



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Massachusetts

Capacity and Usage Assessment

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

Summary Assessment

Massachusetts does not provide a strong example of legislative oversight of the executive branch. The governor wields exceptional power, and there are few tools available, short of acts voted upon by the entire general court, to check the executive branch. In many of the domains that we have analyzed, including contract oversight, sunset provisions, advice and consent, and administrative regulation review, oversight appears to be limited. Where oversight does exist, such as in the appropriations process and in committees, lack of committee minutes or of recordings of committee hearings makes it difficult to ascertain the degree to which it functions in an effective manner.

Major Strengths

While much of the responsibility for auditing lies in the hands of a separately-elected state auditor, the House and Senate Post Audit and Oversight Committees conduct some audits. The latter spearheaded the investigation into the Mount Ida closure, and both the committee's hearings and its final report were widely reported in the media. As a result of the Mount Ida controversy, the governor has proposed a plan to prevent a similar crisis from occurring (Dumcius, 2018a).¹ Nevertheless, short of voting on statutory changes, there are not many options available to legislators for prompting change in executive agencies. The current state auditor, however, has been fairly active in proposing legislation that increases oversight of executive branch functions, so this could change in the future.

¹ https://www.masslive.com/news/index.ssf/2018/07/massachusetts_gov_charlie_bake_30.html, accessed 7/30/18.

Challenges

Numerous issues prevent Massachusetts from achieving a strong degree of oversight. There is an almost complete lack of legislative involvement in the administrative rules process. Minutes, transcripts, and video or audio archives of most committee hearings are not available online, making it difficult for members of the public to assess legislators' activities. The opaque nature of legislative hearings in Massachusetts has prompted attempts at reform, since the same exemptions also apply to the executive and the judiciary. Thus far, however, little headway has been made in this domain (Schoenberg, 2018).²

Relevant Institutional Characteristics

Massachusetts' legislature, originally known as the Great and General Court of the Commonwealth of Massachusetts, is referred to as the general court. This moniker is based on its colonial era authority to rule on judicial appeals. The general court currently consists of 40 senators and 160 representatives.³ It is the only highly professional legislature in New England and one of the most professionalized in the United States. The National Conference of State Legislators (NCSL) (Kurtz and Weberg, 2017) considers Massachusetts to be a "full-time lite" legislature,⁴ but the Council of State Governments (2017) ranks it at 2nd nationally, after California's legislature. Massachusetts legislators receive an average annual salary of \$62,548, which is below average for professional legislatures⁵ and especially modest considering the high cost of living in Massachusetts. Nearby New York legislators, a state with a similarly high cost of living, earn an average \$79,500 annually plus a per diem, and Michigan legislators earn \$71,685 plus over \$10,000 for business expenses in a state with a much lower cost of living (Moncreif and Griffin, 2018). Not surprisingly, according to Haider-Markel (2008), "over half of the state's legislators supplement their income with other employment, such as a part-time law practice." The legislature as whole had a permanent staff of 759 in 2015, a decline of roughly 150 positions since 2009.⁶ The average legislative staff size in Massachusetts is four and a half permanent staffers per legislator (more than double that of Rhode Island, but less than Michigan) (NCSL, 2015). Legislators in Massachusetts are not term-limited,⁵ and both house and senate members serve two-year terms. The general court meets every year beginning on the first Wednesday in January, but its formal business must be completed by the third Wednesday in November in odd-numbered years and by the last day in July in even-numbered years. "[E]ven when not in session, legislators are often engaged in committee work or constituent activities in their home districts" (Haider-Markel, 2008). This is referred to as sitting "in an informal session." There is very little transparency in the operation of the general court because "[u]nder

² https://www.masslive.com/politics/index.ssf/2018/07/public_records_commission_meet.html, accessed 7/30/18.

³ Prior to 1978, the lower chamber had 240 members.

⁴ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 7/24/18. ⁵ <http://www.ncsl.org/research/about-state-legislatures/legislator-compensation-2018.aspx>, accessed 7/24/18. ⁶ <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 7/24/18.

⁵ <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>, accessed 7/24/18. ⁸ https://pioneerinstitute.org/better_government/time-to-end-legislative-exemptions-from-public-records-open-meeting-laws/, accessed 7/30/18.

