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State Legislative Oversight: **New York**



Capacity and Usage Assessment

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

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Legislative Oversight in New York

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Summary Assessment

Legislative leadership controls the chambers, and as a result budgets and other issues are often decided in closed door deals between the chamber leaders and the governor. When oversight or even calls for more oversight occur, they are often reactive, fire-alarm oversight, as in the cases of nurse licensing or the SUNY bid-rigging scandal. Public access to information about the legislature's activities is also hampered by websites that are difficult to navigate and by limited information about committee activity.

Major Strengths

There is substantial institutional capacity to conduct audits within the OSC. Joint public hearings during the appropriations process are quite substantial and involve testimony from agency representatives, questions from legislators, and public comments. The legislature also has substantial influence over government reorganization. And while it appears that advice and consent on gubernatorial appointees has often been somewhat pro forma in the past, there are indications that this may be changing (although such changes are driven partly by partisan concerns).

Challenges

Despite the institutional resources available to conduct audits, there appears to be little coordination between the Comptroller and the legislature, and little evidence exists that audit reports are frequently the subject of committee hearings. The reactive nature of legislative attention to issues like contracts and the sporadic nature of committee hearings means that oversight does not always occur in an effective way. Even when hearings do occur, remedial legislation often has a difficult time making it through committees to face a vote. This is partly a result of the dominance by legislative leadership over both the functioning of committees and the legislative process. This influence extends into the realm of appropriations, which, despite

substantial hearings, appears largely to be the result of bargaining between the governor and legislative leaders. A lack of any general sunset provisions, combined with inadequate review capacities mean that the legislature has little influence over the state’s regulatory regime.

Relevant Institutional Characteristics

The New York State Legislature is classified by the National Conference of State Legislatures (NCSL) as one of the most professionalized in the United States, with Squire (2017) ranking it at 3rd in the nation, after California and Massachusetts. Legislators work full time, are well paid, and have large staffs (NCSL, 2017b).¹⁶⁷¹ Legislators receive a \$79,500 salary, plus a \$175 per diem for each full day in session. The legislature meets year-round (NCSL, 2017a).¹⁶⁷² The legislature as a whole employed 2,865 staff members as of 2015, 2,776 of whom were full-time. This was the most in the country, but nearly 1,300 less than New York had in 1988 (NCSL 2016).¹⁶⁷³ New York legislators are not term-limited, and both assembly and senate members run for reelection every two years.

New York’s legislature “relies on a strong leadership system,” and “[t]he powers granted to the leaders by their party conferences are sweeping” (Haider-Markel 2009). One of the most crucial powers is the ability to appoint chairs and membership in all standing committees, which “allows legislative leaders...to coordinate the policy process within each house by regulating the flow of legislation to the floor.” This system, however, has also led to accusations that “the majority leaders of each house and the governor constitute ‘three men in a room’ who make public policy for the state (Haider-Markel 2009).

New York’s Governor is also powerful, rated by Ferguson (2015) as 13th most powerful among the 50 states, tied with Wyoming. This rating is derived in part from the governor’s power over the budget, including the line-item veto and executive budget authority. According to the New York Division of the Budget, “[u]nder this system, the Executive is responsible for developing and preparing a comprehensive, balanced budget proposal, which the Legislature modifies and enacts into law (New York State Division of the Budget).”¹⁶⁷⁴ According to Haider-Markel (2009), this power “allows the governor to set the fiscal agenda each year and forces the legislature to negotiate directly with the governor.” Besides the governor, there are not many other separately elected executive positions in New York, the only others being the lieutenant governor, the comptroller, and the attorney general. New York’s governorship is also distinguished by its substantial informal power, much of which is a function of the office’s national prominence and prestige, a side-effect of New York City’s “sheer size and economic importance...to the rest of the nation” (Haider-Markel 2009).

New York has traditionally been characterized as having an “activist” state government and “long history of progressive politics.” Consequently, during the 20th century New York institutionalized a social welfare state, under both Democratic and Republican Governors (Haider-Markel 2009). This philosophy has meant that an above average percentage (13.4%) of New York’s workforce is employed in state or local government. Larger than average

¹⁶⁷¹ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx> Accessed 07/11/18

¹⁶⁷² <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx> Accessed 07/11/18

¹⁶⁷³ <http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf> Accessed 07/11/18

¹⁶⁷⁴ <https://www.budget.ny.gov/citizen/process/process.html> Accessed 07/11/18

proportions are employed in public safety and welfare (2.3% in each compared to national averages of 1.7% and 1.6% respectively) and services (1.8% in California compared to 1.3% nationally). The proportion employed in education, 6.2%, is only slightly above the national average of 6.1%. (Edwards 2006).

Political Context

New York State politics has been heavily influenced by the Democratic Party, in no small part due to the dominance of New York City. The more rural upstate regions, meanwhile, traditionally have held solid Republican majorities. There are over twice as many registered Democrats in the state as there are Republicans (NYS Board of Elections),¹⁶⁷⁵ and currently the governor and lieutenant governor, the attorney general, and the comptroller are Democrats. The New York Assembly consists of 150 members. The assembly is dominated by the Democratic Party, which controlled the chamber consistently even prior to the 1990s through 2018. In 2018 Democrats held a commanding 104-41 majority, with 1 member of Ross Perot's Independence Party and 4 vacancies.

