



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in New Jersey

Capacity and Usage Assessment

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

Summary Assessment

New Jersey has evolved strong institutional resources, and the legislature possesses extensive oversight powers, especially for administrative rule review. It is one of two states with a constitutionally enshrined legislative veto that has been used three times. Additionally, it has active committees on oversight exercising vigorous policing of executive agencies, an Office of the State Auditor producing performance audits of most executive units at regular intervals, and ample opportunities for the legislature to provide advice and consent regarding executive appointments and agency reorganization. There are recent examples of legislative use of some of these tools. Specifically, the legislature has reviewed and eliminated defunct commissions and boards, and the legislature has successfully blocked gubernatorial judicial appointments and agency reorganizations through advice and consent. Although we found substantial evidence that the legislature uses these tools, the linkage between audit reports and legislative action is not as systematic as it is in other top oversight states, such as Colorado. For example, oversight in New Jersey might be improved by reporting systems to apprise the public of the use of these tools by legislators—a way to oversee the overseers—an approach we found in several other states.

Major Strengths

There are several indications that New Jersey approaches oversight as a bipartisan responsibility. The Legislative Services Commission (LSC), which oversees the work of the Office of the State Auditor (OSA), consists of equal numbers of legislators from the two major political parties. New Jersey's budget oversight committee is a joint committee, so whenever the

two legislative chambers are controlled by different political parties this committee is also bipartisan. The OSA reports rates of agency compliance with audit recommendations, typically at a rate of approximately 80%. Legislators use these compliance reports during budget hearings and are willing to impose financial consequences on non-compliant agencies.

Challenges

Some public corporations, (e.g., the Port Authority of New York & New Jersey or the New Jersey Transit Corporation) are exempt from OSA audits. Disasters, such as a 2016 train crash, provide an avenue for the legislature to investigate, but the scope of these actions is narrow. Recent budget cuts have reduced the capacity of OSA to produce performance audits. There is no requirement that audits receive a legislative hearing, and audit staff rarely testify at committee hearings. New Jersey's legislature lacks authority to oversee state contracts, but it can use audits to trigger investigations.

Relevant Institutional Characteristics

While New Jersey has a strong governorship, the state has only a somewhat professionalized state legislature. New Jersey state legislators are employed full time, are not term limited, and receive a yearly salary of \$49,000 with no per diem (NCSL, 2015; NCSL, 2017b; NCSL, 2017a), well below the state's per capita median income of \$71,637 (based on 2012 census data). Therefore, it seems likely that many legislators will seek to supplement their legislative salary with other income. This is consistent with the National Conference of State Legislatures' (NCSL) rating of New Jersey as a hybrid of professional and part-time legislature. In New Jersey, legislators have the option of meeting 12 months of the year and are assisted by a relatively large staff of 727 total permanent staffers (NCSL, 2018). According to Squire (2017), the New Jersey Legislature does not take advantage of its opportunities to meet full-time, with actual floor session days of 31 in 2013 and 40 in 2014. Obviously, committees can meet on days when the chamber is not in session, but the difference between the potential and actual session days is wider than it is for most states. Therefore, although on without adjusting for actual session day Squire (2017) would rank New Jersey as the 5th most professional legislature in the nation, adjusted for actual session days, New Jersey is ranked as only the 20th most professionalized legislature nationally, a rating that is more consistent with NCSL's classification.

New Jersey is a state perhaps as well known today for a highly influential governor as it is for highly contentious and notoriously corrupt machine politics (Haider-Markel, 2008). Though he has now been succeeded by Gov. Phil Murphy, former Gov. Chris Christie was described publicly as one of the most infamous and powerful governors nationwide, a perception fostered by regular media coverage that regularly identified the governor as holding a uniquely powerful office (McArdle, 2012; Zernike & Martin, 2013; Lizza, 2014). As George Will (2011) put it, Christie's notoriety has earned the governor a reputation as the "America's Caesar"—the most powerful U.S. governor. More objectively, the New Jersey Office of the Governor was never indeed the most powerful such institution in the country, and in recent years the

institutional powers of the governor's office in New Jersey has eroded significantly (Ferguson, 2013; Ferguson, 2016).