Massachusetts law, the state legislature is not considered a ‘public body’ in the traditional sense, and therefore enjoys exemptions from open meeting and public records laws.”⁶

Massachusetts also has one of the most powerful governorships in the United States.⁹ Ferguson (2013) rates the state at 5th in terms of gubernatorial power. The governor initiates the budget process and has a line-item veto. It takes a two-thirds vote in both chambers to override a veto, and the general court must be in session to hold an override vote. Governors have only ten days in which to veto a bill if the legislature is in session, otherwise the bill takes effect without a gubernatorial signature. Therefore, Massachusetts governors sometimes can use a pocket veto by waiting until the legislature adjourns in order to reject a bill without vetoing it. Governors serve four-year terms and are not subject to term-limits. This means that they could remain in power for substantial periods of time, but in recent years this has not happened often. Since 1991, when Michael Dukakis left office after eight years, only Bill Weld (1991-1997) and Deval Patrick (2007-2015) have served for more than one term.

Political Context

Politics in Massachusetts is dominated by the Democratic Party. In 2018, Democrats hold supermajorities in both chambers: 31 senators out of 40 and 117 of 160 house members.⁷ Massachusetts Democrats, moreover, are characterized by their “strong liberal leanings” (HaiderMarkel, 2008). Nevertheless, the Republican Party remains competitive in statewide elections by adopting moderate stances in comparison to Republicans elsewhere in the country. Shor and McCarty (2015) report that Massachusetts had the 39th least polarized lower chamber. Presently, government in Massachusetts is divided. After Democratic Gov. Deval Patrick retired in 2015, Republican Charlie Baker won the office and ended a seven-year-long Democratic trifecta.

Massachusetts is not only a ballot initiative state, but it is the only state in the U.S. that allows a citizen to introduce legislation through his or her representative or senator—“the right of free petition.”⁸ The clerks of each chamber assign these bills, which number in the thousands, to the appropriate substantive committees. The committees then spend most of January and February holding hearings on and debating these bills.

Dimensions of Oversight

⁶ https://pioneerinstitute.org/better_government/time-to-end-legislative-exemptions-from-public-records-open-meeting-laws/, accessed 7/30/18.

⁷ http://www.ncsl.org/Portals/1/Documents/Elections/Legis_Control_071018_26973.pdf, accessed 7/24/18.

⁸ <https://www.massbar.org/advocacy/legislative-activities/the-legislative-process>, accessed 10/13/18.

Oversight Through Analytic Bureaucracies

The Massachusetts Office of the State Auditor (OSA) is an independent executive agency headed by an elected state auditor.⁹ According to statute, the OSA is “organized in five divisions, namely, the division of state audits, the division of authority audits, the division of federal audits, the division of contract audits and the division of local mandates.”¹⁰ It conducts audits of “the accounts, programs, activities, and functions directly related to the aforementioned accounts of all departments, offices, commissions, institutions, and activities of the commonwealth.”¹¹ All agencies are required to submit to a standard post financial audit at least every three years or as often as the state auditor deems appropriate. Financial post audits of this sort have a relatively narrow focus, examining principally the financial behavior of agencies. The Office of the Comptroller hires CPA firms to conduct the state’s single audit and to audit basic financial statements (NASACT, 2015). The OSA has a staff of 228 of which only 25 are non-professional support staff (NASACT, 2015). In 2015 it had a budget of slightly more than \$18 million, all of it through a state appropriation (NASACT, 2015). The OSA conducts performance audits and sunset reviews based on its own decisions, at the request of the legislature, as mandated by law, but not at the request of the governor (NASACT, 2015). Additionally, the OSA also conducts audits of the MassHealth system and the education system, IT audits, audits of the judiciary, law enforcement and other public safety agencies, contracts, and housing and other independent authorities.¹⁵

