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State Legislative Oversight: **Virginia**



Capacity and Usage Assessment

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

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



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Legislative Oversight in Virginia

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Summary Assessment

Virginia possesses two powerful and active non-partisan analytic agencies--the Auditor of Public Accounts (APA) and the Joint Legislative Audit and Review Commission (JLARC). Both agencies are highly regarded and respected by both sides of the aisle. Both conduct a variety of financial audits and performance audits and are responsive to requests from the legislature to conduct investigations. However, it is unclear whether legislators are using the information produced by the APA and JLARC. These elements taken together suggest that the Virginia General Assembly, while possessing excellent tools to conduct oversight, may not take a comprehensive, proactive approach to oversight.

Major Strengths

Evidence gathering by analytic bureaucracies is the strongest element of legislative oversight in Virginia. To facilitate accountability generally, Virginia has created some innovative methods for managing administrative rules, especially through the Regulatory Townhall website, but this has largely taken place through the executive branch and with no input from the main legislative body responsible for administrative rules review, the Joint Commission on Administrative Rules.

Challenges

The limited legislative engagement on reviewing administrative rules may lead to problems if elements of the regulatory rule-making process breakdown. The lack of comprehensive oversight may be due in part to the institutional structure of the legislature. The relatively short legislative sessions may simply not give legislators enough time to conduct good oversight. The Virginia General Assembly does not appear to make much use of interim committees to conduct oversight. Additionally, many committee hearings conducted during the regular session emphasize reporting out bills enrolled in the committee which may reduce time for oversight.

Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL) classifies the Virginia Legislature as a hybrid: neither fully professional nor part-time but possessing elements of both.²⁴⁰² Virginia is a bicameral legislature with an upper chamber, the Senate of Virginia with 40 members, and a lower chamber, the House of Delegates with 100 members. Senators serve a four-year term and receive an \$18,000 annual salary, whereas Delegates serve a two-year term and receive a \$17,640 annual salary.²⁴⁰³ Additionally, Senators and Delegates are paid \$196 per day which provides them with an extra \$5,000 to \$10,000 in salary depending on the actual session days, which average 35 to 45 per year (Squire 2017). Legislative sessions alternate annually between 60 days in even numbered years and 30 days in odd numbered years. But, the Governor has the power to call special sessions as he or she deems necessary or when 2/3rds of General Assembly petition him to do so. Since 2011, the Virginia legislature has convened for four special sessions with the longest session in 2012²⁴⁰⁴ lasting from March to May to deal with the budget and the shortest occurring in 2015 lasting one day to approve changes in congressional re-districting.²⁴⁰⁵ As of 2015, there were 822 total legislative staff members, 533 of whom are permanent staff. This is a higher level of staff than is generally observed in hybrid legislatures. In contrast South Carolina, another mid-Atlantic hybrid legislature, which has comparable legislature membership, has only 332 legislative staff. The Squire Index (2017) ranks Virginia's legislature as the 32nd most professional.

The Virginia governor like many southern states is not as powerful when compared to other governors, and there are some unique restrictions when compared to other states. Ferguson (2015) rates 31 other governors as more powerful than Virginia's. First, the tenure potential is low because Virginia governors are also not eligible to serve consecutive terms.²⁴⁰⁶ Virginia is the only state to not allow consecutive terms. Since 1970 when gubernatorial races became more competitive between Republicans and Democrats, no governor has been elected to another non-consecutive term. Therefore, in practice the constitutional prohibition against consecutive terms acts as a de facto limit of one term. Within this arrangement governors tend to be active at the outset of their terms.

Second, as in most states the governor is responsible for assembling and submitting a budget to the General Assembly for their consideration. Virginia operates on a biennial budget cycle and the governor has line-item veto power for appropriation bills only. In addition to a line-item veto on appropriation bills, the governor has a qualified veto on non-spending bills as well. While a 2/3rd majority of the Assembly is necessary to override a veto, unlike most states it only has to be 2/3rd of present legislators to override. Reflecting the increasingly competitive nature of Virginia and the razor-thin majorities Republicans hold in the Senate and House of Delegates, there have been few overrides of the governor's vetoes. In 2018, Governor Northam vetoed 10 bills, and the Republican controlled legislature was unable to override any of them.²⁴⁰⁷