Using data from the Council of State Governments' *Book of the States* (BOS), Margaret Ferguson compiled a Governors Institutional Powers Index (GIPI) using 2010 data in the 10th edition of *Politics in the American States* (the beginning of Christie's tenure as governor), and 2015 BOS data in the 11th edition of the book. Comparing the two tables illustrates a decline in the institutional powers of the New Jersey Governor's office. In 2010, Ferguson's analysis assigned a GIPI rating of four to New Jersey's governor, tied for third most powerful governor in the U.S. behind Maryland and Massachusetts. The New Jersey governorship scored substantially lower in 2015 with a GIPI score of 3.47. Part of this is the result of legislative actions to rein in the governor's institutional powers. Specifically, the governor lost some of his appointment powers and some of his power to control the state's budget. But the governor still exercises significant amount of control of New Jersey's budget. He or she still has the line-item veto (Ferguson, 2016), and it takes a two-thirds vote of the legislature to override this veto. Moreover, New Jersey's governor has a "reduction" veto over any line item in the budget, allowing him or her to cut, but not increase, the amount budgeted (Haughey, 2016).¹

New Jersey has a somewhat larger than average proportion of its population employed in state and local government. As of 2006, the combined state and local bureaucracy in New Jersey accounted for 11.9% of all employment in the state, both full time and part time. This was only slightly more than the national average of 11.4% (Edwards, 2006). Using data from the 2015 Annual Survey of Public Employment and the Bureau of Labor Statistics to estimate recent trends, it appears that the size of the bureaucracy relative to total employment grew in New Jersey from 11.9% in 2006 to 12.9% in 2015, an 8% increase overall now slightly further above the national average (U.S. Census Bureau, 2015; Bureau of Labor Statistics, 2017).

Political Context

Since 2000, New Jersey's legislature has been largely controlled by Democrats. Currently, the New Jersey Senate is made up of 25 Democrats and 15 Republicans. Its general assembly is made up of 54 Democrats and 26 Republicans. Democrats regularly win statewide races for federal office. Republicans in New Jersey have not cast their Electoral College votes for a Republican president since 1988, and they have not elected a Republican senator since 1972, although there have been two Republican U.S. senators from the state who were appointed to the position. Moderate Republicans, however, remain sufficiently competitive in statewide elections to occasionally clinch the governorship.

Although a plurality of the electorate in New Jersey identify as Democrats, a greater number of New Jersey residents identify as "Independents" than as Republicans (Haider-Markel, 2008). This relatively large centrist group of potential "switchers" proves to be a strong moderating force for the New Jersey Republican Party which can move towards the political center to appeal to these voters. Once in the legislature, the relatively liberal Democrats (17th most liberal Democratic party in a state House and 16th most liberal Democratic party in a state senate) and the center-left Republican party (3rd least conservative Republican party in each chamber) have some common ground, making New Jersey one of the least polarized state

¹ <https://info.cq.com/resources/state-by-state-guide-to-gubernatorial-veto-types/>, accessed 6/26/18.

legislatures in the country. Its lower chamber is the 9th least polarized lower chamber in the country, and its senate is the 6th least polarized upper chamber (Shor & McCarty, 2015).

