



# State Legislative Oversight: **Vermont**



## Capacity and Usage Assessment

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

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## Summary Assessment

While Vermont has a relatively weak governor, it also has limited legislative oversight mechanisms. Vermont’s legislature does not appear to regularly use the oversight tools available to it. Growing partisanship and increasing tensions between the legislature and the executive in recent years appear to magnify some of the flaws in the system of legislative oversight in Vermont.

### Major Strengths

Vermont’s legislature has an unusually large amount of influence over the appropriations process, a circumstance resulting from the fact that the governor does not have line-item veto authority. Similarly, standing committees routinely call agency heads in for questioning, which at times has prompted policy changes from those agencies. While recent disputes between the legislature and the governor have made the appropriations process more contentious, the legislature has remained united across partisan lines and was able to pass a budget in the face of repeated gubernatorial vetoes. Vermont also has sunrise laws in place that require agencies to demonstrate that any new rules will yield positive outcomes before being enacted.

### Challenges

Vermont’s legislature has the power to block gubernatorial appointees, but this power is used rarely. In recent cases when it has happened, blocking of nominees has been characterized as “highly unusual” and motivated by partisanship. Similarly, since 2017, the legislature has blocked only two of the 19 executive orders promulgated by the governor, and both pertained to agency reorganization. Vermont’s legislature has a minor role in the monitoring of contracts, which is instead left to executive agencies or the attorney general. Vermont has sunrise laws in place, but the state has no automatic sunset mechanisms in place to expire laws. Finally, and perhaps most importantly, while the legislature is able to request non-audit investigations of

particular programs, the governor is the only person empowered to request performance audits, which in any case occur relatively infrequently. Consequently, the general assembly's power to independently audit the executive is severely curtailed. Similarly, rulemaking is subject to review by the legislature, but LCAR cannot independently block the adoption of regulations.

## Relevant Institutional Characteristics

Vermont, like other states in New England, is typified by a relatively large citizen legislature and a weak governor (Haider-Markel, 2008). The Vermont General Assembly is classified by the NCSL as part-time<sup>2358</sup> and with Squire ranking it as 33<sup>rd</sup> in terms of professionalism (Squire, 2017). The Vermont General Assembly holds sessions for five months out of the year (Haider-Markel, 2008). Vermont also has one of the most poorly compensated legislatures in the US; legislators receive a total pay of only \$707.36 per week while in session and a \$100 reimbursement per day for travel expenses.<sup>2359</sup> Additionally, Vermont has the smallest legislative staff in the country, with only 92 total full-time and seasonal staffers. This is approximately half the size of the 180 member general assembly.<sup>2360</sup>

While the contemporary institutional powers of the governor's office are much stronger today than has historically been the case (Haider-Markel, 2008), Vermont's governor is still one of the weakest in the country, ranking 40<sup>th</sup> out of 50 states in terms of gubernatorial authority (Ferguson, 2013). The governor serves only two-year terms and has no line-item veto power. While Vermont governors do have the power to reorganize executive agencies, this power is checked in practice by the administrative regulation process (Haider-Markel, 2008). Previously, Vermont's governors were restricted to one-year terms and were informally restricted from seeking reelection; the office was considered a position of "first citizen" rather than the chief executive (Haider-Markel, 2008). Gubernatorial terms were eventually extended to two years and, since the 1920s, incumbent governors have successfully run for re-election 95% of the time.

Vermont's bureaucracy is average-sized per capita (Edwards, 2006). However, the allocation of human capital across the bureaucracy is uneven; the state's education system employs an above-average percent of the Vermont population (7.1% in 2006) while welfare services and public safety programs employ a smaller percentage of the state's population than nearly all other states. Overall, however, the proportion of the population employed in state and local government is similar in size to other states.

## Political Context

Vermont's political context is similar to that of neighboring New England states. As in much of the region, local politics is dominated by the Democratic Party. In Vermont, however, the general assembly consists of four partisan groups: Democrats and Republicans, nine Vermont

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<sup>2358</sup> [http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#side\\_by\\_side](http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#side_by_side), accessed 6/7/18.