The story is more complicated in the New York Senate, which varies in size from a constitutional minimum of 50 members. The variation is a relic of New York's 1894 Constitution that created a formula to expand the number of state senators in response to increases in population. There have been legal disputes over this because there are three different ways to calculate the number of seats, and these methods have been used by political parties to add or subtract districts to their advantage. Currently, there are 63 Senators. The Democrats won control of the Senate in 2008 only to have a breakaway faction, unhappy with the party's choice for chamber leadership, caucus with the Republicans. Initially only one of the four disgruntled Democrats caucused with the Republicans, but that created a 31 to 31 split within the chamber. In 2010 Republicans gained control the NY Senate. The so called Independent Democratic Caucus (IDC) bargained with Senate Republicans for chair positions of major committees in exchange for their support of the Republican caucus, and apparently were given extra stipends (called "lulus") in a clandestine deal that eventually led to legal consequences. By 2018 the IDC had grown to eight members and was preventing Democrats from exerting majority control over the chamber. As a result of primary challenges, the IDC power in the chamber ended. In 2019 Democrats reestablished majority control of the chamber.

Despite these political maneuvers, Shor and McCarthy (2015), do not report especially high levels of polarization in either chamber. The New York Assembly is the 33rd most politically polarized lower chamber in the nation, while the Senate is the 23rd most polarized upper chamber. Moreover, some legal mechanisms exist to ensure bipartisan representation in oversight processes. For instance, the Senate rules stipulate that its Ethics and Internal Governance Committee be comprised of an equal number of members from each of its two largest parties (usually Democrats and Republicans). This stands in contrast to other Standing Committees, whose composition is proportional to the chamber's overall partisan makeup (New York State Senate).¹⁶⁷⁶ (Senate Rule VII.1.d.) During the period of IDC activity in the Senate, with the Republicans and the IDC comprising a majority coalition, the Ethics Committee

¹⁶⁷⁵ https://www.elections.ny.gov/NYSBOE/enrollment/county/county_apr16.pdf Accessed 07/11/18

¹⁶⁷⁶ <https://www.nysenate.gov/legislation/laws/CMS> Accessed 07/11/18

consisted of three Republicans, three Democrats, and three Independent Democrats. This effectively gave three of the eight Independent Democrats in the senate membership on this committee. So, a bipartisan rule in practice gave extraordinary power to one faction in the senate.

The State Constitution also requires partisan balance on some commissions, such as the Independent Redistricting Commission (Article III.5.b, p. 7-8) and the Commission on Judicial Nomination (discussed above, Article VI, 2.c-e, p.14-15) (New York Department of State).¹⁶⁷⁷ Other commissions require bi- or multi-partisan representation, but not necessarily balance. One such commission is the Joint Commission on Public Ethics, in which twelve slots are allotted for appointment by the Governor and majority conferences in each legislative chamber, with only one slot each appointed by the Assembly and Senate's respective minority leaders. Thus, the electoral and numerical preeminence of the Democratic Party in the state does not translate into one-party hegemony in policy-making.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Financial oversight of state agencies and municipalities in New York State is primarily conducted by the Office of the State Comptroller (OSC), an exceptionally large analytic bureaucracy led by an elected comptroller. The entire OSC employs 2,700 people and receives a state allocation of \$46.3 million to support its work (NASACT 2015). The audit division has 495 of these positions allocated for its work (NASACT 2015). The OSC conducts financial oversight of state agencies, public authorities, and local governments. It monitors the financial condition of local governments and school systems through its ongoing Local Government Fiscal Stress System Report. It hires outside CPA firms to conduct the state's single audit.

The OSC has numerous responsibilities other than those associated with audits. It manages and issues public debt, administers the state's payroll of \$16.7 billion, monitors the Justice Court Fund and the Oil Spill Fund, provides technical assistance and training to all levels of government, and monitors unclaimed funds of approximately \$15 billion. Additionally, it administers the New York State and Local Retirement System and investigates acts of corruption by public officials and fraud involving public funds (NY State Comptroller).¹⁶⁷⁸ To do this, it maintains a hotline for tips on fraud and corruption (NASACT 2015).

Of interest to our discussion here, the OSC conducts audits of state agencies, reviews state contracts and audits contract payments. The Comptroller's Office also performs performance audits, which are intended to "provide the Legislature and Executive Branch with an independent and objective view of how State and City government can operate more efficiently and effectively."¹⁶⁷⁹ Within the Comptroller's Office, it is the Division of State Government Accountability (SGA) that conducts audits of New York State and New York City agencies and public authorities."¹⁶⁸⁰ For the reporting year 2016-17, the SGA "issued 115 audit reports addressing the operations of state agencies and public authorities." Of these,

¹⁶⁷⁷ <https://www.dos.ny.gov/info/constitution.htm> Accessed 07/11/18

¹⁶⁷⁸ <https://www.osc.state.ny.us/about/response.htm> Accessed 07/11/18

¹⁶⁷⁹ <https://www.osc.state.ny.us/recruit/mgmtaud.htm> Accessed 07/11/18

¹⁶⁸⁰ http://osc.state.ny.us/audits/annualreport16_17.pdf Accessed 07/11/18

approximately 35 reports annually are performance audits rather than financial audits. Stressing the value of all 115 audits, the Comptroller’s annual report claims that its work saved the state over \$320 million, with the potential for another \$316 million in savings. It notes, however, that “[i]n these cases, more action is usually required to realize the savings (e.g., legislative action or agency follow-up investigations with vendors to determine actual amounts).” The heads of audited agencies, moreover “must report to the Governor, the State Comptroller, and the leaders of the Legislature and the legislative fiscal committees on any steps taken to implement the State Comptroller’s recommendations, and on reasons why any particular recommendations were not implemented.”¹⁶⁸¹ Of the 113 recommendations made in the 2016-17 reporting period, 94% were acted upon in full or in part by agencies.