The absence of a divided legislature or crippling polarization between the parties in the legislature does not necessarily mean that there is political harmony in the state as demonstrated by government shutdowns in 2006 and 2017, and a near-shutdown in 2018. The ensuing budget battles have left New Jersey with one of the worst state bond credit ratings in the country. Recently, Moody's Investor Services downgraded New Jersey from an A2 to an A3 rating and considers the state presently stable at that rating (Rizzo, 2017), while Standards and Poor's Global Ratings downgraded New Jersey to the present rating of A- (The Pew Charitable Trust, 2017).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Office of the State Auditor (OSA) is the legislative analytic bureaucracy in New Jersey responsible for producing audit reports. Established by law in 1934 (P.L. 1933, c.295), the OSA currently falls under the provisions of the Legislative Services Act as a unit within the Office of Legislative Services (OLS). The mission of the OLS is to provide a wide range of non-partisan analysis and support services to the legislature, in addition to the state audit functions. Other divisions in the Office of Legislative Services include the Legislative Counsel, the Legislative Budget and Finance Office, the Office of Public Information, the Administrative Unit, the Data Management Unit, and the Human Resources Office.² The OLS is overseen by the legislature through the Legislative Services Commission (LSC). This Commission consists of 16 members and is required by law to have an equal number of Democrats and Republicans and must have eight legislators from each chamber. The commission establishes general operating and budgetary policies for all divisions of the OLS, but it grants the OSA discretion in the day-to-day discharge of its duties.³ The OSA derives authority to carry out its duties from the State Constitution (Article VII, Section I, Paragraph 6 of the State Constitution) and New Jersey statutes (N.J.S.A. 52:24-1 et seq. and Public Laws of 2006, Chapter 82), which mandate that the OSA conduct "post-audits of all transactions and accounts kept by or for all departments, offices, and agencies of state government," and any entity that receives public funding.⁴ Mandatory follow-up reports determine whether agencies have complied with audit "recommendations." The typical compliance rate is around 85%.⁵ The OSA reports its findings to the legislature, governor, and the OLS Executive Director. All communication with legislators is strictly confidential, a stringent policy clarified by staff, as follows:

Confidentiality between staff and legislators is an important feature of the relationship. State law requires it. NJSA 521170 states that any legislative work product that OLS provides is confidential unless the legislator gives consent to

² https://ballotpedia.org/New_Jersey_Office_of_Legislative_Services, accessed 6/21/18.

³ <http://www.njleg.state.nj.us/legislativepub/oview.asp>, accessed 6/21/18.

⁴ http://www.njleg.state.nj.us/legislativepub/about_us.asp#about, accessed 6/27/18.

⁵ <http://www.njleg.state.nj.us/legislativepub/auditor/17ann.pdf>, accessed 6/27/18.

release that information to a third party. It is similar to attorney client privilege (interview notes, 2018).

As noted above, the authority for the New Jersey state auditor is the New Jersey Constitution. It stipulates that the state auditor be appointed to five-year terms by the legislature. Qualifications for the position are listed in the New Jersey code Section 52:24-2 which requires applicants to be made to the Legislative Service Commission, and for that commission to provide the names of qualified applicants to the president of the Senate and speaker of the general assembly. The president and speaker are then responsible for convening a joint meeting for the appointment of a state auditor.

Staffing and deliverables indicate substantial capacity with ample corresponding output. According to the auditor's 2016 annual report, they have 91 professional audit staff and six support staff. Its \$7.2 million budget, however, is fairly small for such a populous state.⁶ The OSA conducts five types of audits: financial audits, performance audits, information technology audits, school district audits, and responses to legislative requests. The allocation of staff time across these types of reports indicates that performance audits are an important part of the OSA's work. In 2016, the Office of the State Auditor completed 15 performance audits accounting for 72.1% of the office's working hours; two IT audits consumed the next largest time commitment at 12.9% of the office's total work hours, followed by two financial audits including the Comprehensive Annual Financial Report CAFR (8%) and two school districts (7%).⁷ The distribution of audit hours is similar for 2017: performance audits 73.8%, financial audits 10.6%, information technology audits 10.7%, and school district audits 4.9%.⁸

Most audits are initiated at the discretion of the state auditor. His decision of which audits to schedule is based on a risk assessment. As noted above, this authority is based on NJ Public Laws of 2006, Chapter 82. There do, however, appear to be some limits on the OSA's audit authority.⁹ It appears that OSA is constrained in auditing certain large agencies, such as the Port Authority of New York & New Jersey (PANYNJ), due to complexity, legal questions about authority to audit, and issues with subpoena power (interview notes, 2018). Another example is the New Jersey Transit Corporation. While audits have been conducted on elements of the New Jersey Department of Transit, the OSA has not conducted an audit of the New Jersey Transit Corporation. These prohibitions can be overcome when "fire alarm" oversight (i.e., a response to a crisis) is triggered. Following a train crash in 2016, the OSA initiated an audit of the New Jersey Transit Corporation with an expected publication date some time in 2019. The audit is expected to have a somewhat narrow focus, thus reducing the overall complexity. Typically, agencies are audited at least once every five years, which is a built-in feature of the risk-based assessment.¹⁰ Importantly, in 2011, the OLS budget was cut by \$250,000, and legislative staffing in both the assembly and senate was cut by a total of \$4 million (Statehouse Bureau Staff,