<sup>2359</sup> <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>, accessed 6/7/18.

<sup>2360</sup> [http://www.ncsl.org/Portals/1/Documents/Elections/Legis\\_Control\\_2017\\_March\\_1\\_9%20am.pdf](http://www.ncsl.org/Portals/1/Documents/Elections/Legis_Control_2017_March_1_9%20am.pdf), accessed 6/7/18.

Progressive Party members (seven in the house, two in the senate), and seven independents in the house. While a strong tradition towards liberal politics and a strong Democratic Party are par-for-the-course in New England politics, the presence of multiple influential political parties is somewhat unusual. Democrats control more than two-thirds of the senate (23 of 30 seats) and form a majority in the house (84 of 150 seats). Vermont Progressive Party members often caucus with the Democrats, giving the latter a veto-proof majority in the house.

The number of self-identifying Democrats, Republicans, and conservatives in Vermont has decreased since the 1990s. While the percentage of self-identifying independents and liberals has increased. As of 2008, Vermont had the most self-identifying independents per-capita in the country, with 44% of the state identifying as such (Haider-Markel, 2008). The Republican Party in Vermont therefore typically adopts fairly centrist policies in order to stay competitive (Shor & McCarty, 2015). Vermont's House ranks at 25<sup>th</sup> in terms of partisanship, while the senate ranks at 33<sup>rd</sup> (Shor & McCarty, 2015), reflecting Haider-Markel's observation that, while the Vermont house tends to be openly partisan, the senate "operates in a highly collegial manner" (Haider-Markel, 2008).

Despite Vermont's tradition of left-liberal politics, Vermont's current governor is a Republican. This means that Vermont currently has a divided government, with the Democratic Party/liberal coalition controlling the general assembly and the Republican Party controlling the executive branch.

## Dimensions of Oversight

### Oversight Through Analytic Bureaucracies

The Vermont state auditor is a constitutional officer elected by popular vote every two years. The Office of the Vermont State Auditor (OSA) has 15 staff members, including the state auditor, three appointed positions, a financial manager, and 10 audit staff.<sup>2361</sup> The state appropriation for the OSA is fairly small, even for a small state—approximately \$600,000 in 2015 (NASACT, 2015). There is, however, an additional \$1.6 million appropriated for audits performed by contracts, such as CPA firms. The OSA is responsible for conducting three types of audits: federal single audits of agencies, boards, and municipalities that receive federal grant funding; a comprehensive state-wide governmental audit; and special (performance or other) audits. Currently, however, the federal single audit and the state's Comprehensive Annual Financial Report (CAFR) are handled under contract with an external auditor, KPMG. This leaves the state auditor's staff "free to focus almost exclusively on performance audits."<sup>2362</sup> In 2017 the OSA completed four performance audits, seven in 2016, six in 2015, three in 2014, and six in 2013—an average of five audits per year.<sup>2363</sup> In Vermont, the governor may require that the OSA conduct special/performance audits<sup>2364</sup>, but the state auditor is empowered to conduct

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<sup>2361</sup> <http://auditor.vermont.gov/sites/auditor/files/documents/2016-17%20Strategic%20Plan%20and%20PR%20Final%2001-31-17.pdf>, accessed 6/7/18.

<sup>2362</sup> <http://auditor.vermont.gov/sites/auditor/files/documents/2016-17%20Strategic%20Plan%20and%20PR%20Final%2001-31-17.pdf>, accessed 6/7/18.

<sup>2363</sup> <http://auditor.vermont.gov/node/95>, accessed 5/4/18.

<sup>2364</sup> Title 32, Chapter 3, § 163 of the Vermont State Code.

performance audits of his or her choosing (NASACT, 2015). The legislature, however, has no opportunities to dictate what agencies will be audited. Copies of audit reports are distributed to the senate pro tempore and the speaker of the house, as well as to the governor's office; the reports must also be available "prominently" on their website.<sup>2365</sup> The legislature is merely a consumer of these performance audits.