²⁴⁰² <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 5/11/18

²⁴⁰³ <http://viriniageneralassembly.gov/viriniaLegislature.php?secid=20&activesec=2#!hb=1&mainContentTabs=0>, accessed 5/11/18

²⁴⁰⁴ <http://www.ncsl.org/research/about-state-legislatures/2012-legislative-session-calendar.aspx>, accessed 11/30/18

²⁴⁰⁵ <http://www.ncsl.org/documents/ncsl/sessioncalendar2015.pdf>, accessed 11/30/18

²⁴⁰⁶ <https://law.lis.virginia.gov/constitution/article5/section1/>, accessed 5/11/18

²⁴⁰⁷ https://pilotonline.com/news/government/virginia/article_d9f6b8d8-433e-11e8-bcc4-c31c50459006.html, accessed 5/13/18

As Virginia has become more Democratic, governors have been increasingly willing to veto bills from a Republican-controlled general assembly. From 2013 to 2017, then Gov. Terry McAuliffe vetoed 91 bills, setting a record for the number of bills vetoed by a Virginia governor.²⁴⁰⁸ In 2017 alone the Republican controlled legislature was unable to override any of his 40 vetoes for that year.²⁴⁰⁹

Political Context

Over the past 10 to 15 years, Virginia's political make-up has shifted from a reliably red state at the national and state level to a competitive state in presidential elections and evenly split at state level elections. The most recent election was 2017 in which Democrat Lt. Governor Ralph Northam won a surprisingly easy election with 54% of the vote, in what was expected to be a more competitive race. With the growth of the Washington, D.C. suburbs of Arlington and Fairfax counties, battle for control of the legislature has been increasingly competitive.

While control of the governorship has alternated between Democrats and Republicans since 2000, Republicans have maintained control of the legislature for most of that time. From 2009-2013 control of the General Assembly was split with Democrats controlling the Senate and Republicans the House of Delegates, and from 2015-2018 Republicans controlled both houses. Moreover, Republicans have controlled the House of Delegates since 2000. While this may suggest Republican domination at the state house and senate levels, it would be an error to assume such control. In 2017, Republicans nearly lost control of the Senate and House, when Democrats flipped an astonishing 15 seats in the House, 12 of which were GOP held seats. As a result, the current membership of both houses is comprised of the thinnest of majorities, with Republican controlling the Senate 21-19 and the House 51-49.

Shor and McCarty (2017) ranked the Virginia Senate as the 16th most polarized upper chamber in the nation, and the House of Delegates the 22nd most polarized lower chamber. However, this data does not reflect recent Democratic gains in the legislature. Future analyses may discover substantially different relationships between the two political parties in both chambers.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are two primary analytic bureaucracies that report to and are directed by the general assembly. The first is the Auditor of Public Accounts (APA), which is part of the legislative branch and was established through the Article IV Section 18 of the Virginia Constitution. The APA is well funded, with a state appropriation of \$11.3 million for 2015

²⁴⁰⁸ https://www.washingtonpost.com/local/virginia-politics/mcauliffe-poised-to-set-the-record-most-vetoes-by-a-virginia-governor/2017/03/22/6141e204-0e6b-11e7-9d5a-a83e627dc120_story.html?utm_term=.b6715fa4d49a, accessed 5/13/18

²⁴⁰⁹ <http://www.nvdaily.com/news/2017/04/gov-mcauliffe-keeps-a-perfect-veto-record/>, accessed 5/13/18

(NASACT 2015), a staff of 120 audit professionals (about a quarter of whom are CPAs), and 12 administrative or clerical staff (NASACT 2015). Its primary responsibility is to conduct oversight of the courts and executive agencies by conducting comprehensive financial and operational audits.²⁴¹⁰ The APA has produced 400+ reports since 2017. These reports concentrate on financial performance covering a range of subjects from circuit court operations, local governance fiscal and operational health, to single statewide audits.²⁴¹¹ Included in these reports is the Comprehensive Annual Financial Report (CAFR) which details spending, payroll growth, and debt schedules for the entire state.²⁴¹² Unlike some other states, Texas for instance, the Virginia CAFR does not offer any legislative recommendations for areas that may be falling short of their financial and operational responsibilities. Based on summaries of reports listed in its 2018 Annual Report, the APA conducted about 15 reports per on state agencies or programs from 2016 to 2018, but these are financial audits exclusively.

