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State Legislative Oversight: **Maine**



Capacity and Usage Assessment

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

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Legislative Oversight in Maine

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Summary Assessment

Maine’s legislature appears to have the capacity to conduct oversight of the executive, but this occurs only on a case-by-case basis. There is no requirement that audits are reviewed. There does not appear to be an explicit use of audit reports in the appropriations process, although the limited availability of information on hearings makes it hard to assess this with certainty. The State Auditor performs only fiscal audits and not performance audits. The Office of Program Evaluation and Government Accountability (OPEGA) performs performance audits at the request of the Government Oversight committee, but it is a small office with limited resources. As a result it has filed only 38 reports since 2010 (eight years), fewer than five per year, and moreover these reports are not extensive. The report mentioned earlier concerning DHHS responsibility in the death of two girls was only 9 pages long. Reports on similar problems in other states led to full-scale performance audits or investigative reports that stretched to dozens of pages with numerous recommendations for agency changes. As the report correctly announces, it is an “OPEGA Information Briefing”. This is not a full-scale audit. Although the legislature could play a substantial role in administrative rule review, in practice, it merely delays adoption of rules.

Major Strengths

The Government Operations Committee is nonpartisan, with equal numbers of legislators from both major political parties. We found examples of vigorous oversight conducted through the Government Operations Committee. Both the State Auditor and OPEGA appear to provide strong capacities for oversight, but we note that they lack the funding and staff needed to produce full-scale performance audits. Written questions submitted to the governor and state agency directors by the Joint Committee on Appropriations and Financial Affairs along with other substantive joint committees demonstrate strong capacity for oversight. The use of joint committees across chambers and also collaboration between substantive and finance committees appears to be an efficient use of the scarce committee staff resources. The example of cooperating in a proactive fashion across partisan lines relating to the environment and potential

mining operations shows that Maine can and often does conduct police patrol oversight rather than simply reacting to crises.

Challenges

Four challenges were identified that prevent the Maine legislature from conducting more rigorous oversight. First, the institutional pushback the legislature receives from executive agencies is a deterrent, especially with a more aggressive governor like Gov. LePage. Second, Maine has a citizen legislature that does not meet frequently and when it does legislators' time is consumed with the lawmaking process of considering and producing bills. Third, the presence of term limits does not give legislators enough time to fully understand all that state government does. One elected official lamented that after eight years, "I finally have a handle on state government and I'm done." Finally, while the staff who aid legislators at the committee level have a great deal of expertise and knowledge of state government functions, few have experience with oversight.¹⁰⁶⁰

Relevant Institutional Characteristics

According to the National Conference of State Legislators (NCSL), Maine has a part-time "lite" legislature (Kurtz & Weberg, 2017) that meets for only half the year, from December through June. The legislators were paid \$14,271.00 for their first regular session and receive more than \$4,000.00 less for the second regular session of their term; earning only \$10,158 for that session (Moncreif & Griffin, 2017). The legislature is bicameral, comprised of a senate and a house of representatives. Both senators and representatives serve 2 year-terms. Legislators may not serve more than eight years (or four terms) consecutively (NCSL, 2015a). Maine has a large legislature for such a small state with the upper chamber comprised of 35 Senators and the lower chamber comprised of 151 Representatives.

In 2015 the legislature employed 206 staffers, of which 171 were permanent (NCSL, 2015b). Maine's staffing levels are comparable to other New England states like New Hampshire with 150 overall staffers and Vermont with 92.¹⁰⁶¹ Maine provides central non-partisan and partisan staff to legislators, with only the presiding officers, speaker of the house and senate president having dedicated staff. The partisan offices provide legislative aides to their respective caucuses. On average, one legislative aide is assigned to 7 or 8 representatives and one aide for every 4 or 5 senators.¹⁰⁶² In cases where legislators would need technical consulting on audit reports, legislators are likely to rely on the non-partisan central office staff.

Since Maine is a non-professional part-time legislature, it is reasonable to expect legislators to have a difficult time conducting oversight of the executive branch and related agencies. With little assistance from a professional staff, short terms, and term-limits, it is difficult to envision legislators developing substantive expertise on the job in any area of policy

¹⁰⁶⁰ Interview notes from 7-18-18

¹⁰⁶¹ <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 7/10/18

¹⁰⁶² Interview notes, 7/13/18.

that would allow them to effectively monitor the states specialized administrative agencies. Maine ranks as the 41st most professional state legislature (Squire 2017).