In addition to more formal "yellow book" audits, the state auditor may perform non-audit investigative reviews on specific programs. These reviews do not have to meet "yellow book" auditing standards, nor do they offer recommendations to the legislature. These reviews, however, "may lead to or complement performance audits."<sup>2366</sup> The OSA completes an average of five such evaluations each year. Unlike performance audits, legislative committees may initiate an investigative review, while other audits are initiated by the executive branch.

Audits and reports do occasionally serve as the basis for legislative action, though a representative from the OSA says that it is "extremely rare" that audits or non-audit investigations directly result in actual legislation. More often, the outcome is a regulatory change, not a statutory one. This is because most of the OSA's recommendations are targeted at agencies themselves. The auditor general's 2017 Performance Report notes that, while the OSA has no power to compel agency responses. Between 29-100% of the Auditor's recommendations are implemented within one year (with the majority implementing above 67% or more), depending on the agency and the specific issue in question.<sup>2367</sup> From 2003 to 2015 there was a steady upward trend in repeat findings in subsequent audits, followed by a very sharp decline in 2016. The Performance Report attributed this reduction to "the hard work of [Department of] Finance & Management staff who now provide more and better guidance and support to the various state agencies and departments."<sup>2368</sup>

The Joint Fiscal Office (JFO) is the analytic support agency that works closely with the legislature. It provides non-partisan staff support to committees that have jurisdiction over some facet of policy related to state finances. These include health care and education funding. It works closely with the committees most directly involved in the budget and appropriations processes: both chambers' appropriations committees, both chambers' transportation committees, the House Ways and Means Committee and the Senate Finance Committee, and the Joint Fiscal Committee.<sup>2369</sup> The JFO has a staff of 12 professionals, several of whom specialize in substantive policy domains such as health care finance, education finance, revenue and tax, and transportation.<sup>2370</sup> Additionally, JFO has a webmaster and an HR administrator.<sup>2371</sup> During 2017 the JFO produced 13 Issue Briefing Reports on a wide range of topics, including Water Quality Financing and the SSDI Program in Vermont: Mental Health and Musculoskeletal Diagnoses.<sup>2372</sup> Additionally, the JFO produced seven legislative briefing reports that primarily

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<sup>2365</sup> <https://legislature.vermont.gov/statutes/section/32/003/00163>, accessed 6/7/18.

<sup>2366</sup> <http://auditor.vermont.gov/sites/auditor/files/documents/2017-18%20Strategic%20Plan%20and%20PR%20Final.pdf>, accessed 6/7/18.

<sup>2367</sup> <http://auditor.vermont.gov/sites/auditor/files/documents/2017-18%20Strategic%20Plan%20and%20PR%20Final.pdf>, accessed 6/7/18.

<sup>2368</sup> <http://auditor.vermont.gov/sites/auditor/files/documents/2017-18%20Strategic%20Plan%20and%20PR%20Final.pdf>, accessed 6/7/18.

<sup>2369</sup> <http://www.leg.state.vt.us/jfo/>, accessed 7/18/18.

<sup>2370</sup> [http://www.leg.state.vt.us/jfo/contact\\_us.aspx](http://www.leg.state.vt.us/jfo/contact_us.aspx), accessed 7/18/18.

<sup>2371</sup> <http://www.leg.state.vt.us/jfo/publications/2017%20Fiscal%20Facts/2017%20Fiscal%20Facts%20--%20Part%201-01%20Cover%20and%20TOC.pdf>, p. 3, accessed 7/19/18.

<sup>2372</sup> [http://www.leg.state.vt.us/jfo/issue\\_briefs.aspx](http://www.leg.state.vt.us/jfo/issue_briefs.aspx), accessed 7/18/18.

provide budget analysis, seven other miscellaneous reports, such as results first reports, tax and revenue reports and basic needs reports. The latter discussed a livable wage for Vermont's citizens. It produces fiscal analysis, called fiscal notes, for bills considered in the two legislative chambers (37 fiscal notes for 2017). These are very brief, one page notes that describe the bill and what it will cost, and or what effects the bill would have on state employees if it were to become law. Finally, it produces a lengthy annual fiscal report of more than 100 pages for the citizens of Vermont, called Fiscal Facts. The report is publicly available on JFO's website.