The actions of the APA are directed by the Joint Legislative Audit and Review Commission (JLARC). The commission is comprised of nine members of the House of Delegates, five members of the Senate, and the Auditor of Public Accounts who serves as a non-voting ex officio member. At least five of the members from the House must also serve on the House Appropriations Committee and two of the senate members must serve on the Senate Finance Committee. Membership from the House is determined by the Speaker and from the Senate by the Rules Committee.²⁴¹³ JLARC was authorized by statute in 1973, specifically by Code of Virginia Title 30, Chapter 7, and its authority to conduct oversight has been increased thirteen times since 1973.²⁴¹⁴ JLARC was established in large part as a reaction to the lack of executive oversight in Washington, D.C. stemming from Watergate.²⁴¹⁵

What sets JLARC apart from other states with joint audit committees is that JLARC directs the actions, approves the workplans, and accepts the reports of the APA but has its own staff who are conducting audit reports on behalf of the legislature. Currently, JLARC has 28 staff members who have produced nearly 130 reports between 2010 and 2018, with reports available as far back as 1975 on the JLARC website.²⁴¹⁶ During 2018 JLARC produced 11 reports that are similar to program evaluations or performance audits. Furthermore, JLARC is well funded with its FY 2017-18 budget set at \$11 million. In one interview the authority of JLARC was described as broad with a strong nonpartisan reputation. Their reports are frequently critical, blistering, and credible, garnering widespread coverage by state media and, in addition, usually eliciting action from the legislature.²⁴¹⁷

One such report focused on the Virginia Economic Development Partnership (VEDP), which functions as a quasi-governmental corporation distributing grants and other tax incentives to businesses. In 2016 the general assembly, through a joint resolution, directed JLARC to investigate VEDP's "operational efficiency, performance, and accountability structure."²⁴¹⁸ The resulting report showed that VEDP had little accountability and lacked organizational structures to help it promote Virginia from a marketing perspective and in the job incentive grants it

²⁴¹⁰ http://www.apa.virginia.gov/about_us.aspx, accessed 5/16/18

²⁴¹¹ http://www.apa.virginia.gov/APA_Reports/Reports.aspx, accessed 5/16/18

²⁴¹² <http://www.apa.virginia.gov/reports/ComprehensiveAnnualFinancialReport2017.pdf>, accessed 5/16/18

²⁴¹³ <http://jlarc.virginia.gov/members.asp>, accessed 5/16/18

²⁴¹⁴ <http://jlarc.virginia.gov/authority.asp>, accessed 5/16/18

²⁴¹⁵ Interview notes 5/16/2018

²⁴¹⁶ <http://jlarc.virginia.gov/reports.asp>, accessed 5/16/18

²⁴¹⁷ Interview notes 5/16/18

²⁴¹⁸ <http://jlarc.virginia.gov/pdfs/reports/Rpt488.pdf>, accessed 5/16/18

distributed. This investigation found that VEDP failed to meet statutory requirements for monitoring job incentive grants and lacked organizational capacity to monitor the nearly \$400 million in grants VEDP had distributed over the past 10 years.²⁴¹⁹ In fact, VEDP had no documented policies in place for critical aspects for grant awards, like conducting due diligence before awarding the grant and verifying jobs created, capital invested, and wages paid.

According to the report, VEDP operated an ad hoc manner where there was little coordination statewide for economic development and growth and a board of directors that failed to provide accountability because of its lack of engagement and expertise. JLARC found that VEDP had no strategic marketing plan in place to promote Virginia despite being statutorily required to “see that there are prepared and carried out effective economic development marketing and promotional programs.”²⁴²⁰

In the report, JLARC suggested four specific legislative recommendations to address these systematic issues. Some of these recommendations included requiring the board to develop a strategic plan, develop a statewide entity to coordinate development activities, and make future appropriations to VEDP contingent on adopting these recommendations. Unfortunately, the Virginia legislature has no video archive of committee hearings in response to this report, so it is difficult to ascertain how much oversight this report prompted in the appropriate committees. However, HB 2471 was introduced in 2017 after the report was published. This bill codified many of the recommendations set forth in the JLARC report.²⁴²¹ The final bill with amendments from the governor was approved in the House 99-0 and in the Senate 40-0, suggesting that JLARC’s oversight recommendations were taken seriously by the legislature and acted on promptly in a bipartisan manner. In fact, the new statutory requirements have had an impact already with VEDP attempting to recover \$5 million from a grant given to Tranlin Corp. for its failure to develop a \$2 billion paper manufacturing plant.²⁴²²