The comptroller also regularly proposes legislation “to increase the accountability and transparency of New York state and local government. During the 2017-18 legislative session, for example, the comptroller proposed 19 bills on topics ranging from accruing debt to responding to acts of terrorism, promoting transparency in the state procurement process, strengthening ethics and conflict of interest laws, and fire protection contracts, among other things. Of the 19 bills, only 4 were ultimately signed into law (Office of the State Comptroller).¹⁶⁸²

It is less clear, however, to what extent legislators actually use the audit reports generated by the comptroller for oversight purposes. An archive search of transcripts and video on the Assembly’s website, for example, turns up only passing references to audits, and, as noted above, most of these are financial rather than performance audits.¹⁶⁸³ Conversations with practitioners indicate a lack of familiarity with what the legislature did with audits (interview notes 2019), and a lack of interest in legislative oversight of the executive (interview notes 2019). The latter may be changing, as recent calls for stepping up legislative investigations of the executive branch were made by the new chair of the Assembly Investigations Committee (interview notes 2019; Campanile, 2019).¹⁶⁸⁴ The independence of the elected OSC could explain this level of detachment between the legislature and the audit division, a situation that we found in other states that have only an elected auditor.

Other divisions of the OSC work with the legislature providing information used during the appropriations process. These units are the Division of Budget, Senate Finance, and Assembly Ways and Means, each have staff involved in fiscal matters, including fiscal notes on bills and budget forecasting. It is difficult to determine exactly how many staff positions are assigned to each entity, but the Empire Center’s data on the state budget indicates that there are 294 staff in the Division of Budget and 100 staff serving the Assembly Ways and Means Committee.¹⁶⁸⁵

Oversight Through the Appropriations Process

As described above, the Governor of New York enjoys executive budget powers. Under this model, “[t]he Governor is required by the State Constitution to seek and coordinate requests

¹⁶⁸¹ http://osc.state.ny.us/audits/annualreport16_17.pdf Accessed 07/11/18

¹⁶⁸² <https://www.osc.state.ny.us/legislation/index.htm> Accessed 07/11/18

¹⁶⁸³ <http://nyassembly.gov/av/> Accessed 07/12/18

¹⁶⁸⁴ <https://nypost.com/2019/01/02/cuomo-threatens-to-investigate-state-lawmakers-funding/> accessed 2/5/18

¹⁶⁸⁵ Seethroughny.net/payrolls 2/5/18

from agencies of State government, develop a ‘complete’ plan of proposed expenditures and the revenues available to support them (a ‘balanced budget’), and submit a budget to the Legislature along with the appropriation bills and other legislation required to carry out budgetary recommendations (New York State Division of the Budget).¹⁶⁸⁶ Among these are “Article VII Bills,” which contain “other provisions necessary to implement the Executive Budget. Such legislation typically amends existing State laws governing programs and revenues.”

Once the budget is submitted to the legislature, the Senate Finance and Assembly Ways & Means Committees analyze the Governor’s budget. They are advised during this process by the Division of the Budget (DoB), which is an executive agency that “works closely with state agencies to coordinate the development and execution of their policy programs, ensuring the Budget Office is involved in every facet of New York State’s government.”¹⁶⁸⁷ Extensive committee hearings are held throughout this process. The Assembly Ways and Means Committee, for example, held 26 meetings on different aspects of the budget (higher education, public protection, human services, etc.) between January 24 and February 27, 2017.¹⁶⁸⁸ The primary purpose of these meetings is “to provide the appropriate legislative committees with public input on the Executive Budget proposal (New York State Legislature).”¹⁶⁸⁹

Hearings are quite substantial, and routinely last 6-8 hours or more. These hearings feature testimony from agency representatives who also take questions from committee members, as well as activists, NGOs, and social services organizations. The meetings are also an opportunity for committee members to exercise oversight of agency activities. During a joint budget hearing on environmental conservation held on February 27, 2018, for example, committee members asked the Commissioner of the Department of Environmental Conservation to justify several budget lines, including money allocated for zoos, initiatives intended to combat algal blooms, and the elimination of a soil health program. Similar inquiries were made of other agency representatives who testified at this and other hearings.¹⁶⁹⁰

Once the public hearings conclude, the legislature proposes amendments to the governor’s budget; these amendments are subject to a line-item veto, which can be overridden by a two-thirds veto in each chamber. Any parts of the budget not added by the legislature or pertaining to appropriations for the legislature and judiciary, however, automatically become law. Any changes by the legislature to the executive budget must be compiled in a legislative report, which is published online. The most recent report indicates that, depending on the agency in question, the number of such amendments varies significantly. For example, the legislature accepted without any changes the governor’s budget for the Department of Audit and Control, while the Division of the Budget received an extra \$827,000 for membership dues and other operational purposes. The Division of Criminal Justice Services, however, received \$26.28 million in extra funding, split between dozens of different programs and initiatives. The legislature also modified or disapproved several of the governor’s Article VII proposals to implement the budget. For example, the legislature did not approve “Executive proposals to amend speedy trial requirements; conditions for bail and pre-trial detention; or changes to the