Maine's governor has an average amount of institutional power--ranked as the 29th most powerful governor in the United States (Ferguson 2015). As is the case in many states, the Governor of Maine has limited tenure potential, serving no more than two four-year terms in office (The State of Maine, 2013). Maine's governor may use the line-item veto on appropriations bills, but it only takes a simple majority vote of the general assembly to override a line-item veto.¹⁰⁶³ However, on other bills where the governor cannot use the line-item veto, the legislature needs a 2/3rd majority to override the governor's veto. Maine's governor has limited appointment control over other major executive agencies-- empowered to make 18 political appointments out of nearly 50 positions listed in the Book of the States (CSG 2014, Table 4.10) 16 of which require legislative approval. In Maine, the Secretary of State, State Treasurer, Attorney General, and the State Auditor are elected by a joint ballot of the legislature (not the voters) to serve 2-year terms, with a term limit of 4 consecutive terms. While it is not clear if this makes these top executive branch officials more responsive to the legislature, at times it produces uneasy relationships with the governor because there is often a mixture of Democrats, Republicans, and Independents serving in these positions.

As recently as 2015, Governor LePage attempted to change the selection method of executive officials by the legislature. He proposed eliminating the secretary of state and shifting those duties to a newly created office of the lieutenant governor. Maine is currently one of five states with no lieutenant governor.¹⁰⁶⁴ Additionally, LePage proposed that the attorney general, treasurer, and auditor general become gubernatorially-appointed offices with consent of the Senate. Not surprisingly, the Maine legislature rejected LePage's constitutional proposals.¹⁰⁶⁵

Political Context

Currently Maine is more competitive than other New England states, with Republicans and Democrats capable of winning statewide offices and control of the legislature. Part of this competition reflects the strength of independent and third-party candidates. The state clearly had divided government from 1992 through 1996. Divided government returned again in 2013 through 2018. At the state level, control of the state Senate and House of Representatives has been divided between Republicans and Democrats since 2015.¹⁰⁶⁶ In 2018, Maine's legislature was divided with Republican's narrowly controlling the Senate 18 to 17 and Democrats narrowly controlling the House 74 to 70, with an additional 7 legislators from other parties or classified as independents.

This level of partisan competition was not evident during the early 2000s. From 2003 to 2010 Democrats controlled both legislative chambers and the governorship. Republicans gained control of all three of these from 2011-2012. The partisan composition of the legislature and executive branch is ambiguous from 1997 through 2002 depending on how one classifies

¹⁰⁶³ <http://bangordailynews.com/2015/06/19/news/state/senate-addresses-lepages-124-line-item-vetoes-with-lightning-speed/>, accessed 9/26/18.

¹⁰⁶⁴ <http://bangordailynews.com/2015/01/22/politics/lepage-to-propose-adding-lieutenant-governor-dropping-secretary-of-state/>, accessed 7/17/18

¹⁰⁶⁵ <http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280056885>, accessed 7/17/18

¹⁰⁶⁶ <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx>, accessed 7/17/18

Independent Governor Angus King, who currently caucuses with the Democratic Party in the U.S. Senate. If he is classified as a “leaning Democrat,” then the Democratic trifecta expands to include 1997 through 2010, more than a decade.

As a potentially competitive state Maine does not enjoy the same extreme low levels of partisan polarization in the general assembly that other New England assemblies do, like Massachusetts, Connecticut, Rhode Island, and Vermont for instance.¹⁰⁶⁷ This is evident in Shor & McCarty’s (2017) polarization data, which ranks the Maine house of representatives the 13 most polarized state house and its senate the 19 most polarized upper chamber. As a result, the two approximately equal parties face off much more frequently in the legislature.