In addition to the legislative analytic bureaucracies, there is the Office of the State Inspector General (OSIG) who reports to the Governor. The Inspector General is appointed by the governor with the consent of the Senate. The OSIG conducts a variety of reports related to administrative functions, performance audits, and behavioral and mental health. Since 2017, the OSIG has produced 16 reports in these areas. At present there is little evidence of whether or how the general assembly utilizes these reports.

Oversight Through the Appropriations Process

As stated earlier, Virginia operates on a biennial budget where the governor has full budgetary authority over the first budget proposal. Budgets are generally developed and debated in even years and can be amended in odd numbered years.²⁴²³ To provide some budgetary

²⁴¹⁹ https://www.richmond.com/news/virginia/government-politics/general-assembly/report-finds-disarray-at-va-economic-development-partnership-urges-withholding/article_d70e2737-027f-55ed-a001-d09843997eeb.htm, accessed 5/16/18

²⁴²⁰ <http://jlarc.virginia.gov/pdfs/reports/Rpt488.pdf>, accessed 5/16/18

²⁴²¹ <http://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+HB2471>, accessed 5/13/18

²⁴²² https://www.richmond.com/news/virginia/government-politics/general-assembly/virginia-will-take-legal-action-to-recover-almost-million-from/article_7d58e499-f25e-51f7-ab22-25f8a770fca8.html, accessed 5/13/18

²⁴²³ <http://viriniageneralassembly.gov/virginiaStateBudget.php?secid=22&activesec=4#!hb=1&mainContentTabs=0&content=0,includes/contentTemplate.php%3Ftid%3D56%26ctype%3Db%26cid%3D108>, accessed 5/14/18

context, the budget for FY 2017-18 was approximately \$120 billion, with \$59.7 billion for FY17 and \$60.3 billion for FY18.²⁴²⁴

In recent years the appropriations committee has directly challenged the governor's ability to veto spending bills. The flashpoint for this challenge was Democratic Gov. McAuliffe's efforts to expand Medicaid in Virginia, a policy which is anathema to many Republicans. During the appropriations committee budget sessions, the "Stanley Amendment" was adopted, which would have prevented the governor from accepting federal dollars for Medicaid expansion without the express permission of the general assembly.²⁴²⁵ As can be expected Gov. McAuliffe promptly vetoed the amendment. In response, the Speaker of the House instructed the clerk not to register the veto in the final enrolled bill. Legislators argued that Gov. McAuliffe improperly used the item veto by only vetoing the language of the bill, while not vetoing the underlying appropriation.²⁴²⁶

Only recently has the legislature agreed to start broadcasting and archiving committee hearings.²⁴²⁷ As a result, the archive is not extensive and does not provide information regarding hearings topics.²⁴²⁸ However, after a review of the archived videos from the Senate Finance Committee, it is clear that very few full committee hearings are used for oversight purposes during the regular session.²⁴²⁹ Nearly all of the five hearings of that committee from 1/16/18 to 2/8/18 focused on reporting bills out of the committee to the full Senate.²⁴³⁰ In their first hearing of 2018, committee staff gave presentations on the governor's budget and forecasting of revenue.²⁴³¹ In many other states those types of presentations would be given by the appropriate departmental head. In a subsequent hearing on 1/18/18, the Secretary of Finance gave a detailed presentation on revenues and funding sources for the upcoming amendments to the biennial budget.²⁴³²

At the house appropriations committee held on 1/22/18 a litany of department heads gave short introductory statements about their agencies and took a few questions from senators, but department heads did not give extensive Powerpoint presentations (the pattern we observed in many states) and legislators did not seem to ask questions that we would construe as oversight.²⁴³³ In contrast, interim meetings of the Senate Finance and House Appropriations Committee appear to more actively pursue oversight of expenditures. This was even more apparent in the interim House Appropriations Committee, which met three times from September to December 2018. These interim hearings, in particular those on 9/17/18 and 10/15/18, focused on testimony from a wide range of agencies and departments with varying levels of questioning by delegates. The most direct questioning came during the 10/15/18 hearing, where the heads of the Department of Medical Assistive Services (DMAS) and the Virginia Department of Social Services (VDSS), which have jurisdiction over the implementation of Medicaid services in