The OSA audits generally identify areas where agencies can adopt better practices or where they are not in compliance with their statutory authority. The state auditor is required to transmit copies of her report to the general court, to the governor’s office, and to affected agencies, in addition to posting the reports prominently on the OSA website. Moreover, “On or before April 1 of each year, the state auditor shall submit a report to the house and senate committees on ways and means which shall include, but not be limited to, (a) the number of audits performed under this section; (b) a summary of findings under said audits; and (c) the cost of each audit.”¹² The state auditor may choose to audit the agencies independently or as a part of a larger organizational audit. In 2017, 52 audits were conducted; in 2016, 86. Many of these audits focus on commissions, public authorities, or regional governments rather than state agencies. For example of the more than 60 audits conducted in 2018, it appears that approximately a dozen were audits of state agencies, and some of these seem to focus more on fiscal accountability than on program performance. One of the OSA’s 2016 performance audits won the National State Auditors Association Award for Excellence in Accountabilities. The award-winning audit, which examined MassHealth’s administration of managed care organizations and of fee-for-service payments, found that the state had been charged for unnecessary services, improperly billed, and that cost-cutting opportunities had been missed.¹³ This indicates that this analytic support agency produces high quality evidence and information

⁹ <https://www.mass.gov/orgs/office-of-the-state-auditor>, accessed 7/25/18.

¹⁰ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter11/Section6>, accessed 7/25/18.

¹¹ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter11/Section12>, accessed 7/25/18.¹⁵
<https://www.mass.gov/audit-reports>, accessed 7/25/18.

¹² <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter11/Section12>, accessed 7/25/18.

¹³ <https://www.mass.gov/news/bumps-office-accepts-ncaa-excellence-in-accountability-award>, accessed 10/13/18.¹⁸
<https://www.mass.gov/osa-legislation>, accessed 7/30/18.

that legislators could use to oversee the work of state agencies as well as monitoring other government entities.

The state auditor also proposes legislation “to address problems identified in our work, or to help us more effectively ensure accountability and transparency in government.”¹⁸ In the 2017-2018 legislative session, State Auditor Suzanne Bump proposed an “Accountability Agenda,” “which aims to build public trust in government by improving accountability, and leveraging the power of data and technology,” to the legislature.¹⁴ These measures included laws designed to increase the OSA’s ability to conduct oversight of the Department of Revenue, enhancing its ability to review auditees’ digital data, giving the State Comptroller more power to pass regulations and new requirements for agencies. None of these proposals have yet made it through committee. However, several other pieces of legislation prepared by the state auditor have been signed into law over the years.¹⁵ Most of these laws involve access to information for the state auditor or mandate that state agencies report problems to the state auditor. For example, in 2011 the legislature added a clause to an existing law that provides the OSA with access to “accounts, books, records and activities related to the service it provides” (Chapter 172).¹⁶ The state auditor also provides testimony to the legislature, either during committee hearings or through written correspondence. During 2017, she testified seven times and, as of October 2018, has testified five times.¹⁷ Her most recent 2018 testimony encouraged legislators to support local governments’ water infrastructure needs.

The Massachusetts General Court is the only state legislature that does not have any centralized research service bureaus, either fiscal or general research.¹⁸ The legislative leaders’ offices appear to manage staff services for their respective chambers. Fiscal support staff appears to work with the Ways and Means Committees of each chamber, but even basic information such as this cannot be confirmed using public information. Such information would typically be available on the legislature’s website in other states.

Performance audits and audits of program compliance with statutes are performed by two separate legislative agencies: the House and Senate Post Audit and Oversight Bureaus. These bureaus “serve under and at the discretion of the senate committee on post audit and oversight and the house of representatives committee on post audit and oversight.”¹⁹ The heads of these bureaus, known as legislative auditors, are appointed by their respective committees, which also direct their activities: “The committees shall oversee the development and implementation of legislative auditing programs to be conducted by the bureaus with special emphasis on performance auditing. The committees receive the reports of the department of the state auditor and the legislative auditors and shall determine what remedial measures, if any, are necessary.”²⁰

A recent investigation carried out by the Senate Post Audit and Oversight Committee examined the acquisition of Mount Ida College by the University of Massachusetts Amherst. The investigation was triggered by a senate order requesting that the committee “explore the merits of

¹⁴ <https://www.mass.gov/service-details/learn-about-auditor-bumps-accountability-agenda-legislative-package>, accessed 7/30/18.