Despite this level of partisan polarization, Maine’s legislators have joined forces to rein in its current governor. Governor LePage has made extensive use of his veto powers vetoing 642 bills and line-items to date, which is more than all of Maine’s previous governors combined.¹⁰⁶⁸ The legislature has responded by overriding his vetoes at a historically high rate for Maine with 302 of LePage’s vetoes overridden, a rate of nearly 53%. While the legislature has been primarily divided or under Democratic control for most of LePage’s tenure, the practical impact of his vetoes has effectively made it necessary for any bill to have the support of 2/3rd of the legislature.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The principal analytic bureaucracy in Maine is the Office of the State Auditor (OSA), a legislative agency. It is headed by the state auditor who is elected to the position by a joint ballot of the legislature. The auditor may be elected to two four year-terms. According to statute, the state auditor performs three services: First, the OSA provides auditing services for municipalities and court districts. Second, the OSA performs post audits by request of either the legislature or the governor. In this capacity, the agency may provide staff support for an investigation requested by the legislature or the governor into any agency or organization that receives state funding. Third, the OSA performs an annual single audit of the state. The OSA’s audits are confined to reviews of agencies spending practices.¹⁰⁶⁹

For example, in 2016 the OSA performed a post audit of the state’s Social Service Block Grant program and found that the state was transferring federal TANF funds to the Social Services Block Grant in a way that was likely out of compliance with the federal TANF transfer program.¹⁰⁷⁰ The Maine Department of Health and Human Services responded by calling the OSA (a legislative agency) overly partisan. Since 2005, the OSA has only performed 17 such post audits of individual departments/programs. Eight of those 17 audits were performed in 2013. The OSA is required to send reports, such as the 2016 DHHS report mentioned, to all

¹⁰⁶⁷ <http://www.centerforpolitics.org/crystalball/articles/registering-by-party-where-the-democrats-and-republicans-are-ahead/>, accessed 7/19/18

¹⁰⁶⁸ <https://bangordailynews.com/2018/07/16/politics/how-lepage-and-his-veto-pen-remade-maine-politics/>, accessed 7/17/18

¹⁰⁶⁹ Interview notes 7/17/18

¹⁰⁷⁰ <https://www.maine.gov/audit/osa-reports/UseofTANFTransferstotheSSBG.pdf>, accessed 7/17/18

relevant committee chairs as well as to the governor's office. In addition to post audit reports of state programs, the OSA conducts an annual state audit, as well as budget and annual audits of all of Maine's counties, municipalities, and its unorganized territories.¹⁰⁷¹ The audits of the Maine's local government subunits constitute the bulk of the OSA's published reports and are contracted out to private accounting firms. The overall budget for the OSA in FY 2015 was \$3.1 million of which approximately \$1.3 million was a state appropriation (NASACT 2015). It employs a staff of 28, 26 of whom are audit professionals.

In addition to OSA the Joint Government Oversight Committee (GOC) is supported by the non-partisan Office of Program Evaluation and Government Accountability (OPEGA). OPEGA exists to support the Legislature in monitoring and improving the performance of State government by conducting independent, objective reviews of State programs and activities with a focus on effectiveness, efficiency and economical use of resources. Within this context, OPEGA also evaluates compliance with laws, regulations, policies and procedures. It produced six reports in 2018, two of which were briefs. The reports appear to be thorough evaluations.

Aiding the Joint Committee on Appropriations and Financial Affairs (AFA) is the Office of Fiscal and Program Review (OFPR). The OFPR's activities are directed by the Legislative Council which is an administrative committee that manages the entire legislature. It is comprised of legislators holding house and senate leadership positions. The Council is balanced evenly on a partisan and institutional basis.¹⁰⁷² The non-partisan OFPR staff consists of a director plus eight analysts and two administrative support staffers. In addition to staffing committee hearings related to budget issues, OFPR collects, researches, and analyzes fiscally-related information for legislators and committees whose primary policy area is taxation, revenues, and appropriations. The OFPR also projects revenue and expenditure—representing the legislature on the Revenue Forecasting Committee. Its primary responsibility, however, analysis of the governor's budget, other appropriations requests, and the fiscal impact of any introduced bill or amendment.¹⁰⁷³

The OFPR has "program review" in its title suggesting that it conducts some type of auditing or reviews of program effectiveness, however in conversations with the OFPR it was stated that the office's name is a vestige of former responsibilities of the legislative agency. Rather, the OFPR's main purpose is to guide legislators through the budgetary process, draft budget amendments, and issue fiscal reports on revenue.¹⁰⁷⁴