²⁴²⁴ <https://www.datapoint.apa.virginia.gov/index.php>, accessed 5/14/18

²⁴²⁵ https://www.richmond.com/news/virginia/government-politics/general-assembly/mcauliffe-budget-veto-could-open-door-for-medicare-expansion/article_3e09c99c-1832-52fd-9e3d-30619f790eec.html, accessed 5/14/18

²⁴²⁶ <http://www.dailypress.com/news/politics/dp-nws-medicare-budget-20160520-story.html>, accessed 5/15/18

²⁴²⁷ https://www.richmond.com/news/virginia/government-politics/virginia-to-broadcast-and-archive-general-assembly-committee-hearings-for/article_18ae5af8-a804-5b26-b9c9-d78c583d76f1.html, accessed 5/18/18

²⁴²⁸ http://virginia-house.granicus.com/ViewPublisher.php?view_id=3, accessed 5/18/18

²⁴²⁹ http://virginia-senate.granicus.com/ViewPublisher.php?view_id=3, accessed 1/7/19

²⁴³⁰ http://virginia-senate.granicus.com/ViewPublisher.php?view_id=3, accessed 1/7/19

²⁴³¹ https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=1845, accessed 1/7/19

²⁴³² https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=1883, accessed 1/7/19

²⁴³³ <https://virginiageneralassembly.gov/house/committees/commstream.html>, hearing 1/22/18, accessed 1/7/19

Virginia, testified. Questions focused on the progress DMAS has made regarding Medicaid waivers and VDSS's ability to verify eligibility of enrollees and the progress being made to get people off of state medical and welfare services.²⁴³⁴ Delegates asked direct questions over the progress of coordination of various agencies in terms of sharing information on eligibility and management of Medicaid expansion in the state.

During one joint hearing, the governor addressed the Joint Appropriations and Finance Committee to present his budget amendments to the biennial budget.²⁴³⁵ This had the flavor of a State of the State address, but in a committee hearing room. The focus, however, was solely on the governor's spending and taxation policies. After the governor's presentation, the Secretary of Finance for the governor described the governor's priorities in greater depth. Senators and delegates then asked pointed and direct questions over where the governor was getting the funds to pay for his priorities and which initiatives were "one-off" items, meaning they were not permanent programs.

It appears that oversight through the appropriations process does take place, but whether this occurs in conjunction with or in response to the actions of JLARC is not clear. In the hearings that we were able to examine, we found no evidence that a report from JLARC was mentioned nor was JLARC staff called to testify. The appropriations and finance committees have the resources, particularly staff, through JLARC and the Division of Legislative Services, which serves as the primary legislative research service, to conduct rigorous oversight. However, we found evidence to suggest that some of their oversight efforts are driven by partisan considerations. Moreover, we found that the "money" committees often focus on other tasks at the expense of oversight.

Oversight Through Committees

Much of the oversight conducted by the legislature flows through the APA and JLARC. This may result in less oversight being conducted by standing committees with responsibility for specific policy areas. Additionally, there are no standing committees, study groups, or joint commissions in the house or senate that specifically mention oversight, except for the Joint Commission on Transportation Accountability, which does not appear to be very active having held only two meetings this year.²⁴³⁶ Furthermore, Virginia's general assembly appears to make minimal use of interim study committees or interim oversight committees. Compared to other legislatures with similarly short legislative sessions, this suggests that Virginia does not see the interim between sessions as an opportunity to pursue oversight to compensate for the need to pass legislature and budget during the regular legislative session.