¹⁵ <https://www.mass.gov/service-details/laws-authored-by-the-office-of-the-state-auditor>, accessed 7/30/18.

¹⁶ <https://malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter172>, accessed 10/14/18.

¹⁷ <https://www.mass.gov/lists/testimony-from-the-office-of-state-auditor-suzanne-m-bump#2018-testimony->, accessed 7/28/18.

¹⁸ https://ballotpedia.org/State_legislative_research_service_bureaus, accessed 10/14/18.

¹⁹ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter3/Section64>, accessed 7/25/18.

²⁰ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter3/Section63>, accessed 7/25/18.

the acquisition.”²¹ According to one lawmaker, UMass’s takeover of Mount Ida was a “hasty acquisition,” and another complained that UMass “‘cut a deal and most of us read about it’ in the media” (Dumcius, 2018b).²²

The study found a number of gaps in accounting and oversight that required redressing as Mount Ida transitioned into the UMass system, including the continuance of certain programs, the integration of Mount Ida students and faculty, and ineffective accreditation and financial reporting policies. The report was the outcome of six hours of hearings held in May 2018,²³ during which committee members took testimony from the Mount Ida Board of Trustees, the Massachusetts Department of Higher Education Commissioner, and various groups representing faculty, students, and other concerned citizens. During the hearings, legislators inquired about financial transparency at the college, how the school wound up in such dire financial straits in the first place, and why a planned merger with another college fell through before Mount Ida was bought by UMass (Tidwell, 2018).²⁴ Although Mount Ida’s president was slated to give testimony, neither he nor the school’s Chief Financial Officer attended, leading some lawmakers to consider issuing subpoenas to compel them to appear before the oversight committee (Stendahl, 2018).²⁵

Neither the House nor Senate Post Audit and Oversight Committees, however, seem to hold hearings very often. Since January 2017, the senate committee has held three hearings, including those pertaining to the Mount Ida College acquisition, a hearing regarding the proposed privatization of three bus lines, and an executive meeting during which the committee voted to approve the report on Mount Ida. We cannot find evidence that the house committee held any hearings during this period.²⁶ A source familiar with these committees noted that, while they do not often conduct major investigations or hold lots of hearings, they are nevertheless active “behind the scenes” and occasionally produce policy briefs for use by legislators (interview notes, 2018). An example of a policy brief is a March 14, 2012 review of the indigent defense counsel program consisting of 116 pages. The brief covered a wide range of topics including but not limited to a lack of available data about the program, the strain that the \$200 million program places on the state budget, analysis of program costs, sources of program waste (e.g. individuals incorrectly receiving indigence status), verifying indigence status, and a comparison with similar programs in other states. In the cover letter accompanying the report, the chair of the House Post Audit and Oversight Committee (HPAOC), Rep. David P. Linsky, stated that he requested this report from the House Post Audit and Oversight Bureau based on his concerns about the cost of the program. Based on the report, the HPAOC made three recommendations: expand a pilot program, implement recommendations of the Civil Infraction Commission, and amend the law so that counsel is not provided for people charged with misdemeanors because jail time is not sought in these trials. Appendix G of the brief provides language proposed to amend current

²¹ <https://malegislature.gov/Reports/6795/st02580.pdf>, accessed 7/25/18.

²² https://www.masslive.com/news/boston/index.ssf/2018/04/oversight_hearing_on_mount_ida.html, accessed 7/15/18.

²³ <https://malegislature.gov/Events/Hearings/Detail/2967>, accessed 7/25/18.

²⁴ <https://www.gazettenet.com/Senate-oversight-committee-seeks-detail-on-Mount-Ida-acquisition-17523011>, accessed 7/15/18.

²⁵ <https://www.bizjournals.com/boston/news/2018/05/16/mount-ida-president-skips-senate-hearing-amid-ag.html>, accessed 7/25/18.

²⁶ <https://malegislature.gov/Events/Hearings/List/1-1-2017/7-31-2018/>, accessed 7/25/18.

statutes. Clearly, the committee and the bureau work together, and the reports requested by the committee chair is used by the legislature to alter state agency programs.