Oversight Through the Appropriations Process

The Maine legislature attempts to use its power of the purse to check the executive branch efforts to control the budget. The governor's line-item veto power is easily overcome by a simple majority vote, so the legislature can engage in effective bargaining with the executive branch. In 2017 a budget standoff, which led to a short 3-day government shutdown in Maine, illustrates this balance of power. The budget standoff in Maine hinged on a tax increase. To provide some budgetary context Maine's budget for the 2016-2017 biennium was approximately \$7 billion. The Democratically controlled house in Maine proposed cutting back a new, voter approved, 3% surtax on income over \$200,000 for the state's education fund to 1.75% and

¹⁰⁷¹ <https://www.maine.gov/audit/county/index.html>, accessed 7/17/18

¹⁰⁷² <http://legislature.maine.gov/execdir/legislative-council/9071>, accessed 7/17/18

¹⁰⁷³ <http://legislature.maine.gov/ofpr/>, accessed 7/17/18

¹⁰⁷⁴ Interview notes 7/17/18

additionally increasing the state's lodging tax from 9% to 10.5%. House Republicans and Governor LePage preferred eliminating the surtax entirely. So LePage vetoed the budget approved by the legislature until July 1st when the government shutdown. Three days later, on July 4th, the Governor signed a budget which eliminated the increase in the lodging tax, but also included an increase in the use of federal TANF funds for early childhood education and a two-year moratorium on changes to mental health funding, both priorities of the house Democratic caucus.¹⁰⁷⁵

In addition to the use of checks and balances to influence the state's budget, Maine's legislature engages in traditional forms of oversight through its appropriations committees.¹⁰⁷⁶ One way that oversight of expenditures is codified is the review of financial orders by the appropriations committee.¹⁰⁷⁷ Following the appropriations and allotment process, agencies and departments formulate financial plans, often referred to as "work programs," that map out the agency's spending plan for the legislative appropriation.¹⁰⁷⁸ The judiciary and each department submit their work plans to the governor who then consolidates all work plans into a financial order, which his office must approve.¹⁰⁷⁹ In some cases the appropriations committee has thirty days to approve the financial order before it is implemented, thereby allowing the Legislature, through the appropriations committee, to review any work programs that may significantly deviate from the original "work plan and the intent of the legislature."¹⁰⁸⁰

While the Maine Legislature provides access to live sessions, it only recently began utilizing audio recordings of some committees. However, there are few recordings to date since the program was only recently implemented. Additionally, the audio recordings that have been compiled are only available through FOIA requests.¹⁰⁸¹ Since audio recordings of hearings are sporadic and just beginning, an examination of committee agendas indicates that executive branch officials make presentations to various appropriations committees and subcommittees. Without recordings of these sessions, we cannot tell how and to what extent committee members engage in questioning executive branch officials. We did, however, find a list of questions that the Joint Committee on Appropriations and Financial Affairs and Joint Standing Committee on Health and Human Services compiled after the two committees met together along with the Legislative Council on January 5, 2018 to consider whether to fund and approve a new 21-bed "step-down" facility that would provide care for people transitioning from a forensic mental health hospital to less expensive in-patient care. This group of legislators submitted these questions to Gov. LePage with copies to commissioners of the Department of Health and Human Service and the Department of Administration and Financial Service. The questions from committee members are exceptionally detailed and extend to four pages of single-spaced typed questions. Additionally, the committee attached three-pages of typed questions from stakeholders—patients at the Upper Saco Unit at the Riverview Psychiatric Center. The following is typical of the questions sent to the governor and agency commissioners by committee members:

¹⁰⁷⁵ <https://bangordailynews.com/2017/07/03/politics/lepage-looms-large-over-stalled-budget-talks-as-shutdown-drag-through-third-day/>, accessed 1/21/18

¹⁰⁷⁶ Interview notes 7/17/18

¹⁰⁷⁷ <http://legislature.maine.gov/doc/147>, accessed 11/2/18

¹⁰⁷⁸ <http://legislature.maine.gov/doc/147>, accessed 11/2/18

¹⁰⁷⁹ <http://legislature.maine.gov/doc/147>, accessed 11/2/18

¹⁰⁸⁰ <http://legislature.maine.gov/doc/147>, accessed 11/2/18

¹⁰⁸¹ Interview notes 11/1/18

How and at what point in the process does the Administration intend to solicit and Incorporate stakeholder input, especially mental health advocacy perspectives? And how will the Department incorporate input from the Consumer Council System of Maine, NAMI, Disability Rights Maine and other critical stakeholders into each phase of the Riverview Secure Rehabilitation Facility project’s development, including vendor selection, site location, building, staffing and care.