¹⁶⁸⁶ <https://www.budget.ny.gov/citizen/process/process.html> Accessed 07/12/18

¹⁶⁸⁷ <https://www.budget.ny.gov/division/history.html> Accessed 07/12/18

¹⁶⁸⁸ <http://nyassembly.gov/comm/?id=41&sec=hearings> Accessed 07/12/18

¹⁶⁸⁹ <http://nyassembly.gov/Press/files/20180116.php> Accessed 07/12/18

¹⁶⁹⁰ http://nystateassembly.granicus.com/MediaPlayer.php?view_id=8&clip_id=4551 Accessed 07/12/18

criminal discovery process,” and also rejected “the Executive proposal to limit law asset seizure and forfeiture activities.”¹⁶⁹¹

Despite the Governor’s preeminence in the appropriations process, the legislature does not serve as a “rubber stamp.” The 2018 budget process, for example, was fraught, with controversy, with Governor Cuomo facing off against the legislature over a number of issues (Campbell, 2018a),¹⁶⁹² including school funding, taxes, and a proposed bailout for the del Lago Resort and Casino, which was opposed by the governor but supported by many legislators, including the powerful senate Republican majority leader (Spector, 2018).¹⁶⁹³ The 2018 budget showdown, however, also revealed the importance of the legislative leadership in decision-making: most of the important negotiations were held during “closed-door meetings (Campbell & Spector, 2018)”¹⁶⁹⁴ between the House and Senate majority leaders and the Governor. Indeed, when the final budget was passed, it occurred at 4 am on March 30, after “[Governor] Cuomo and top lawmakers struck a deal” late in the night to avoid a government shutdown (Campbell, 2018b).¹⁶⁹⁵

Oversight Through Committees

The rules of the assembly require that all committees conduct oversight “of the activities...of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction”¹⁶⁹⁶ (Assembly Rule IV.1.d, p. 11). The senate rules similarly declare that “each standing committee is required to conduct oversight of the administration of laws and programs by agencies within its jurisdiction.”¹⁶⁹⁷ (Senate Rule VIII.5.c, p. 14) According to New York Legislative Law, “the chairman, vice-chairman or a majority of a legislative committee may issue a subpoena requiring a person to attend before the committee and be examined in reference to any matter...[pertaining to an] inquiry or investigation being conducted by the committee...”¹⁶⁹⁸

It appears, however, that committees seldom exercise this power. For instance, during 2016 hearings by the Senate Health Committee and Environmental Conservation Committee on the Hoosick Falls water-contamination scandal,¹⁶⁹⁹ senators from both parties bemoaned the unwillingness of officials from companies implicated in the crisis to testify before the committee, with one minority party committee member insisting that such officials should be subpoenaed

¹⁶⁹¹ <http://nyassembly.gov/Reports/WAM/2018changes/2018changes.pdf> Accessed 07/12/18

¹⁶⁹² <https://www.democratandchronicle.com/story/news/politics/albany/2018/03/28/10-things-know-new-yorks-state-budget-talks/467550002/> Accessed 07/12/18

¹⁶⁹³ <https://www.democratandchronicle.com/story/news/politics/albany/2018/03/27/del-lago-casino-struggling-revenue-seeks-state-bailout/462198002/> Accessed 07/12/18

¹⁶⁹⁴ <https://www.democratandchronicle.com/story/news/politics/albany/2018/03/29/time-late-lawmakers-cuomo-race-toward-budget-deadline/470325002/> Accessed 07/12/18

¹⁶⁹⁵ <https://www.democratandchronicle.com/story/news/politics/albany/2018/03/30/new-york-budget-talks-reach-breaking-point-albany/472895002/> Accessed 07/12/18

¹⁶⁹⁶ <http://nyassembly.gov/Rules/> Accessed 07/12/18

¹⁶⁹⁷ <https://www.nysenate.gov/legislation/laws/CMS> Accessed 07/12/18

¹⁶⁹⁸ <http://codes.findlaw.com/ny/legislative-law/leg-sect-62-a.html> Accessed 07/13/18

¹⁶⁹⁹ <https://www.nysenate.gov/calendar/public-hearings/august-30-2016/drinking-water-contamination> Accessed 07/13/18

(Hoylman, 2016a).¹⁷⁰⁰ Although the committee chairman, under public pressure, eventually did issue subpoenas (Hamilton, 2016),¹⁷⁰¹ he delayed publicizing the results (French, 2016; Hoylman, 2016b).¹⁷⁰² Similarly, a 2017 audit of the Education Department's oversight of nurse licensing,¹⁷⁰³ found that the department failed to address the majority of serious complaints (83%) within the department's own 6-week timeframe. Many investigations, in fact, were open for an average of 7 months. An earlier report on this subject by ProPublica¹⁷⁰⁴ was enough to spur the Senate to pass legislation¹⁷⁰⁵ to address some of these issues (Porat, Adams, & Huseman, 2016; The New York State Senate, 2016 & 2018; Huseman, 2017).¹⁷⁰⁶ However, the Assembly failed to pass any legislation, leading senators to complain that "The roadblock lies squarely at the hands of the Assembly. At some point they have to bow to the need for action (New York State Senate, 2015)."¹⁷⁰⁷ Despite promises to enact legislation during the 2018 legislative session, however, no further action appears to have been taken.