Within the last year there have been several high-profile cases where "fire alarm" oversight could have occurred. In 2015 at an independent living facility and elderly woman broke her clavicle while in bed and was unable to move. Because of the nature of independent living facilities, staff check-ins are not conducted as often as it would be in an assisted living facility. The woman in this case was only discovered after her daughter was unable to reach her by phone. When she was found she was weak and dehydrated and died several months later from

²⁴³⁴ <https://viriniageneralassembly.gov/house/committees/commstream.html>, hearing 1/22/18, accessed 1/7/19

²⁴³⁵ <https://viriniageneralassembly.gov/house/committees/commstream.html>, hearing 12/18/18, accessed 1/7/19

²⁴³⁶ <http://studies.viriniageneralassembly.gov/studies/185>, accessed 5/18/18

cancer in part because she was too weak to undergo treatment.²⁴³⁷ This case highlighted a gap in regulation and oversight of independent living facilities' monitoring procedures and protocols. In Virginia, nursing homes are regulated by VA Department of Health and assisted living facilities are regulated by the VA Department of Social Services (DSS), but independent living facilities apparently were not regulated by any state agency. In March 2018 the general assembly passed a joint bill, HJ 118 that instructed the Department of Social Services to study the regulation of independent living facilities.²⁴³⁸ As of this writing DSS has yet to complete or publish a report on regulations on independent living facilities.

Another case where we might expect to see oversight is the construction of the Mountain Valley Pipeline. This project was initially approved during Gov. McAuliffe's term. It is a \$6.5 billion infrastructure project that extends over 600 miles and is an effort to bring natural gas to the coast from West Virginia and North Carolina.²⁴³⁹ Environmentalists fought this pipeline project, as did landowners who have lost property through eminent domain. When the project was finally underway, several minor DEQ violations were self-reported by the company, Dominion Resources, which had the effect of reinforcing reservations and objections about the project.²⁴⁴⁰ There are currently no hearings or legislation pending regarding oversight of this project, but the legislature is also adjured for the interim session. Some legislators mainly Democrats are calling for a DEQ stream-by-stream impact analysis of the Mountain Valley Pipeline.²⁴⁴¹ Recently, the state attorney general has filed a lawsuit to stop construction of the pipeline in light of the environmental violations, even though they are minor.²⁴⁴²

These high-profile issues demonstrate that there is no shortage of policies that need oversight on the part of the legislature. In the case of DSS the lack of archived recordings of committee hearings past 2017 limits our ability to assess oversight by the legislature. In the case of the Mountain Valley Pipeline, a search through available senate and house committee hearings, revealed no hearings or testimony by DEQ staff regarding the environmental violations on the part of the company constructing the pipeline.

Oversight Through the Administrative Rules Process

The Joint Commission on Administrative Rules (JCAR) is the main legislative oversight body dealing with existing and new rules. It is comprised of five senators and seven delegates. JCAR's main purpose is to review existing agency rules and regulations and review the promulgation of new rules.²⁴⁴³ According to the Book of States, JCAR has no real authority or

²⁴³⁷ https://www.dailyprogress.com/opinion/opinion-editorial-independent-living-facilities-need-oversight-from-richmond/article_51154b0a-010a-11e7-96a7-4f28a0cc92ad.html, accessed 5/18/18

²⁴³⁸ <http://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+HJ118>, accessed 5/18/18

²⁴³⁹ https://www.newsadvance.com/opinion/editorials/dominion-and-pipeline-oversight/article_f3fab14c-3913-11e8-9ab6-633b3b60472d.html, accessed 5/18/18

²⁴⁴⁰ <http://www.wdbj7.com/content/news/Lawmakers-speak-out-for-more-pipeline-oversight-480178833.html>, accessed 5/18/18

²⁴⁴¹ <http://www.wdbj7.com/content/news/Governor-defends-oversight-of-pipeline-projects-480748391.html>, accessed 5/18/18

²⁴⁴² <https://wset.com/news/local/opponents-want-mountain-valley-pipeline-to-stop-work-until-lawsuit-date-is-set>, accessed 1/7/19

²⁴⁴³ <http://dls.virginia.gov/commissions/car.htm>, accessed 5/18/18

effective means to block or eliminate new rules.²⁴⁴⁴ Rather the role of JCAR is partially advisory. JCAR can delay a rule for 21 days but the only method to effectively block promulgation of a new rule is for the general assembly to pass legislation blocking the rule. The only other option for delaying the rule beyond 21 days is if JCAR or the appropriate standing committee postpones the rule until the next legislative session, but this can only be done with the consent of the governor. This essentially gives the governor a veto on JCAR's and the legislature's rule decisions. Schwartz (2010 p.389) describes Virginia's JCAR as "largely inactive"²⁴⁴⁵. Yet, despite the legislature's largely inactive status on administrative rules, he characterizes Virginia's administrative rules review as "consistent and substantive".²⁴⁴⁶ However, the report warns that Virginia may be too focused on deregulation and not enough on areas where there are gaps in regulatory structure, as the example of independent living facilities demonstrates. We note that in 2018, JCAR met only four times and according to the posted agendas very few rules were actually reviewed.²⁴⁴⁷ As such, it would appear that performance may have declined in the past decade.