Oversight Through the Appropriations Process

Once the governor submits a budget proposal, it is examined by the House Committee on Ways and Means, which “releases its own recommendations for the annual budget for deliberation by the House of Representatives.”²⁷ After the house passes a final version of the budget, it is sent to the Senate Committee on Ways and Means, where both it and the governor’s proposal are considered. Once the senate passes its final, amended version of the budget, the Joint Committee on Ways and Means (also called a “Conference Committee”) consisting of three members from each chamber of the general court, including one member of the minority party, meets to “reconcile the differences between the house and senate proposals”²⁸ This committee holds frequent hearings during the budget-making process. These hearings are devoted to hearing testimony from representatives from the various executive agencies.

With the current political composition of the state, the governor has a fairly limited set of tools to “check” their initiative—mainly his veto power. Consequently, Massachusetts’ governor appears willing to use his veto power with some frequency. For example, he vetoed 31 line items in fiscal year 2018 and also proposed changes to 137 items in the budget passed by the legislature.²⁹ The governor also vetoed “a package of pay raises” that the legislature had, in the words of one observer, “hustled through” (The Republican Editorials, 2018).³⁰ In response, however, the legislature “steamrolled” (Metzger, 2017)³¹ through a series of override votes that undid the majority of the governor’s vetoes, including that of the pay raise, and even “approved some supplemental funding.”³⁷ One Joint Committee on Ways and Means hearing is regularly devoted to hearing from constituents and other concerned members of the community. These hearings are quite substantial, often lasting four to six hours, and, unlike other committee hearings, this public testimony was streamed online and archived.³²

Additionally, the Senate and House Ways and Means Committees seem to hold meetings that are specifically devoted to oversight issues. In January 2018, for example, the Senate Ways and Means Committee held an “oversight hearing relative to the Medical and Behavioral Health Procurement for employee health insurance coverage by the Group Insurance Commission.”³³ No archived videos, transcripts, or minutes exist for these hearings, however. Therefore, we cannot determine the extent to which legislators use the budget process to exercise oversight.

In recent years, there have been some disagreements over the budget between the governor and the state legislature. The fiscal year 2018 budget passed by the legislature was subjected to

²⁷ <https://malegislature.gov/Budget/FY2019/HouseWaysMeansBudget>, accessed 7/30/18.

²⁸ <https://malegislature.gov/Budget/FY2019/ConferenceCommittee>, accessed 7/28/18.

²⁹ <http://www.mass.gov/anf/budget-taxes-and-procurement/state-budget/fy18-budget-info/governors-fy18-vetoes/>, accessed 10/14/18.

³⁰ https://www.masslive.com/opinion/index.ssf/2018/07/yes_being_late_on_state_budget.html, accessed 7/25/18.

³¹ <http://www.telegram.com/news/20171004/mass-house-steamrolls-through-veto-overrides>, accessed 7/26/18.³⁷ http://massbudget.org/report_window.php?loc=Analyzing-the-State-Budget-for-FY-2018-Updated.html, accessed 7/26/18.

³² <https://malegislature.gov/Events/Hearings/Detail/2904>, accessed 7/25/18.

³³ <https://malegislature.gov/Events/Hearings/Detail/2876>, accessed 7/25/18.

multiple line-item vetoes by the governor, totaling \$320 million.³⁴ The majority of these vetoes pertained to changes that the governor wished to implement in the MassHealth system. This is part of a larger set of policy changes that the legislature rolled out in 2017. In an October 17, 2017, committee hearing that was really a one and half hour press briefing on the Senate Health Care Report, the Senate President mentioned in his opening remarks that the governor's office had made some proposals, but that the senate did not have time to include those in the proposed bill. He continued to say, however, that the senate had promised the governor that they would consider his proposal in the future. The implication of this is that the general court has veto-proof majorities in both chambers and can proceed to restructure a major government program, MassHealth, without necessarily relying on the executive branch agencies or negotiating with the governor.