According to sources familiar with the Vermont legislature, JFO reports can impact legislation and budget appropriations. These reports are sometimes brought up during committee hearings, or used to question agency witnesses during committee hearings (interview notes, 2018). For example, the JFO hired the University of Vermont to conduct a study of special education funding. The university and the legislature collaborated to change how special education is going to be funded (interview notes, 2018). According to this source, the issue was already on the legislative agenda, but the JFO report provided the final push.

When the legislature wants in depth reports, it allocates money to the JFO to request a proposal from outside entities, such as universities, that can conduct an investigation and produce a report. Sometimes, the JFO is able to provide a report for a committee chair or a key legislator, but it "can't do 180 different issue briefs" (interview notes, 2018).

## Oversight Through the Appropriations Process

Vermont's governor has limited power to steer the appropriations process, since he/she has no line-item veto power. This means that the governor has the choice to approve the bill, veto it in whole, or not sign it within 10 days of being submitted. If the budget is vetoed, then the legislature takes up the budget again. In the past, the appropriations process has not typically been very controversial, since, as Haider-Markel (2008) points out, Vermont has historically had a tradition of informal cooperation between the executive and legislative branches. Vermont House Speaker Mitzi Johnson (D-South Hero) reiterated that same sentiment when she told the Vermont Press Bureau that Vermont governors typically work with legislators "behind the scenes" on passing a balanced budget, even while they defend their own proposals in public.<sup>2373</sup>

Due to Vermont's current state of divided government, however, this kind of informal cooperation has become less common, and the appropriations process has become more contentious. In 2017, for example, major disagreements over the budget emerged between the Republican governor and the Democratically-controlled legislature. The governor had proposed to cut funding to disability assistance and certain tuition loan repayment programs. Cuts to education funding proposed by the governor have emerged as a major flashpoint between the executive and the legislature. Although he offered no specific policy proposals, the governor, citing the need to control mounting costs (Hirschfeld, 2018e),<sup>2374</sup> called on lawmakers to "do whatever's necessary" to avoid raising property taxes to fund education (Hirschfeld, 2018a).<sup>2375</sup> In a memo sent to legislators, the governor suggested several "ideas" for reducing costs,

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<sup>2373</sup> <https://www.vermontpressbureau.com/2017/03/15/house-dems-take-off-gloves-in-budget-battle/>, accessed 6/7/18.

<sup>2374</sup> <http://digital.vpr.net/post/state-state-scott-hints-major-education-spending-overhaul#stream/0>, accessed 4/25/18.

<sup>2375</sup> <http://digital.vpr.net/post/after-his-budget-address-lawmakers-poised-resume-fight-scott-over-education-spending#stream/0>, accessed 4/23/18.

including mandatory staff reductions, reforming special education, and investigating the possibility of closing some schools (Hirschfeld, 2018d).<sup>2376</sup> Legislators largely rejected the memo, with one lawmaker calling the ideas “wrongheaded.” Others complained that the governor’s ideas were “vague” and violated Vermont’s “proud history of letting local voters make financial decisions about what’s best for their local schools (2018a).”<sup>2377</sup> Instead, the legislature hopes to make up the education budget shortfall by shifting the burden to income taxes, which, as one source notes, the governor will almost certainly veto. This would prompt an override vote that, given the legislature’s partisan makeup, would stand a good chance of passing (McClaughry, 2018).<sup>2378</sup>