The statutory limitations notwithstanding, Virginia has developed some practices that may help provide oversight but not through the legislature. The Regulatory Town Hall website offers an interactive portal for agencies to communicate directly with the Department of Planning and Budget (DPB), which is the main executive agency to which other agencies submit proposed rules for analysis. This portal is available to citizens who wish to have direct input on the benefits or costs of proposed rules.²⁴⁴⁸ However, all of this occurs without direct oversight or input from the legislature. In fact, JCAR is a largely inactive commission that meets between 2 and 4 times a year and directs people to the Regulatory Townhall website for more information on administrative rules. Overall, Virginia's administrative rules process is centered around the actions of the governor, attorney general, and the DPB, not the legislature.

Oversight Through Advice and Consent

There have been very few outright rejections of a governor's nominees for agency leadership positions by the general assembly in recent years. The most recent was the Republican legislature's rejection of then Gov. McAuliffe's state Supreme Court nominee. Virginia is unique among the states in its method for judicial selections. In Virginia all judges are elected through the legislature, with supreme court justices serving a 12 year term.²⁴⁴⁹ In this latest instance, McAuliffe made an appointment to the court when the legislature was in recess.²⁴⁵⁰ As a result, there were competing nominees from the Democratic governor and the Republican legislature. In the end, McAuliffe's nominee Judge Jane Roush served for less than a year as a recess appointment and the Republican's preferred candidate, Judge Rossie Alston,

²⁴⁴⁴ The Council of State Governments *The Book of States* (2015)

²⁴⁴⁵ Schwartz, Jason A. 2010. *52 Experiments with Regulatory Review: The Political and Economic Inputs into State Rulemaking*. Institute for Public Integrity, New York University School of Law, Report No. 6, November 2010.

²⁴⁴⁶ file:///F:/State%20Oversight%20Project/Resources%20for%20Summaries/52_Experiments_with_Regulatory_Review.pdf pg. 389

²⁴⁴⁷ <http://dls.virginia.gov/commissions/car.htm?x=mtg>, accessed 11/30/18

²⁴⁴⁸ <http://townhall.virginia.gov/>, accessed 5/18/18

²⁴⁴⁹ <http://dls.virginia.gov/judicial.html>, accessed 5/18/18

²⁴⁵⁰ https://www.fredericksburg.com/news/virginia/republicans-reject-governor-s-pick-for-virginia-supreme-court/article_9759dde4-39f4-11e5-9c70-f74ad2d075a9.html, accessed 5/18/18

failed to gain approval of the Senate when one Republican senator disapproved the partisan manner in which Judge Roush's appointment was handled.²⁴⁵¹ Ultimately, Gov. McAuliffe appointed his preferred candidate twice as a recess appointment but when the general assembly came back into session, she was rejected and a third candidate, Judge Stephen McCullough, was selected.²⁴⁵²

In most cases the confirmation process is routine, with a majority vote required by the senate and house for most appointments, and there are few outright rejections. However, there is a history of governors in the final year of their term attempting to push through a large number of plum appointments.²⁴⁵³ In 2017, Democratic Gov. Terry McAuliffe attempted a similar political maneuver by appointing 55 individuals, many of whom were administration staff or spouses of staff, which led to calls of political patronage by the Republican-controlled general assembly.²⁴⁵⁴ This is not just a partisan strategy, however. A similar battle occurred in 2002 when Republican Gov. Jim Gilmore had 17 appointments to various commissions and boards rejected by the Republican controlled general assembly.²⁴⁵⁵

Virginia governors have the statutory power to issue executive orders relating to state emergencies, create advisory commissions and investigative bodies, as well as the ability to reorganize the executive branch agencies.²⁴⁵⁶ Since his inauguration in 2018, Gov. Northam has issued 14 executive orders, 6 of which were related to declaring state emergencies or the powers of the governor's staff in emergency situations when the governor is absent or incapacitated.²⁴⁵⁷ The legislature has no power to oversee his use of this power other than to pass legislation that supersedes the order.

