement in the review process. For example, with respect to the legislation that the JLOSC wanted enacted before it released the Board of Occupational Therapy from review, the report states that, “[t]he Board and Committee staff worked together to draft legislation” (p. 7 JLOSC Final Report). In conversations with people familiar with JLOSC’s proceedings, hearings were described as bipartisan, with legislators asking investigative questions and attempting to understand why an agency is not functioning effectively (interview notes, 7/25/18). The tenor of the report suggests solution-driven, evidence-based oversight. Legislative action is a commonly recommended solution.

Once again it is difficult to determine the level of oversight being done in the general assembly’s other standing committees due to the lack of audio/video archives and detailed minutes. In fact, most committees do not have any posted minutes and those that do are brief summaries of hearings no more than 2-4 pages in length. In one case, a hearing of the Education Committee in the House of Representatives, a large committee with 17 members, reported out three bills in a meeting lasting no longer than 10 minutes.⁴⁵⁰ This suggests that standing committees are not engaged in rigorous oversight.

Oversight Through the Administrative Rules Process

Delaware’s regulatory review process is a stark contrast between the powers and mechanisms that are available and what happens in practice. The rule promulgation process is centered on public notices and comments as a potential check on agencies. The Division of Research, a legislative agency directed by the Legislative Council, manages and publishes administrative rules through the Registrar of Regulations.⁴⁵¹ These are lengthy documents published monthly. The announcement for October 2018 is 75-pages long and provides a list of each rule or rule change with a contact person so that interested parties can make their views known.⁴⁵² In addition to publishing proposed rules, Delaware has the Regulatory Flexibility Act of 1983, which in theory requires agencies to be aware of the compliance costs of the rule in relation to the size of the entity being regulated.⁴⁵³ The purpose behind the act is to provide flexibility or exemptions to small businesses that may not be able to comply with the financial costs of the new rule. The main committee in the legislature tasked with administrative rule oversight is the Joint Legislative Oversight and Sunset Committee (JLOSC) whose role and duties were described above. As part of its review of entities, the JLOSC can recommend rule changes.

An examination of the JLOSC’s activities demonstrated no hearings or reviews of administrative rules. According to Schwartz (2010), he could find no one at the Legislative Council who knew of any small business impact statements that had been prepared – ever. In

⁴⁵⁰file:///C:/Users/svbet/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/6.20.18%20Education%20Minutes%20(1).pdf, accessed 7/24/18

⁴⁵¹ <http://legis.delaware.gov/Offices/DivisionOfResearch/RegistrarOfRegulations>, accessed 7/26/18

⁴⁵² http://regulations.delaware.gov/services/current_issue.shtml, accessed 10/10/18.

⁴⁵³file:///E:/State%20Oversight%20Project/Resources%20for%20Summaries/52_Experiments_with_Regulatory_Review.pdf, p.190, accessed 7/26/18

other words, the people involved in the implementation of Delaware's administrative rule review process claim that it is not used. In short, the regulatory structure Delaware has created over the years simply is not utilized in any meaningful fashion,⁴⁵⁴ despite a fairly robust regulatory process defined by various statutes.⁴⁵⁵

Overall, the role of legislature is primarily advisory and there are no real mechanisms to halt new rules, unless by chance the agency is among the small number of entities the JLOSC reviews annually.⁴⁵⁶ Despite the legislature's limited engagement with rule review, the attorney general's office must sign off annually on all administrative rules, a task said to keep hundreds of deputy attorneys general busy (Schwartz 2010). So there is some rule review in the state, but it is not performed through legislative oversight of the executive branch.