Ultimately, the House Appropriations Committee approved a budget, with unanimous support from Democrats, Progressives, and Republicans, that restored funding to the programs (Freese, 2018a).<sup>2379</sup> However, when the full legislature finally approved a budget before adjourning, it proved to be “a contentious end to a contentious session in which an already uneasy relationship between Democratic lawmakers and the Republican governor fell into deeper disrepair” (Hirschfeld, 2018c).<sup>2380</sup> In particular, the governor “[drew] a political line in the sand over the issue of tax increases,” and vowed to veto any budget that increased the state’s tax burden. A special session, convened to pass a new budget, was touted as a compromise with the governor (Bradley, 2018).<sup>2381</sup> However, Gov. Phil Scott vetoed the budget passed by the general assembly, forcing the legislature to reconsider the budget. Ultimately, the general assembly passed a largely identical budget, which the governor allowed to become law without his signature (Dobbs, 2018).<sup>2382</sup>

The House Ways and Means Committee is responsible for anything that involves state revenue—debt, taxes, and so on. It met regularly from January through May 2016. Meeting minutes indicate that specific legislation organizes the discussions. Each bill includes speakers. These are staff from the JFO, the Office of the Legislative Council, state agency leadership, and lobbyists, and members of other legislative committees. According to informed sources, the Vermont legislature does not have its own staff, so the JFO provides staff for committee hearings. More importantly, the JFO makes budget presentations to the committee, creates the budget bills and keeps track of tax revenue. Votes and “possible vote” are listed after a handful of the bills on a meeting agenda.<sup>2383</sup>

The Joint Fiscal Committee is an interim committee that meets when the legislature is not in session to provide continuity on budget and appropriations and other fiscal issues. It appears to meet four to six times from July through November. Meetings last for an entire day and minutes

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<sup>2376</sup> <http://digital.vpr.net/post/tax-hike-looms-scott-asks-lawmakers-consider-reductions-school-staff#stream/0>, accessed 4/25/18.

<sup>2377</sup> <http://digital.vpr.net/post/after-his-budget-address-lawmakers-poised-resume-fight-scott-over-education-spending#stream/0>, accessed 4/25/18.

<sup>2378</sup> <https://vermontbiz.com/news/2018/april/24/mcclaughry-annual-education-finance-end-game>, accessed 4/24/18.

<sup>2379</sup> <https://www.sevendaysvt.com/OffMessage/archives/2018/03/23/vermont-house-approves-58-billion-budget-with-broad-support>, accessed 4/24/18.

<sup>2380</sup> <http://digital.vpr.net/post/lawmakers-close-out-2018-session-scott-vows-budget-veto#stream/0>, accessed 6/7/18.

<sup>2381</sup> <http://wamc.org/post/second-vermont-budget-bill-passed-despite-veto-threat>, accessed 6/7/18.

<sup>2382</sup> <https://www.sevendaysvt.com/OffMessage/archives/2018/06/25/vermont-legislature-sends-scott-a-third-budget-proposal>, accessed 7/16/18.

<sup>2383</sup> <https://legislature.vermont.gov/committee/meeting-detail/2016/21/4189>, accessed 7/19/18.

of the meetings indicate lengthy substantive presentations as well as knowledgeable questions from legislators.<sup>2384</sup> The JFO also provides staff for this and other interim committees.

## Oversight Through Committees

Minutes for committee meetings are not available for all meetings or, when available, are not detailed. One source in the auditor general's office, however, said that it is "very common for agency heads to be called in for questioning." In one case that was widely reported in the media, senators criticized the Secretary of Vermont's Agency of Natural Resources (ANR) for failing to meet a deadline for the adoption of a regulation dealing with storm water runoff (Polhamus, 2018a).<sup>2385</sup> This prompted an apology from the official, who had previously blocked the regulation with little explanation, and a concession that nothing had in fact prevented her from adopting the rule on time (Polhamus, 2018b).<sup>2386</sup> Noting that another state bureau, the Agency of Agriculture, had also refused to cooperate with lawmakers regarding information about farms' contribution to the state's water pollution problems, some legislators suggested that the ANR's actions appeared to be part of a pattern of intentional flouting of environmental laws by the governor's administration. This incident suggests that there is a certain level of oversight being exercised by some standing committees over executive agencies that fall within their policy domain. One representative from the auditor general's office noted that appropriations committees tend to be particularly interested in matters of oversight and often request data for use in decision-making. However, most substantive standing committees "are more focused on broader policy issues" and tend to avoid "the nuts and bolts" of agency operations, "talk[ing] about proposals to department heads, and not so much about administration."