This press briefing provides valuable insights into the legislative process in Massachusetts. Senators who spoke at the press briefing responded to questions from the press corps with a level of detail that would typically be demonstrated by state agency officials with deep expertise in program details. The senators, according to their prepared statements at the briefing (which collectively lasted for 45 minutes) described working groups that met around the state with various stakeholders. The senators themselves participated in these working groups, a process that lasted for nearly two years. That responsibility was not delegated to legislative and agency staff, although legislative staff was thanked for its involvement and support in the process of developing the "best practices" codified in the bill. The level of expertise of the senators suggests that they do not need to rely on agency officials to understand program details. They are in a position to work more independently than most legislators we have observed.

Oversight Through Committees

The general court's leaders are quite powerful, because "[t]hey have extensive control over committee assignments, the assignment of bills to committees, the appointment of committee chairs, the allocation of staff among members, and even legislators' parking spaces." The leadership's control over legislative committees is quite important since committees, and especially the policy-specific joint committees, are supposed to play a role in legislative oversight.

The house and senate rules governing the activities of joint committees, of which there are more than 20 in Massachusetts, specify a number of explicit oversight responsibilities. These include the "review and study, on a continuing basis, the implementation, administration, execution and effectiveness of those laws, or parts of law, the subject matter of which is within the jurisdiction of that committee," as well as related administrative regulations and programs. Joint committees are also charged with determining "the necessity or desirability of enacting new legislation within the jurisdiction of that committee."³⁵

Despite this responsibility, people familiar with the legislature report these committees are only sometimes concerned with oversight activities, and usually this is when there is a clear problem in state government (interview notes, 2018). The Mount Ida acquisition controversy that

³⁴ <https://www.masstaxpayers.org/sites/masstaxpayers.org/files/FY%202018%20Veto%20summary%20FINAL.pdf>, accessed 7/25/18

³⁵ <https://malegislature.gov/Laws/Rules/Joint>, accessed 7/25/18.

was discussed earlier was mentioned as a good example of how standing committees will get involved in oversight. That hearing is one of the few recorded general court hearings.³⁶ Legislators asked questions about the financial arrangements of the acquisition and about the impact on the students. As noted in the Oversight Through Analytic Bureaucracies section, the audit report appears to have been instrumental in this hearing. But legislators also were quite persistent in their questioning of the witnesses.

The other noteworthy example of an oversight hearing was held by the Joint Committee on Transportation.³⁷ Those hearings examined ongoing problems at the Massachusetts Bay Transportation Authority (MTBA), also known as “the T” as another example of how standing committees might get involved in oversight in the event of controversies. In 2015 and 2016, MTBA was wracked by service interruptions (WBUR Newsroom, 2015),³⁸ aging equipment and infrastructure (Enwemeka, 2015),³⁹ and lax accounting (Sullivan, 2016).⁴⁰ This led to the creation by the governor of a new Fiscal Management Control Board for the MTBA (Jessen, 2015),⁴¹ a move that was approved by the legislature as part of the fiscal year 2016 budget, despite the fact that members of the Transportation Committee remained “skeptical” of the plan (Murphy, 2015).⁴² Subsequently, the legislature has continued to exercise oversight over MTBA’s affairs, with the Senate Post Audit and Oversight Committee “grilling” MTBA officials in 2017 over plans to privatize certain maintenance garages to save money. During one hearing, the oversight committee chair specifically noted that the plan “gave me great pause, and I thought that specifically merited oversight and more public scrutiny” (Mohl, 2017).⁴³

It appears from the comments of informed observers and from media reports that standing committees of the general court engage in fire alarm oversight. Given the absence of recordings of committee hearings, we cannot determine whether they also conduct routine, ongoing oversight.

Oversight Through the Administrative Rules Process

Most of the rule review process in Massachusetts is conducted within the executive branch. The Massachusetts General Court has minimal oversight power in the administrative regulations process. Using executive orders, Gov. Deval tasked Attorney General Martha Coakley with reviewing existing rules to identify those that were deemed unnecessary, burdensome, inconsistent or hindering investment and development in the state. Schwartz (2010) faults Massachusetts for ignoring non-economic costs and benefits of rules or regulations.

According to statute, “[e]ach executive office shall publish on its website a list of statutes passed in the previous 24 months for which regulations are required and for which regulations

³⁶ <https://malegislature.gov/Events/Hearings/Detail/2967>, accessed 10/14/18.