Oversight Through Advice and Consent

The Delaware confirmation process is fairly straightforward, with the governor making nominations and the Senate confirming or rejecting his nominees on a simple majority vote. In Delaware the governor has fairly extensive appointment powers, with the ability to appoint individuals to a variety of commissions, advisory councils, agency heads, and judicial posts. From 2017 to 2018, the governor submitted 188 nominations for various positions ranging from adjutant general of the National Guard to local justices of the peace.⁴⁵⁷

The governor's office compiles a general biography of the potential nominees with their qualifications and submits it to the Senate Executive Committee. This committee is comprised of all the senate leadership positions and is responsible for the operations of the senate and assigning bills to their respective committees. The Delaware Senate does not assign nominees to the committee of jurisdiction for consideration, rather the Executive Committee reviews the candidates' qualifications and reports the nominations out to the full chamber just like any other bill (interview notes, 7/26/18). New appointees always receive a hearing, while re-nominations usually do not receive a hearing. Although the governor has the ability to withdraw submitted nominations, this rarely occurs. In 2018 there were only two withdrawals, and one of those was due to the death of the nominee prior to a hearing (interview notes, 7/26/18). Very few nominees are rejected outright by the senate. Experts could only recall two nominees being rejected by a full vote of the senate, and one of those was back in the 1990s during Gov. Castle's tenure (interview notes, 7/26/18). While this suggests the senate confirmations are routine and not controversial, in truth the governor's vetting process is thorough. The communication between the governor's staff and senate leadership, and the collegial nature of a small legislature is usually enough to prevent contentious institutional battles over nominees.

There is no legislative oversight or review of gubernatorial executive orders in Delaware. The governor does not appear to make excessive use of this tool to make policy outside the reach of the legislature. In the nearly two years since he took office in January 2017, Gov. Carney has issued 21 executive orders.⁴⁵⁸ Despite one-party control of state government, the governor does

⁴⁵⁴file:///E:/State%20Oversight%20Project/Resources%20for%20Summaries/52_Experiments_with_Regulatory_Review.pdf, p.191, accessed 7/26/18

⁴⁵⁵ <http://regulations.delaware.gov/>, accessed 7/28/18

⁴⁵⁶ Council of State Governments. 2015. *Book of States*. Table 3.26

⁴⁵⁷ <https://legis.delaware.gov/Senate/Nominations>, accessed 7/28/18

⁴⁵⁸ <https://governor.delaware.gov/executive-orders/>, accessed 7/28/18

appear to make policy by executive order. For example, he established a uniform statewide anti-discrimination policy. Moreover, the governor can use executive orders to reorganize the executive branch. Many executive orders establish or renew commissions, advisory groups, councils, boards or similar entities. For example, Gov. Carney used executive order 14 to establish an advisory council on connected and autonomous vehicles. There was not, however, a massive restructuring of government agencies in the recent set of executive orders.

Oversight Through Monitoring of State Contracts

Delaware, unlike other states, separates funding for non-profit organizations that provide services to citizens from the normal appropriations process into a separate Grants-in-Aid Bill. This provides a legislative tool that could be used to monitor a subset of state contracts. Legislators from the Joint Finance Committee (JFC), with the support of the Controller General's office, review contract requests and make funding recommendations for this specific type of state contract.⁴⁵⁹ However, there are no minutes on the JFC's website so it is difficult to determine if hearings were held to discuss the Grants-in-Aid bill in order to assess non-profits' requests and evaluate their past performance.⁴⁶⁰ The Grants-in-Aid process holds the potential as a useful tool for monitoring state contracts, but currently it is unclear if the general assembly uses it as a mechanism for oversight. In correspondence with someone familiar with the process, it was stated that there are no audio or video recording of JFC's proceedings so it difficult to ascertain at what level legislators uses the Grants-in-Aid process for oversight purposes.⁴⁶¹

Delaware does make all its contract awards public along with the all the supporting documents of the bid, making the award process extremely transparent.⁴⁶² Some executive agencies have the capacity to monitor state contracts, in particular the Office of Management and Budget, the Division of Accounting in the Finance Department, and the independently elected State Auditor of Accounts. However, there does not appear to be a central agency that vendors or other agencies are required to report contracts issued over a specific amount. And the legislature appears to have no mechanisms, outside of the Grants-in-Aid bill, to assess the effectiveness or failures of state contracts. The independent legislative agencies, the DoR and OCG, do not assess state contract performance.