Vermont has several joint committees that meet when the legislature is not in session. Several of these explicitly include oversight of state programs in their name and their mission statement (e.g., the Health Reform Oversight Committee). The diligence with which these committees carry out their mission appears highly variable. The legislative council (one of these joint committees) has not met since 2016, lists no witnesses, and posts no documents on its webpage.<sup>2387</sup> The Health Reform Oversight Committee does appear more active. It met three times in 2017, but it does not post an agenda for any of these meetings. It does, however, post one or two reports that apparently were considered at these meetings. It posted an agenda for a meeting in November 2016 that lists four witnesses for each of two topics: Psychiatric Nurse Workforce Issues; and Substance Abuse Treatment: waitlists, challenges, opportunities.<sup>2388</sup> Witnesses for each of these topics included state agency leadership and practitioners in the field. There is no evidence that bills on this topic were passed during the 2018 legislative session. The committee also considered a piece of legislation that involved a waiver to the Prescription Drug Act. The legislature passed a bill on this subject that ". . . create[s] an entity to act as a

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<sup>2384</sup> [http://www.leg.state.vt.us/jfo/jfc/2017/2017\\_09\\_14\\_JFC\\_Meeting/2017\\_09\\_14\\_JFC\\_Minutes.pdf](http://www.leg.state.vt.us/jfo/jfc/2017/2017_09_14_JFC_Meeting/2017_09_14_JFC_Minutes.pdf), accessed 7/19/18.

<sup>2385</sup> <https://vtdigger.org/2018/03/29/facing-legal-censure-natural-resources-secretary-defends-inaction/>, accessed 4/23/18.

<sup>2386</sup> <https://vtdigger.org/2018/01/05/moore-gives-large-developers-pass-parking-lot-rule/>, accessed 4/23/18.

<sup>2387</sup> <https://legislature.vermont.gov/committee/search/2016/60>, accessed 7/19/18.

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[http://www.leg.state.vt.us/jfo/healthcare/Health%20Reform%20Oversight%20Committee/2016\\_11\\_14/2016\\_11\\_14\\_HROC\\_Agenda.pdf](http://www.leg.state.vt.us/jfo/healthcare/Health%20Reform%20Oversight%20Committee/2016_11_14/2016_11_14_HROC_Agenda.pdf), accessed 7/19/18



wholesaler to distribute lower cost drugs to pharmacies and insurance companies” (Johnson, Villamarin-Cutter, & Malone, 2018).<sup>2389</sup>

## Oversight Through the Administrative Rules Process

The Vermont Administrative Procedures Act requires “agencies to make filings of every new, amended, or repealed rule at least four times during the rulemaking process.”<sup>2390</sup> Vermont also uses a “sunrise” mechanism (Baugus & Bose, 2015) that requires that agencies looking to implement new rules or regulations must perform extensive cost/benefit analysis that support and justify the rule change and present that analysis to the Joint Legislative Committee on Administrative Rules (LCAR). The third stage of this process, which occurs after a public comment period, involves the Legislative Committee on Administrative Rules (LCAR). Within 30 days of being placed on the LCAR’s agenda, a majority of the committee can vote to object to the proposed rule and recommend either amending or withdrawing the proposed rule. The agency must then respond within 14 days, whereupon the committee can modify or withdraw its objections (3 V.S.A. § 842). LCAR, however, cannot independently block the adoption of a rule. If the committee objects to the rule on the grounds that it is beyond the purview of the agency, that is contrary to the intent of the legislature, that it is arbitrary, or that there was insufficient public input, it can file a certified objection with the Secretary of State. A certified objection means that “the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule.” Henceforth, “[i]f the agency fails to meet its burden of proof, the Court shall declare the whole or portion of the rule objected to invalid” (3 V.S.A. § 842). LCAR can also file objections to existing rules, which remain in effect until repealed or amended (3 V.S.A. § 817). All rules under consideration can be referred to the appropriate standing committees for review.