Oversight Through Monitoring of State Contracts

Monitoring the performance of contracts in Virginia is a highly decentralized process. Unlike some states, Texas for instance, where agencies report on their contracts to the legislative analytic bureaucracy, in Virginia the agencies themselves monitor performance of their contracts. As a result, there is a great deal of focus on the procurement procedures and few requirements or guidelines for monitoring and enforcement of contracts. In a 2015 JLARC report, JLARC examined 12 contracts worth approximately \$1.8 billion. JLARC found that nearly 91% of contracts did not have incentives to allow for contract enforcement and 74% of contracts contained no penalties should the contract recipient fail to provide the service.²⁴⁵⁸ Furthermore, JLARC found that the two agencies that have some capacity to provide oversight and monitor

²⁴⁵¹ https://www.fredericksburg.com/news/va_md_dc/virginia-senate-rejects-gop-s-pick-for-state-supreme-court/article_fcb8a0fc-4503-11e5-b17c-bf04cf704e3f.html, accessed 11/30/18

²⁴⁵² https://pilotonline.com/news/government/virginia/general-assembly-elects-stephen-mccullough-to-virginia-supreme-court/article_66d0e1db-1739-534d-a838-e62b21007547.html, accessed 11/30/18

²⁴⁵³ https://www.richmond.com/news/virginia/government-politics/general-assembly/in-final-year-governor-s-board-appointments-face-test-by/article_4e9b2924-f6b8-5877-bbe2-12466bd1c4a0.html, accessed 5/18/18

²⁴⁵⁴ <https://www.dailypress.com/news/politics/dp-nws-mcauliffe-appointments-20170602-story.html>, accessed 11/30/18

²⁴⁵⁵ https://www.richmond.com/news/virginia/government-politics/general-assembly/in-final-year-governor-s-board-appointments-face-test-by/article_4e9b2924-f6b8-5877-bbe2-12466bd1c4a0.html, accessed 11/30/18

²⁴⁵⁶ <http://knowledgecenter.csg.org/kc/system/files/4.5.2017.pdf> Book of States (Beyle 2017)

²⁴⁵⁷ <https://www.governor.virginia.gov/executive-actions/>, accessed 5/18/18

²⁴⁵⁸ <http://jlarc.virginia.gov/pdfs/summary/Rpt482Sum.pdf>, accessed 5/18/18

state contracts, the Department of General Services and the Virginia Information Technologies Agency, monitor too few contracts and their abilities are too limited to provide comprehensive contract monitoring. The most troubling finding was that the state lacked any comprehensive information system that monitors contract performance. As of 2017, the general assembly has not acted on the central recommendations of the JLARC report that would fundamentally alter the decentralized nature of Virginia contract monitoring.²⁴⁵⁹

Oversight Through Automatic Mechanisms

Virginia does not have comprehensive sunset laws. Rather, the scope of its sunset provisions is largely selective. The only standard sunset provisions are when a bill creates a new advisory commission or board within the executive branch. Under this provision the new commission expires after three years. While Virginia has not enacted detailed sunset provisions in the manner that Alabama has, it does allow for sunset provisions to be enacted on a case by case, selective basis. In this way Virginia's approach to sunset laws is similar to several other states: Idaho, Michigan, Minnesota, Montana, Nebraska, and Wisconsin.²⁴⁶⁰

Methods and Limitations

We contacted four people to request an interview but were only able to interview one person about legislative oversight in Virginia. Virginia has only recently begun to post and archive video recordings of committee hearings. The lack of more extensive archives makes it difficult to determine what kind of questions, if any, have been asked of problematic agencies, like the investigation of Virginia Economic Development Partnership, an example described above.

²⁴⁵⁹ <http://jlarc.virginia.gov/pdfs/reports/Rpt496.pdf>, accessed 5/18/18

²⁴⁶⁰ The Council of State Governments, *The Book of States* (2016).

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