In practice, the quality and frequency of deliberate oversight conducted by the legislature varies by chamber and by committee. Some committees, like the Assembly Energy Committee and the Senate Health Committee, held 7 public hearings each in 2017. On the other hand, several committees in both chambers did not hold any hearings at all in the past two years, although they did hold meetings. But these meetings were often perfunctory and consisted largely of votes on legislation.

The activities of the Assembly and Senate committees explicitly charged with conducting oversight seem similarly modest, at least in recent years. The Assembly's Standing Committee on Oversight, Analysis, and Investigation, for example, has held only one public hearing in the last two years, with another scheduled and subsequently canceled.¹⁷⁰⁸ It did conduct investigations into a handful of state agencies, although these were limited in scope, and essentially intended to identify best practices.¹⁷⁰⁹ That committee also considers itself a "resource" for other standing committees, and publishes "A Guide to Legislative Oversight" for use by other legislators (Brennan, 2005).¹⁷¹⁰ The document outlines the authority for legislative oversight in New York and techniques that can be used to engage in oversight (hearings, special studies, communications with the media, subpoenas, etc.). Meanwhile, the Senate Standing Committee on Investigations and Government Operations has held only two public hearings, and its regular meetings often lasted 10 minutes or less and consisted on up-or-down votes on legislation. A newly appointed committee chair appears to be scheduling more frequent

¹⁷⁰⁰ <https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/hoylman-demands-subpoena-compel-polluters-testify-hoosick-falls> Accessed 07/13/18

¹⁷⁰¹ <https://www.timesunion.com/local/article/Democrats-seeks-release-of-subpoenaed-Hoosick-10551702.php> Accessed 07/13/18

¹⁷⁰² <https://www.politico.com/states/new-york/albany/story/2016/10/hoylman-demands-results-of-hoosick-falls-subpoenas-be-made-public-106854>; <https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/senator-hoylman-demands-ny-senate-leadership-produce-documents> Accessed 07/13/18

¹⁷⁰³ <http://osc.state.ny.us/audits/allaudits/093017/16s83.htm> Accessed 07/11/18

¹⁷⁰⁴ <https://www.propublica.org/article/weak-oversight-lets-dangerous-nurses-work-in-new-york> Accessed 07/13/18

¹⁷⁰⁵ <https://www.nysenate.gov/legislation/bills/2015/S7791>;

<https://www.nysenate.gov/legislation/bills/2017/s1380/amendment/a> Accessed 07/13/18

¹⁷⁰⁶ <https://www.propublica.org/article/state-audit-slams-new-york-oversight-of-nurses> Accessed 07/13/18

¹⁷⁰⁷ <https://www.nysenate.gov/legislation/bills/2015/A10532> Accessed 07/13/18

¹⁷⁰⁸ <http://nyassembly.gov/comm/?id=30&sec=hearings> Accessed 07/12/18

¹⁷⁰⁹ http://nyassembly.gov/write/upload/pdfs/20171215_79158.pdf Accessed 07/12/18

¹⁷¹⁰ <http://www.judgewatch.org/library/nys/feb2005-report-legislative-oversight.pdf> Accessed 07/12/18

meetings, underscoring the impact the particular people can have on legislative oversight when the processes is dependent on individual motives and motivation.

Political motives, environmental disaster, and human failure combined to produce an oversight hearing said to be one of the only major oversight hearings in all of 2018 (interview notes 2019). A Nor'easter, a kind of storm, had hit the New York coast leaving many without power and leaving some to question the time it took to restore power. The public hearing titled, *To evaluate the reason behind widespread power outages and slow restoration of power in the Hudson Valley over the past two weeks*, was held jointly by the Senate Standing Committee on Investigations and Government Operations, Senate Standing Committee on Energy and Telecommunications, and Senate Standing Committee on Aging on March 27th, 2018.¹⁷¹¹ Chair of the hearing, Republican Senator Terrence Murphy, was motivated in part by a need to firm up support in his district when he chaired hearings into the state's response to a natural disaster (interview notes 2019). The hearing resulted in SB S7262A authored by Senator Murphy. The bill passed in the senate but died in the assembly.¹⁷¹² Murphy would go on to lose his reelection bid to a Democrat 7 months later, despite featuring his investigation of the slow response to the outages prominently in his campaign (Weinberger, 2018).¹⁷¹³

The hearing itself featured CEOs of public utilities and an official from the Department of Public Service. The former provided detailed answers regarding staffing, hours needed to complete repairs, and specific challenges including downed power lines and uprooted mature trees on private property that impeded repairs. The Public Service Commission (PSC) provided information about their investigation into power restoration delays, hardening of the power system, the emergency plans, and the PSC's role in approving the emergency plans. The depth of senators' knowledge of the relationship between the utilities and PSC seemed at times superficial. For instance, the chairman didn't know or realize the PSC had staff overseeing the utilities' response to the storms in real time. The chair didn't know that the PSC had staff at each of the utilities' emergency response centers and their corporate offices working with utility management and staff. Several exchanges involved Republican Senators inquiring about the effect that the Democratic governor's sending crews to Puerto Rico, an island also experiencing power outages due to storm, had on power restoration times. The officials replied the effect would be minimal. CEOs encouraged legislators to attempt to find solutions to the major source of outages during the storm, large trees outside of the right a way. However, in response to this suggestion, few legislators seemed eager to pursue legislative remedies to this problem, perhaps out of fear of the legal and electoral consequences of tree trimming or tree removal on private property. Senator Murphy's bill, SB S7262A, would have made changes to emergency planning, restoration of service reporting, and vegetation management during emergencies, but it died in the assembly.¹⁷¹⁴