The governor’s reply to these questions was a series of accusations directed at the legislations asking the questions. These accusations were dismissive and insulting.

We found a similar list of questions about a gubernatorial proposal to restructure Maine’s county jails. Key questions in the written list sent to the governor were, “If your report is approved, who will pay for it?” and “How does the funding work exactly?”¹⁰⁸² In the cover letter accompanying this list of questions from the committees (Joint Standing Committee on Appropriations and Financial Affairs and Joint Standing Committee on Criminal Justice and Public Safety), it appears that the governor set as a condition of appearing before the committee a written list in advance of the questions committee members would be asking.

In conversations with people familiar with the appropriations process, we were told that Appropriations and Financial Affairs (AFA) committee actions and oversight efforts were largely contingent on the personalities of committee leadership.¹⁰⁸³ For example, previously the AFA often used the interim to hold hearings and highlight issues relating to excessive spending or inappropriate use of appropriated funds. The process of holding a hearing on these types of issues was often enough to effect change in the agency in question. Recently the AFA holds fewer interim hearings. Knowledgeable observed attributed this change to the makeup and personalities on AFA, which change frequently due to term limits. In fact, the AFA has not held an interim hearing for nearly three years.

Oversight Through Committees

The Maine legislature makes extensive use of joint committees, and as our discussion of oversight through the appropriations process indicates, joint standing committees with jurisdiction over substantive policy areas often meet in tandem with the Joint Standing Committee on Appropriations and Financial Affairs when a proposed change will impact the state’s budget. The Joint Rules of the Maine Legislature establish 16 joint standing committees, and allows for the creation of other joint committees as the legislature deems necessary.¹⁰⁸⁴ Currently there are 23 listed joint standing committees in the 128th Legislature.¹⁰⁸⁵ These joint committees are responsible for the bulk of the lawmaking and policy formation in the Maine legislature, and the standing committees that are exclusive to one chamber do not contribute greatly to the lawmaking or oversight process.¹⁰⁸⁶ The heavy reliance on joint committees creates a unique committee dynamic not commonly seen in other legislatures. Since the House is the larger chamber its membership dominates joint committees which are made up of 13

¹⁰⁸² <http://legislature.maine.gov/doc/2159>, accessed 9/26/18.

¹⁰⁸³ Interview notes 7/17/18

¹⁰⁸⁴ http://legislature.maine.gov/house/jr_frame.htm, accessed 7/18/18

¹⁰⁸⁵ <http://legislature.maine.gov/committee/#Committees>, accessed 7/18/18

¹⁰⁸⁶ Interview Notes from 7-18-19.

members, usually with 3 Senators and 10 Representatives, with exception of the Government Oversight Committee, which is equally comprised of Senators and Representatives. Further complicating the joint committee dynamic is the current divided control of Senate and House. As a result, Democrats currently hold a one vote majority on all the committees. The structure of joint committees gives the House of Representatives the potential to dominate committee business and lawmaking.¹⁰⁸⁷ However, since all legislation is dependent on passage through both chambers, an individual senator wields greater influence on the composition of bills than the average representative. In essence, representatives can dominate committee activities, and senators can dominate the floor debate and amendment process.¹⁰⁸⁸ In the end the somewhat unique joint committee environment requires a great deal of cooperation in the lawmaking process.

Oversight can be conducted through each joint standing committee with the appropriate jurisdiction. Experts in the state, however, indicate that most legislators do not have the time for oversight.¹⁰⁸⁹ As a result, the only committee that consistently conducts oversight is the Joint Government Oversight Committee (GOC) with the support of the non-partisan Office of Program Evaluation and Government Accountability (OPEGA). The GOC is comprised of twelve members with an even partisan and institutional split. Interestingly, the GOC is one of the few joint committees where membership is not dominated by the larger House of Representatives, but is made up of six senators and six representatives.