LCAR met twice during 2017. The agenda for these meetings indicates that on June 8<sup>th</sup>, 2017 the committee considered four proposed rules, two promulgated rules, and one emergency amendment. On October 23<sup>rd</sup>, 2017 the committee considered judicial rules, video arraignments, two promulgated rules, and one proposed rule. There do not appear to be minutes available nor are recordings available. Both meetings appear to have focused on rules changes proposed by the Vermont Judicial branch. The Vermont Supreme Court was seeking amendments to the Vermont Rules of Appellate Procedure. The court provided a 100+ page document to the committee. Therefore, we do not know anything else about these proceedings or the decisions that were made.

## Oversight Through Advice and Consent

There does not appear to be evidence that gubernatorial appointees are often rejected by the senate, although it does happen occasionally. In April 2018 the senate was considering the appointment of a candidate to the state’s Labor Relations Board. Citing the candidate’s long

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<sup>2389</sup> <http://digital.vpr.net/post/5-minute-wrapup-what-got-done-during-5-month-long-legislative-session>, accessed 9/19/18.

<sup>2390</sup> <https://www.sec.state.vt.us/media/68457/RuleOnRulemaking.pdf>, accessed 6/7/18.

career in the corporate sector, public sector unions put substantial public pressure on the senate to refuse to confirm the nominee (Gram, 2018).<sup>2391</sup> The senate did ultimately block the appointment, in what was described as “a highly unusual move.” The governor, meanwhile, derided the refusal to confirm the nominee as being motivated by partisan concerns, arguing that it was “difficult to see how politics didn’t play into the decision” (Freese, 2018b).<sup>2392</sup> There is indeed evidence that partisan concerns do at times affect the confirmation process. For example, in 2017 Gov. Phil Scott, a Republican, raised questions about an appointee to the Green Mountain Care Board who had been appointed by former-Gov. Peter Shumlin, a Democrat. Shumlin had evidently failed to file the proper paperwork notifying the senate of the appointment, and so Gov. Scott objected that the appointment was “tainted by a clerical error” and could open the door for legal challenges to the decisions of the Green Mountain Care Board. Because of its substantial influence over the state’s health care system (Hirschfeld, 2018b),<sup>2393</sup> this board “is one of the most powerful regulatory bodies in Vermont . . . That means there’s a lot at stake when it comes to deciding who sits on that five-person board, and Republican Gov. Phil Scott is seeking to oust his Democratic predecessor’s most recent appointment” (Hirschfeld, 2017).<sup>2394</sup> Despite Gov. Scott’s objections, however, the senate unanimously voted to confirm the appointee.

Although Vermont’s governor has the authority to reorganize agencies via executive order, both the house and the senate have 90 days to weigh in on executive orders. If either chamber disapproves, the order does not become effective. Of the 21 executive orders promulgated by the current governor since assuming office in January 2017, two have been rejected by the legislature. Both pertained to agency reorganization: Executive Order 07-17 attempted to merge the Department of Liquor Control and the Lottery Commission, but was blocked by the house. Executive Order 05-17 was intended to create the Agency of Economic Opportunity, but was rejected by the Senate (Ledbetter, 2017).<sup>2395,2396</sup>

## Oversight Through Monitoring of State Contracts

Contract oversight in Vermont appears to be handled by the Office of Purchasing and Contracting,<sup>2397</sup> which does not report to the legislature. Purchasing is governed by Bulletin 3.5, which is “the official source for current State procurement and contracting policies and procedures.”<sup>2398</sup> While in some cases individual agencies can conclude their own contracts. For example, “[t]he Department of Buildings and General Services . . . works directly with vendors to offer one-to-two-year contracts for statewide fuel commodities.”<sup>2399</sup> All contracts for more

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<sup>2391</sup> <https://vtdigger.org/2018/04/13/state-workers-seek-block-labor-relations-board-appointment/>, accessed 5/15/18.