This hearing did not demonstrate high quality, evidence-based, solution-driven oversight by the legislature of an executive branch agency. During the hearing legislators made limited use of evidence and information about the problem addressed—response time during power outages. Moreover, the performance of a state agency, the PSC, does not appear to have been the focus of the investigation. Indeed, legislators demonstrated little knowledge about the role played by the

¹⁷¹¹ <https://www.nysenate.gov/calendar/public-hearings/march-27-2018/joint-public-hearing-evaluate-reason-behind-widespread-1> accessed 2/5/18

¹⁷¹² <https://www.nysenate.gov/legislation/bills/2017/s7262/amendment/a> accessed 2/5/18

¹⁷¹³ <https://www.tapinto.net/towns/yorktown/articles/state-senate-candidate-terrence-murphy> accessed 2/5/18

¹⁷¹⁴ <https://www.nysenate.gov/legislation/bills/2017/s7262/amendment/a> accessed 2/5/18

PSC. The problems addressed arise from choices made by utility companies and their performance in a crisis.

Oversight Through the Administrative Rules Process

The Administrative Regulations Review Commission (ARRC) is a joint legislative committee that reviews all new rules and regulations proposed by state agencies. The ARRC is “a bi-partisan watchdog over every state agency’s rules and regulatory activities to make sure they are legal and effective (Legislative Commission on Administrative Regulations Review, 2017).”¹⁷¹⁵ Although the membership from each chamber reflects the partisan composition of that chamber, when one chamber is controlled by each of the two major political parties, a joint commission is also a bipartisan commission. The ARRC reviews rules “from the viewpoint of how they affect the average taxpayer, small business owner or family.”¹⁷¹⁶ The committee also has the power to “hold hearings, subpoena witnesses, administer oaths, take testimony and compel the production [of evidence](Justia NY Legis L Section 87, 2015a).”¹⁷¹⁷ While agencies are required to submit proposed rules to the ARRC for review, the ARRC does not have the independent authority to block the adoption of rules; it can only “make recommendations to an agency based upon its review of that agency's rule making process, or any of the agency's proposed, revised or adopted rules(Justia NY Legis L Section 88, 2015b),”¹⁷¹⁸ For example, then ARRC Chair Ken Zebrowski compiled a report showing 12 comments that resulted in changes for 2013 and 2014 (Legislative Commission on Administrative Regulations Review, 2017).¹⁷¹⁹ This report also shows that over the same period AARC was responsible for introducing 5 bills regarding rules and rule procedure, with one being signed into law in 2013 (ibid). The ARRC, however, is required to report to the governor and the entire legislature periodically on the rules it has reviewed. Schwartz (2010) reports that the effort to coordinate rule review across the two chambers has largely failed with each conducting separate reviews. That said, it appears that both chambers do not vigorously exercise their rule review prerogatives. The committees often lapse into inactivity and even when they are active, their assessment is only advisory.

There is also another layer of rules review, the Governor’s Office of Regulatory Reform (GORR). This was created via executive order in 1995 by then Governor Patacki, but all subsequent governors have renewed this order (Schwartz 2010). GORR makes recommendations about rules to the Governor’s cabinet, known in New York as the Executive Chamber, which also “reviews proposed rules for necessity, clarity, consistency and efforts to reduce burdensome effects (Division of Administrative Rules).”¹⁷²⁰ In the absence of any major revisions as a result of ARRC, GORR, or Executive Chamber review, the rule is adopted and filed with the Department of State’s Division of Administrative Rules.¹⁷²¹ Existing rules are also reviewed “no

¹⁷¹⁵ <https://nyassembly.gov/comm/?id=44&sec=story&story=72406> Accessed 07/17/18

¹⁷¹⁶ <http://nyassembly.gov/comm/ARRC/20150603/index.pdf> Accessed 07/17/18

¹⁷¹⁷ <https://law.justia.com/codes/new-york/2015/leg/article-5-b/87/> Accessed 07/18/18

¹⁷¹⁸ <https://law.justia.com/codes/new-york/2015/leg/article-5-b/88/> Accessed 07/18/18

¹⁷¹⁹ <https://nyassembly.gov/comm/ARRC/20150603/index.pdf> accessed 1/11/19

¹⁷²⁰ <https://www.dos.ny.gov/info/rulediagram.html> Accessed 07/18/18

¹⁷²¹ <https://www.dos.ny.gov/info/index.html> Accessed 07/18/18

later than in the fifth calendar year after the year in which the rule [was] adopted, and, thereafter...at five-year intervals (FindLaw, NY SAP Section 207).¹⁷²²

A bill, S05982 (2017), that would strengthen the ARRC's powers by requiring agencies to respond in writing to ARRC objections was considered in 2018. It required "at least a brief explanation of the agency's rationale for either agreeing with the objection, or requiring additional time for consideration, or for disagreeing with the objection (New York State Assembly, 2017)."¹⁷²³ The bill has so far passed the Senate and died in the Assembly Governmental Operations (ibid.).