The GOC directs activities of OPEGA by selecting topics and setting the scope of OPEGA's investigations, while working to ensure that OPEGA has access to the information it needs to conduct reviews.¹⁰⁹⁰ OPEGA's authority is outlined in statute and they may access and use confidential information during the review process. After OPEGA completes a report the GOC allows for public comment on the report by various stakeholders in response to the report's findings or recommendations. At that point the GOC meets in a work session to endorse or reject the report, make legislative recommendations, or refer portions of the report to the appropriate committee for their consideration. The GOC continues to monitor all legislative action regarding the report, which is relatively easy considering the OPEGA staff is the primary support staff for the GOC. Since 2010, OPEGA has conducted 38 reports on a wide range of issues, which is a sizable number considering OPEGA has only ten staffers.

Recently, there was a high-profile failure of Maine's child protective services, where, in separate instances, two young girls were killed while the Department of Health and Human Services knew of the abuse.¹⁰⁹¹ The GOC instructed OPEGA to conduct a review of the monitoring practices of the DHHS and make recommendations for action. After initial resistance on the part of the governor to allow the DHHS Commissioner to testify and a subpoena by the GOC to compel the commissioner to testify, the GOC and governor began to work more closely to resolve issues that OPEGA identified as contributing factors in the deaths of the young girls.¹⁰⁹² Specifically, the governor is attempting to get ahead of the OPEGA report by proposing legislation that focuses on the need for more caseworkers and increases in pay to

¹⁰⁸⁷ Interview notes from 7-17-18.

¹⁰⁸⁸ Interview notes from 7-18-18.

¹⁰⁸⁹ Interview notes 7-18-19.

¹⁰⁹⁰ <http://legislature.maine.gov/doc/2249>, accessed 7/18/18

¹⁰⁹¹ <https://www.pressherald.com/2018/07/10/dhhs-chief-says-agency-will-urge-hiring-of-75-more-child-protective-workers/>, accessed 7/19/18

¹⁰⁹² <http://www.wmtw.com/article/official-says-lepages-bill-tackles-child-welfare-system/22106854>, accessed 7/19/18

attract and retain state caseworkers.¹⁰⁹³ However, the initial report from OPEGA suggests the underlying causes of deaths of the two girls may differ. In their report, OPEGA determined that in one instance established procedures and policies of protective services were not followed and the actions of the caseworker were not properly supervised. In the second instance there was appropriate follow-up and information sharing but perhaps not enough reassessment of information that might have prompted different approaches to identifying risks to the child.¹⁰⁹⁴

However, in Maine not all oversight is reactionary or “fire alarm” type oversight. In 2017 Maine completely revised laws regulating the mining industry, even though there were no major mining operations occurring in Maine. Several legislators recognized that the laws on the books were outdated and did not adequately protect Maine’s environment. Furthermore, while there were no major mining operations in Maine, there was some interest from Canadian mining firms to conduct geological assessments of what resources were present and the difficulty in accessing those resources.¹⁰⁹⁵

The reforms included changing the administrative rules process related to mining, where under the normal process any substantive rule changes that are not blocked by legislation automatically take effect. The new mining reform bill reversed that process, stating that any new rules relating to mining had to be approved by the legislature before taking effect and the agency could not proceed with the rule even when the legislature failed to act on the proposed rule. Another reform was to require all mining operations to be shaft mines, effectively banning open pit mines and requiring mining companies to provide financial assurances upfront to pay for any environmental damage or accidents that may occur during mining operations.¹⁰⁹⁶ The support for the bill was overwhelmingly bipartisan, with the measure passing the Senate 34-0 and the House 121-14 and serves as an excellent example of bipartisan proactive oversight.

Oversight Through the Administrative Rules Process

In Maine, under state law agencies must submit all newly proposed rules to the legislature for adoption. There is no review of existing rules. For any rule classified as a major substantive rule to become permanent, the agency must submit rules to the legislature in the form of a bill that the legislature must pass and wait for the governor to sign it.¹⁰⁹⁷ If the rule is classified as a routine technical rule, then the agency can submit it along with a “fact sheet” to the Legislative Council, who may send it on a the committee with substantive jurisdiction over the agency for an optional review. If the legislature takes no action on a rule by the end of the legislative session in which the agency submitted the rule, then the rule takes effect.