³⁷ <https://malegislature.gov/Committees/Detail/J27>, accessed 8/1/18.

³⁸ <http://www.wbur.org/news/2015/02/03/boston-february-historic-snowfall>, accessed 8/1/18.

³⁹ <http://www.wbur.org/news/2015/02/13/mbta-fixes>, accessed 8/1/18.

⁴⁰ <https://commonwealthmagazine.org/transportation/mbta-says-it-cant-reconcile-fares-cash-deposits/>, accessed 8/1/18.

⁴¹ <https://blog.mass.gov/transportation/mbta/governor-baker-appoints-5-member-mbta-fiscal-management-control-board/>, accessed 8/1/18.

⁴² <http://www.wbur.org/news/2015/05/20/house-speaker-deleo-backs-creation-of-mbta-control-board>, accessed 8/1/18.

⁴³ <https://commonwealthmagazine.org/transportation/senators-grill-t-officials-privatization/>, accessed 8/1/18.

have not been adopted, identifying the session law in which the statutory authority was passed and containing a brief statement as to the agency's plan to adopt the regulations. Semi-annually, the plan shall be updated on the website and filed with the clerks of the house and the senate and the chairs of the joint committee on state administration and regulatory oversight."⁴⁴ Public hearings are "required prior to the adoption, amendment, or repeal of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; or, (b) a public hearing is required by the enabling legislation of the agency or by any other law; or, (c) a public hearing is required as a matter of constitutional right."⁴⁵ Regulatory changes are referred to the appropriate standing committee, which can request changes from the agency in question. Agencies must then respond to the request. However, while agencies cannot simply ignore requested revisions, the legislature cannot unilaterally block the adoption of new administrative rules (interview notes, 2018).

Although the Joint Committee on State Administration and Regulatory Oversight exists "to consider all matters concerning competitive bidding on public contracts, public construction, open meeting laws, state regulations, state agencies, lobbyists' reporting laws and such other matters as may be referred,"⁴⁶ it seems not to be involved in the actual promulgation of rules. Rather, committee activities seem largely centered around considering legislation. The committee's "regulatory review" hearings pertaining to proposed legislation that would affect rules and regulations that have already been adopted rather than to new rules.⁴⁷

There is some evidence that this may be changing. Bill H.1675, which was introduced in January 2017, would require agencies to file a copy of an adopted rule with the Joint Committee for review. Then, "[n]ot later than 30 days after receiving a copy of an adopted rule from an agency under section 72, the committee may: (a) approve the adopted rule or regulation; (b) disapprove the rule or regulation and propose an amendment to the adopted rule or regulation; or (c) disapprove the adopted rule or regulation."⁴⁸ This bill, however, is currently under study.

Oversight Through Advice and Consent

The legislature in Massachusetts does not confirm gubernatorial appointees to cabinet positions or other executive branch positions (Wall, 2014, Table 4.10). Many gubernatorial appointments in Massachusetts are confirmed by the Executive Council rather than the legislature. The Executive Council consists of eight members who are elected biannually from districts throughout the state. The council meets weekly to provide "advice and consent on gubernatorial appointments, pardons and commutations, and warrants for the state treasury."⁴⁹ These gubernatorial appointees include judges as well as other executive branch officials and members of a wide range of boards and commissions. Several members of the governor's cabinet do not require confirmation of the executive council. Rather, they are named outright to their positions by the governor without any requirement for approval.

⁴⁴ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30A/Section6D>, accessed 12/18/18.

⁴⁵ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30A/Section2>, accessed 12/18/18.

⁴⁶ <https://malegislature.gov/Committees/Detail/J25>, accessed 7/26/18.

⁴⁷ <https://malegislature.gov/Events/Hearings/Detail/2775>, accessed 7/26/18.

⁴⁸ <https://malegislature.gov/Bills/190/H1675/House/Bill/Text>, accessed 7/26/18.

⁴⁹ <https://www.mass.gov/orgs/governors-council>, accessed 10/14/18.