Oversight Through Advice and Consent

The Constitution of New York guarantees the Senate's right to confirm or reject gubernatorial appointments to lead state agencies, as well as "the members of all boards and commissions, excepting temporary commissions" appointed by the governor (New York Department of State).¹⁷²⁴ Confirmation hearings occasionally feature questions by members of substantive standing committees and testimony from nominees, though such hearings often are left until the very end of the legislative session, when they have typically been rushed through. Most nominees "are usually interviewed in the morning and confirmed...later in the day (Karlin, 2017)."¹⁷²⁵ In one case, "the Senate rushed through [Governor] Cuomo's same-day appointment of Joe Lhota as MTA chairman, with a committee confirmation hearing taking place late at night via Skype while the nominee was in his home (Lovett, 2018)."¹⁷²⁶ This practice has left some senators disgruntled, prompting complaints that "committee[s] and...nominees should have the respect that they deserve, rather than having [hearings] jammed at the end of session (Lombardo, 2018)."¹⁷²⁷ Consequently, starting with the 2018 legislative session nominees are now divided into Tier One and Tier Two groups, with the first being "those who are being nominated for a paid or policymaking position" and Tier Two consisting of those who are not (Flanagan, 2018).¹⁷²⁸ Henceforth, there is "a prohibition on the Senate considering Tier One nominees the same day that such nomination is submitted to the Senate" and a prohibition on considering Tier Two nominees whose names were submitted to the senate at least one month prior to the end of the legislative session. Some have interpreted these changes in the light of partisan conflict between the Republican-dominated senate and the Democratic governor, who "has publicly pledged to try and help flip the chamber to Democratic control (Lovett, 2018)."¹⁷²⁹

¹⁷²² <https://codes.findlaw.com/ny/state-administrative-procedure-act/sap-sect-207.html> Accessed 07/18/18

¹⁷²³ http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S05982&term=2017&Summary=Y&Actions=Y Accessed 2/8/19

¹⁷²⁴ <https://www.dos.ny.gov/info/constitution.htm> Accessed 07/18/18

¹⁷²⁵ <https://www.timesunion.com/local/article/PSC-nominee-testifies-unclear-when-confirmation-11201171.php> Accessed 07/18/18

¹⁷²⁶ <http://www.nydailynews.com/news/politics/state-republicans-warn-cuomo-nominee-appointments-article-1.3949383#> Accessed 07/18/18

¹⁷²⁷ <https://www.timesunion.com/news/article/Senate-Republicans-overhaul-confirmation-process-12885129.php> Accessed 07/18/18

¹⁷²⁸ <https://www.scribd.com/document/378114115/Appointments-Letter-Senator-Flanagan> Accessed 07/18/18

¹⁷²⁹ <http://www.nydailynews.com/news/politics/state-republicans-warn-cuomo-nominee-appointments-article-1.3949383#> Accessed 07/18/18

The governor has the power to appoint the majority of the Executive Chamber, with the exception of the comptroller, the attorney General, and the lieutenant governor, who are elected separately, and the head of the Department of Education, who is selected by the State Board of Regents, which is itself appointed by the legislature (Haider-Markel 2009). As with appointments to executive agencies, the Senate may approve or reject appointments to the Court of Appeals, New York's highest court (New York Department of State).¹⁷³⁰

Government reorganization is largely in the hands of the legislature, owing to the fact that the divisions of the executive branch are established in statute (New York State Senate, Section 31).¹⁷³¹ According to the state constitution, "the legislature may... assign by law new powers and functions to departments, officers, boards, commissions or executive offices of the governor, and increase, modify or diminish their powers and functions... (and may create) temporary commissions..." (Article V.3, p. 13). However, the governor does have the power to "establish, consolidate, or abolish additional divisions and bureaus" not already established by law. Any appropriations required by such actions would require legislative action. In recent years, a number of different agencies have been merged, including the Division of Parole and the Department of Correctional services, the Consumer Protection Board and the Department of State, and the Banking and Insurance Departments. These changes were enacted as part of the budget, and thus received legislative approval (Murphy, 2011).¹⁷³²

New York's governor has the power to issue executive orders only if they are related to disasters and emergencies or to establish study commissions or similar entities. This is more limited authority than many other state governors have in this area. The legislature does not have the power to review these, which seems quite sensible with respect to disaster warnings where speed is of the essence. It is therefore somewhat surprising to find that the governor issued 50 executive orders in 2018. While most of these concern disasters and emergencies of a physical nature such as floods, some involve protecting women's reproductive rights, ensuring parolee's voting rights, and other threats that are less environmental. The legislature has no authority to intervene to stop these orders other than to pass laws.