Oversight Through Automatic Mechanisms

As stated previously, Delaware has comprehensive sunset provisions and the Joint Legislative Oversight and Sunset Committee (JLOSC) utilizes the Division of Research to conduct reviews of selected agencies and commissions. JLOSC's annual report and its recommendations are often adopted by the legislature. However, JLOSC is flexible with agencies in terms of adopting those recommendations or delaying the review. JLOSC will often

⁴⁵⁹ <http://legis.delaware.gov/GrantInAid/Information>, accessed 7/27/18

⁴⁶⁰ <http://legis.delaware.gov/Committee/JointFinance>, accessed 7/27/18

⁴⁶¹ Correspondence notes 10/16/18; for a detailed explanation of the Grants-in-Aid process go to www.gia.delaware.gov, accessed 10/17/18

⁴⁶² <http://contracts.delaware.gov/>, accessed 7/26/18

hold over reviews into the next session to allow the agency or commission time to prepare for review (interview notes, 7/26/18).

The process for selecting an agency for review is usually left to the discretion of JLOSC, with input from house and senate leadership in collaboration with the governor. The governor usually has staff in place to communicate the governor's wishes and this helps to facilitate cooperation from the executive agency and prevent institutional pushback. One person familiar with the process discussed the challenges JLOSC often faces. A big challenge is how to rein in agencies or commissions that are overstepping their scope and charter (interview notes, 7/25/18). Delaware's sunset provisions are comprehensive, and JLOSC is a fairly active committee. Its non-partisan approach to determining program and agency effectiveness or ineffectiveness is in stark contrast to other states with comprehensive sunset provisions. Delaware's approach to sunset review is one of general assembly's best assets when conducting oversight.

Recently, discussions of ways to improve oversight in Delaware make a case for increasing staff resources for legislators and the Division of Research to enhance the sunset review efforts.⁴⁶³ Currently there is only one staff assigned to JLOSC. More staff could increase the depth of the review reports and expand the number of entities reviewed. The compressed schedule of the legislature and the tendency to avoid special sessions further constrains the capacity of the JLOSC. In discussions with people familiar with JLOSC, it is evident that there was no plan currently to increase staffing levels or to increase the scope of JLOSC's sunset reviews (interview notes, 7/25/18).

The overall impact of JLOSC differs from states that have committees that focus on sunset procedures rather than assessing performance. For instance, since 1977 Texas has eliminated or consolidated 79 agencies and routinely transfers or consolidates agency responsibilities into other agencies.⁴⁶⁴ In contrast, Delaware has only abolished one agency in the last six years (interview notes, 7/25/18). The approach JLOSC and legislators take is to determine why a particular agency is not functioning properly and provide recommendations to the general assembly that aim to improve the agency, not abolish it (interview notes, 7/25/18). These differences could be attributed in part to the differing political context of Delaware and Texas, where Democratic dominance in Delaware is not as likely to produce a scaling back of government programs. If the purpose of Delaware's sunset laws is to consolidate duplicative agencies or abolish ineffective obsolete agencies, then Delaware is failing to take advantage of its comprehensive sunset provisions. It is rare for entities to be eliminated. If on the other hand, the purpose of the sunset review is to enhance the performance of existing agencies, the JLOSC is in effect drafting legislation and making improvement-oriented changes. This sounds like a solid example of solution-oriented, evidence-based, bipartisan oversight.

Methods and Limitations

Of the ten people that we asked for interviews, three responded. We had to rely heavily on their information because there are no recordings of committee hearings either live or archived. Moreover, there are not archived recordings of legislative floor sessions. Delaware has the lowest level of video or audio recordings for any of the 50 states.⁴⁶⁵

⁴⁶³ <https://delawarestatenews.net/opinion/commentary-delaware-sunset-committee-needs-more-support/>, accessed 7/26/18

⁴⁶⁴ <https://www.sunset.texas.gov/about-us>

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⁴⁶⁵ <http://www.ncsl.org/research/telecommunications-and-information-technology/legislative-webcasts-and-broadcasts.aspx>, accessed 1-10-19

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