⁶ For reference, this is about half of what Michigan's auditor general receives and roughly the same amount Colorado's audit agency receives, even though Colorado's population is less than two-thirds the size of New Jersey's.

⁷ <http://www.njleg.state.nj.us/legislativepub/auditor/16ann.pdf>, accessed 6/21/18.

⁸ <http://www.njleg.state.nj.us/legislativepub/auditor/17ann.pdf>, accessed 6/27/18.

⁹ <http://www.business.rutgers.edu/sites/default/files/documents/2017-agaauc-state-auditor.pdf>, accessed 6/21/18.

¹⁰ An agency not audited for five years will almost certainly place them on the audit schedule (interview notes, 2018).

2011).¹¹ Fewer resources for OSA staffing limit its capacity to produce high quality audits reports, which means that legislators will be less informed (interview notes, 2018).

While legislators can follow a process to request an audit, these are rarely the source of an audit's initiation: only two in a five-year period (interview notes, 2018). In addition to audits, studies may be requested by legislative leadership or the Legislative Services Commission, but a perusal of the OSA's work product indicates most of the OSA's work is usually at their own discretion based on risk assessment.¹² An example of legislative initiation is a 2016 public request by the assembly speaker and a fellow assemblyman to audit a school district that was operating at a \$2 million deficit (Lin, 2016).¹³

It appears that there might be more audits triggered by legislator requests if the current structure, which funnels such requests through legislative leaders, were changed. Every year for at least the past ten there are an average of eight bills that would in some way change the functioning of the OSA with respect to audits, its process, and its methods of analysis. Starting with 2008 and ending in 2018, bills have been introduced that would allow any legislator to make an audit request, the formation of a special performance audit committee, and direct the state auditor to audit any contracts with private corrections companies.¹⁴ The most recent bill was co-sponsored by a legislator serving on the LSC, the legislative commission that oversees the work of the OSA.¹⁵

The performance audits produced by the New Jersey Office of the State Auditor emphasize improving the efficiency of government agencies. Each year, the OSA produces reports summarizing their activities and the value added. A 2016 report states that the OSA "identified \$75.9 million in new cost savings and revenue enhancements."¹⁶ The subsequent annual report claims that in 2017 OSA "identified \$34.6 million in new cost savings and revenue enhancements."¹⁷

Most performance audits include recommendations for improving the efficacy of the audited agency. The OSA tries to convince audited agencies to address its recommendations rather than framing recommendations as something the legislature should take up (interview notes, 2018). The agency is viewed as the appropriate actor to solicit legislative change, rather than the OSA (interview notes, 2018). Once the OSA completes an audit, by statute a copy is sent to the governor, the president of the senate, the speaker of the general assembly, and the Executive Director of the Office of Legislative Services. Additionally, the OSA routinely sends copies to each member of the state legislature, executive directors of partisan staff, management of audited agency, the state treasurer, the state comptroller, and the New Jersey State Library. The reports are also posted prominently on the state auditor's webpage (interview notes, 2018). There is no requirement that an audit receive a legislative hearing (interview notes, 2018). Only about once a year to audit staff testify at committee hearings (interview notes, 2018). Two examples are background checks for education employees and a requirement for insurance companies to check death records before suspending a policy (interview notes, 2018). Additionally, we identified two examples of the state auditor giving testimony at a committee

¹¹ http://www.nj.com/news/index.ssf/2011/07/christie_signs_state_budget_af.html, accessed 6/19/18.