Oversight Through Monitoring of State Contracts

As discussed above, the Comptroller monitors all state financial transactions, including pre-approval of state contracts. Some watchdog groups have called on the legislature to increase its oversight of this domain, citing instances of "rigged" contract bidding and a general lack of transparency (Gullo, 2016).¹⁷³³ In one case, the former President of SUNY Polytechnic Institute was convicted for "steer[ing] hundreds of millions of dollars in state contracts to favored companies in Buffalo and Syracuse,"¹⁷³⁴ even though "an audit of 924 procurements across several SUNY campuses between...2012 [and] 2014...didn't find any major issues (Weiser &

¹⁷³⁰ <https://www.dos.ny.gov/info/constitution.htm> Accessed 07/18/18

¹⁷³¹ <https://www.nysenate.gov/legislation/laws/EXC/31> Accessed 07/19/18

¹⁷³² <http://www.ncsl.org/documents/fiscal/eliminations2011.pdf> Accessed 07/19/18

¹⁷³³ https://www.news10.com/news/groups-calling-on-ny-legislature-to-hold-emergency-hearing-on-historic-bid-rigging-scandal_20180313103045100/1037579415 Accessed 07/19/18

¹⁷³⁴ <https://www.nytimes.com/2018/07/12/nyregion/kaloyeros-guilty-buffalo-billion-cuomo.html> Accessed 07/19/18

Mckinley, 2018; Clukey, 2016).¹⁷³⁵ An aide to the Governor was also caught up in that scandal, “extort[ing] developers who built multi-million dollar facilities for the SUNY Polytechnic Institute” and “and squeeze[ing] companies with pending business before the state to pay him and his wife (Vielkind, 2016).”¹⁷³⁶ As a result, some legislators began calling for changes to laws that “provided SUNY more flexibility by eliminating the need for pre-approval from the state comptroller for all SUNY procurements (Clukey, 2016).”¹⁷³⁷ Others, however, warned that “red tape” would slow down economic development (ibid.). In the words of one legislator, “I’m all for more transparency and oversight, but instead of jumping to be the first to legislate in response to a controversy, why don’t we take a slower, more deliberative path and hold public hearings to see what’s best (ibid.).”

Some measures to increase oversight were attempted by the legislature, including “a ‘Database of Deals’ listing all projects awarded to a particular company, detailing subsidies received, and what New Yorkers are receiving for their return on investment in the taxpayer cost per job (Camarda, 2018).” Ultimately, that bill “passed out of committees in both houses last year but never made it to the floor for a vote (ibid.).”¹⁷³⁸ While legislative leadership claims to support other proposals that would give more power to the Comptroller to approve contracts, Senate and Assembly leaders have also said that they “are working towards a ‘three-way agreement’ with the governor before advancing the legislation (Silberstein, 2017).¹⁷³⁹”

The Governor, meanwhile, “has been defiant, saying that the powers should not be returned to the Comptroller,” proposing instead to expand the powers of executive inspectors general (ibid). Some legislators, however, dismiss the idea:

What [the Governor] wanted in the budget was to have an independent inspector general, appointed by him to review his contracts. I don’t think you have to be a lawyer, you just have to be somewhat sane to realize that that’s not a check and balance on anybody. He doesn’t want to lose that control and have that oversight. There’s no other logic why he wouldn’t do it (ibid.).

Consequently, activists, and even some legislators, have pushed lawmakers to pass legislation without the Governor’s support, overriding a veto if necessary. However, veto overrides in New York are exceedingly rare—the last one happened in 2006 (Hakim, 2006).¹⁷⁴⁰ In 2011 the Comptroller lost some power to monitor procurement (Interview 2018). Senate Bill 3984A would have restored those powers, but died in the Assembly Government Operations in 2018 (New York State Senate, S3984A).¹⁷⁴¹ Therefore, the legislature’s involvement in contract

¹⁷³⁵ <https://www.politico.com/states/new-york/albany/story/2016/10/legislators-look-to-change-suny-contract-procurement-repeal-law-that-diminished-state-oversight-106197> Accessed 07/19/18

¹⁷³⁶ <https://www.politico.com/states/new-york/albany/story/2016/09/cuomo-aide-percoco-charges-105711> Accessed 07/19/18

¹⁷³⁷ <https://www.politico.com/states/new-york/albany/story/2016/10/legislators-look-to-change-suny-contract-procurement-repeal-law-that-diminished-state-oversight-106197> Accessed 07/19/18

¹⁷³⁸ <http://www.gothamgazette.com/opinion/7542-sunlight-for-subsidies> Accessed 07/19/18

¹⁷³⁹ <http://www.gothamgazette.com/state/7007-with-session-ending-and-trial-looming-no-legislative-response-to-bid-rigging-scandal> accessed 2/8/19

¹⁷⁴⁰ <https://www.nytimes.com/2006/04/27/nyregion/legislature-overrides-most-budget-vetoes-but-pataki-says-he-will.html> Accessed 07/19/18

¹⁷⁴¹ <https://www.nysenate.gov/legislation/bills/2017/s3984/amendment/a> accessed 1/11/19

oversight is likely to remain minimal and even the OSC's role is limited by gubernatorial actions.

Oversight Through Automatic Mechanisms

According to Baugus and Bose (2015), there is no automatic sunset provision in New York State, although sunset clauses may be attached to legislation. New York also has no sunrise provisions in place.

Methods and Limitations

New York's Legislature provides access to some archived videos for the Assembly. The link to archived videos for the state's senate does not work. The video software for the assembly hearings includes the hearing agenda, and it is possible to move easily through the hearing to key parts of testimony and questioning. On the other hand, the capacity to search for archived videos is limited and cumbersome to use. We contacted 6 people to ask about oversight in the New York Legislature, but we were only able to talk to 4.

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