For major rules changes, the Legislative Council may call a public hearing and the agency must submit information on financial impacts. If a group with at least 100 voters among its members contacts the Legislative Council about a rule, the council must hold a public hearing. These major rule changes are also accompanied by economic and fiscal impact statements. But

¹⁰⁹³ <http://www.wabi.tv/content/news/DHHS-Commissioner-testifies-in-front-of-Government-Oversight-Committee-487821251.html>, accessed 7/19/18

¹⁰⁹⁴ <http://legislature.maine.gov/doc/2315>, accessed 7/19/18

¹⁰⁹⁵ Interview notes from 7/18/18

¹⁰⁹⁶ <https://www.pbs.org/video/environmental-issues-facing-the-state-of-maine-vp3gss/>, accessed 7/18/19

¹⁰⁹⁷ Schwartz 2010 p. 250-251, accessed 7/18/18

these are often vague, incomplete, and inconsistent, so they do not facilitate quality analysis of administrative rules (Schwartz 2010).

In practice, due to limited staff resources and the part-time nature of the legislature very few rules are actually reviewed. Rules take effect if the legislature fails to act, which is what typically occurs.¹⁰⁹⁸ As a result, while the Maine legislature can stop or modify rules, the infrequent use of this prerogative dilutes the power of the legislature to merely a temporary postponement of the rule.

Oversight Through Advice and Consent

Gov. LePage is responsible for making 18 political appointments, 16 of which require legislative approval. In Maine, the joint committee with jurisdiction over the relevant state agency reviews the governor's nominees. For example, if nominating someone to be the Commissioner of the Department of Economic and Community Development, then the Joint Committee on Labor, Commerce, Research, and Development would consider the nomination. The joint committee then votes favorably or unfavorably of the nomination and the Senate can only overturn the committee's ruling by a 2/3rd vote. In conversations with sources familiar with the advice and consent process, the review by the senate of the governor's nominees is *pro forma*. The person interviewed could only recall one instance in recent memory where a governor's nominee was rejected by a joint committee, and the senate was unable to overturn the unfavorable report.¹⁰⁹⁹

The power of Maine's governor to issue executive orders is implied rather than explicitly stated in either statute or in the state's constitution. The legislature has no power to review these orders nor is there any requirement that they comply with the state's administrative procedures act. Moreover, there is no requirement that the public be notified or that the orders be filed or published. That said, the governor's website lists all executive orders issued from 2011 onward. And, with so little restriction on the use of these orders, the state's governors have not issued as many of these orders as some other states' governors do. Also, the governor has the authority to initiate agency reorganizations via an executive order (Beyle, 2008).

Oversight Through Monitoring of State Contracts

Monitoring of state contracts appears to be done through the Office of the State Controller (OSC), which is in the executive branch under the Department of Administrative and Financial Services.¹¹⁰⁰ There does not appear to be a centralized system for monitoring state contracts. Rather the OSC sets the policies and procedures for procurement through contracts and leaving the monitoring of those contracts to the individual agencies. Regardless, there is little legislative involvement in this process.¹¹⁰¹

¹⁰⁹⁸ Schwartz 2010 p.252, accessed 7/18/18

¹⁰⁹⁹ Interview notes from 7/18/18

¹¹⁰⁰ <https://www.maine.gov/osc/aboutus.shtml>, accessed 7/19/18

¹¹⁰¹ <https://legislature.maine.gov/doc/1818>, accessed 9/26/18.

Oversight Through Automatic Mechanisms

There is no regular sunset mechanism in Maine. Agency review occurs as an ad hoc process and agencies, which do have reporting requirements in their authorizing statutes, have them in a similarly ad hoc fashion (Baugus and Bose 2015). However, Maine unlike most New England states also has an extensive “sunrise” mechanism which places the burden of demonstrating that new rules and regulations do not unnecessarily burden the economy on agencies before the bill may be enacted.

The state’s Administrative Procedures Act requires that each agency submit annually to the legislative committee with jurisdiction over its substantive area a “regulatory agenda.” This agenda consists of a list of rules the agency anticipates proposing, but also a list of any rules that the agency has adopted on an emergency basis during the past year. Committees are required to meet to review any regulatory agendas they receive. The committee may then propose legislation to make adjustments to rules adopted in the previous year. This effectively circumvents the restriction against agency review of existing rules—at least during the first year after a rule is adopted.

Methods and Limitations

Maine does not provide archival recordings of committee hearings. It also does not provide extensive minutes or other resources that document the questions and discussions that occur in committee hearings. It is, therefore, difficult to determine how effectively legislators perform oversight. We interviewed three people out of the five people we contacted by oversight in Maine.

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