<sup>2392</sup> <https://www.sevendaysvt.com/OffMessage/archives/2018/05/12/vermont-senate-votes-down-scotts-labor-board-appointee>, accessed 5/15/18.

<sup>2393</sup> <http://digital.vpr.net/post/amid-controversy-over-paperwork-vt-senate-approves-shumlin-appointee-robin-lunge#stream/0>, accessed 6/7/18.

<sup>2394</sup> <http://digital.vpr.net/post/key-shumlin-appointee-danger-losing-job-over-procedural-snafu>, accessed 6/7/18.

<sup>2395</sup> <http://www.mynbc5.com/article/scott-orders-state-agency-reorganization/8608629>, accessed 6/7/18.

<sup>2396</sup> <http://governor.vermont.gov/document-types/executive-orders>, accessed 6/7/18.

<sup>2397</sup> <http://bgs.vermont.gov/purchasing>, accessed 7/16/18.

<sup>2398</sup> <http://aoa.vermont.gov/bulletins/3point5>, accessed 7/16/18.

<sup>2399</sup> [http://www.leg.state.vt.us/jfo/issue\\_briefs\\_and\\_memos/Preliminary\\_Review\\_of\\_Bulk\\_Fuel\\_Purchasing.pdf](http://www.leg.state.vt.us/jfo/issue_briefs_and_memos/Preliminary_Review_of_Bulk_Fuel_Purchasing.pdf), accessed 7/16/18.

than \$25,000 must be certified by the Attorney General’s Office. In other cases, the Secretary of Administration, the State Chief Information Officer, or the Commissioner of Human Resources must review and approve contracts.<sup>2400</sup> Evidence of legislative hearings on contract monitoring was not found.

The Vermont legislature is able to exert some influence over contracts through the appropriations process by adding caveats to specific appropriations. According to a knowledgeable source, “our oversight over state contracts is mainly part of the budget process” (interview notes, 2018). For example, when the Human Service Agency integrated their eligibility system, there was a major overhaul of the software. They had to work with the legislature because it was millions and millions of dollars, and it also involved federal dollars. IT contracts are more likely to get oversight because it’s a line item in the budget—“it’s lumpy and not ongoing” (interview notes, 2018).

If a contract goes awry and it becomes a political issue, then the legislature becomes involved. It is likely that problems with a contract would be brought up in a committee hearing, but usually contracts are not discussed in committees (interview notes, 2018).

### Oversight Through Automatic Mechanisms

Vermont does not have any standard sunset mechanism. Sunsets are instituted at the discretion of the legislature at the time that the authorizing statute is being amended (Wall, 2016). Reviews triggered by a sunset clause are handled by the legal and policy staff at the Legislative Council, which provides various services, including drafting and technical language assistance, legal research, research and analysis of “policy issues,” and support for committees to the legislature. The idea underlying the sunrise mechanism, as opposed to a sunset mechanism, is that it is up to agencies to demonstrate which rules changes will yield positive outcomes.

## Methods and Limitations

We interviewed three of the four people we contacted in Vermont. There are no archived recordings of committee hearings. Indeed, with the exception of Delaware, Vermont has the most limited amount of audio or video information available about its legislature.<sup>2401</sup> Committee minutes are cryptic. Therefore, it is very difficult to be confident of the amount of oversight the Vermont legislature exercises.

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<sup>2400</sup> [http://aoa.vermont.gov/sites/aoa/files/Bulletins/3point5/Bulletin\\_3.5\\_FINAL\\_03-29-18.pdf](http://aoa.vermont.gov/sites/aoa/files/Bulletins/3point5/Bulletin_3.5_FINAL_03-29-18.pdf), accessed 7/16/18.

<sup>2401</sup> <http://www.ncsl.org/research/telecommunications-and-information-technology/legislative-webcasts-and-broadcasts.aspx>, accessed 1/5/19.

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