The governor has the power to reorganize agencies via executive order. According to the Massachusetts Constitution, however, reorganization plans must be referred to the appropriate legislative committee, which then holds a public hearing on the matter within 30 days. The committee then has ten days to approve or disapprove the reorganization plan. Regardless of whether the committee approves, agency reorganizations “shall have the force of law upon expiration of the sixty calendar days next following its presentation by the governor to the general court, unless disapproved by a majority vote of the members of either of the two branches of the general court present and voting.”⁵⁰ If the legislature disapproves, then the reorganization is blocked (interview notes, 2018).

Massachusetts’ governor can issue executive orders for emergencies, disasters, to create councils and commissions, to reorganize state government, to respond to federal requirements, and for personnel administration. The legislature has no power oversee these orders other than passing legislation. During his eight years in office, Gov. Deval issued an average of approximately seven orders per year, while Republican Gov. Baker has issued an average of approximately 10 year during his first three years in office. This suggests that a governor dealing with a legislature controlled by the opposite political party might rely a little more on executive orders than would a governor facing a legislature controlled by members of his own political party. But this difference is not extremely large. Even though the governor can reorganize government through executive order, the Massachusetts General Court does participate in some of these reorganization efforts. In 2009, the legislature passed a bill consolidating some transportation authorities (the turnpike authority and the Massachusetts Bay Port Authority) into a Department of Transportation (see SB 2087 of 2009).

Oversight Through Monitoring of State Contracts

Contracting and procurement in Massachusetts is governed by 801 CMR 21.00 (Procurement of Commodities or Services),⁵¹ including Human and Social Services, which “[a]bsent a superseding law or regulation . . . covers the acquisition of all commodities and services by departments within the executive branch.” This law says little about the legislature, save to note that any contract funded by appropriations is subject to re-approval by lawmakers in each fiscal year. Most contracts are administered by the Operational Services Division (OSD),⁵² which operates COMMBUYS, “the only official procurement record system for the Commonwealth of Massachusetts’ Executive Departments.”⁵³ Contract review is under the purview of the Joint Committee on State Administration and Regulatory Oversight.⁵⁴ As in the case of administrative rules, however, the committee’s involvement appears to be limited to considering legislation pertaining to various aspects of the contracting process, such as hiring practices, definitional clarifications in already-existing statutes, etc. According to one person familiar with the process, the legislature only really gets involved in contract oversight in cases where there is evidence of malfeasance. But he called this a “grey area” and indicated that it is rare for legislators to do so (interview notes, 2018). The state auditor has the authority to

⁵⁰ <https://malegislature.gov/Laws/Constitution#articlesOfAmendment>, accessed 7/26/18.

⁵¹ <https://www.mass.gov/files/documents/2017/11/07/801cmr21.pdf>, accessed 7/30/18.

⁵² <https://www.mass.gov/orgs/operational-services-division>, accessed 7/28/18.

⁵³ <https://www.commbuys.com/bso/>, accessed 7/28/18.

⁵⁴ <https://malegislature.gov/Committees/Detail/J25/About>, accessed 7/26/18.

investigate state contractors “to assess their performance and recommend improvements,”⁵⁵ and the state comptroller (one of the executive branch officials chosen by the governor without any advice and consent) also conducts oversight of state contracts through its administration of the Massachusetts Management Accounting and Reporting System (MAARS).⁵⁶

Oversight Through Automatic Mechanisms

Massachusetts is one of three states, the others being Iowa and North Dakota, that have never had any sunset laws (Baugus & Bose, 2015). It also has no sunrise provisions. Individual statutes, however, may have sunset provisions attached to them. As noted earlier, by executive order, Gov. Deval assigned the state’s attorney general with responsibility for reviewing existing rules and regulations. This, of course, does not involve legislative oversight, but does contribute to the elimination of unnecessary or obsolete rules and regulations.

Methods and Limitations

We contacted 12 officials and spoke with two, who said “we don’t respond to questions or surveys.” The inability or unwillingness on the part of actors to answer questions combined with the overall lack of publicly accessible records for the legislature, (e.g. audio visual of hearings, meeting minutes) made it is very difficult to find information that would normally be publicly available.

⁵⁵ <https://www.mass.gov/info-details/about-the-office-of-the-state-auditor>, accessed 7/30/18.

⁵⁶ <https://www.mass.gov/info-details/v-comptroller-oversight>, accessed 7/30/18.

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