¹² http://www.njleg.state.nj.us/legislativepub/about_us.asp#about, accessed 6/21/18.

¹³ http://www.nj.com/jjournal-news/index.ssf/2016/12/assembly_asks_for_audit_of_bay.html, accessed 6/21/18.

¹⁴ http://www.njleg.state.nj.us/2016/Bills/A1000/745_I1.PDF, accessed 6/21/18.

¹⁵ http://www.njleg.state.nj.us/2018/Bills/A2000/1939_I1.PDF, accessed 6/21/18.

¹⁶ <http://www.njleg.state.nj.us/legislativepub/auditor/16ann.pdf>, p.2, accessed 6/27/18.

¹⁷ <http://www.njleg.state.nj.us/legislativepub/auditor/17ann.pdf>, p.2, accessed 6/27/18.

hearing, once in 2008 (Livio, 2015c),¹⁸ and once in 2014.¹⁹ The OSA does not track bills that might have been introduced in connection with audit report recommendations.

Moreover, New Jersey law forbids OLS staff from initiating legislative policymaking. Rather, a legislator must seek staff assistance, and within that context, staff may only offer suggestions on the issues.²⁰ The standard practice involves physically distributing the audits to government officials and informally communicating with them. The OSA does not envision itself as a source of legislative changes, but rather encourages agencies to seek legislative response (interview notes, 2018). Yet sometimes audit issues are taken up by legislators.

In 2016, the OSA completed a performance audit of the Department of Environmental Protection's tire recycling policies that did produce a legislative response. The auditor's report made a single recommendation, that "the department should develop a process to periodically identify illegal scrap tire piles within the state" (Office of the State Auditor, 2016). Within six months, assembly bill A4395 was introduced, "requiring the continued identification and remediation of waste tire sites." Another bill on this topic, S2422, passed in the senate and died in a general assembly committee in 2016 (Johnson, 2016).²¹ The bill was reintroduced as A2399 on February 1, 2018, and was referred to the Assembly Environment and Solid Waste Committee.²² As of March 2018, the bill was dead in the Senate after having passed unanimously through the general assembly in 2017.²³ Thus, it is not clear how effective the legislature is in responding to audit findings, even on an issue that impacts public health and safety and received some media coverage.²⁴

Vignette: OSA Audit of Group Homes for the Disabled

In 2014, 204 people with profound disabilities were transferred to group homes after closing the New Jersey Developmental Center and the Woodbridge Development Center (Livio, 2014b).²⁵ The transfers were a part of a government program to free dollars "locked into supporting the infrastructure of the institutions" and reinvest that money into community services where patients are integrated into society. The move, however, was met with anxiety from some of the patient's families, some of whom filed a federal lawsuit (Livio, 2014b).²⁶ Gov. Christie publicly responded to the concerned families, espousing the choice provided by the new living arrangements and the promise of community services, while decrying institutionalization (Livio, 2014a).²⁷ The move was done quickly, in two-and-a-half-years, rather than the five years

¹⁸ <https://www.loc.gov/item/2009416611/>, accessed 1/7/19.

http://www.nj.com/politics/index.ssf/2014/12/nj_assembly_panel_delves_into_problems_with_118_million_canceled_social_service_contract_food_stamp.html, accessed 6/21/18.

²⁰ <http://www.njleg.state.nj.us/legislativepub/oview.asp>, accessed 6/21/18.

²¹ <http://www.njspolight.com/stories/16/11/28/fine-print-getting-a-handle-on-new-jersey-s-tire-dumps/>, accessed 6/21/18.

²² <https://legiscan.com/NJ/bill/S2422/2016>, accessed 6/21/18.

²³ <https://legiscan.com/NJ/bill/A4395/2016>, accessed 6/21/18.

²⁴ <http://www.njleg.state.nj.us/bills/BillsByKeyword.asp>, accessed 6/21/18.

²⁵ http://www.nj.com/politics/index.ssf/2014/12/last_residents_at_woodbridge_developmental_center_moved_out_by_christie_administration.html, accessed 6/19/18.

²⁶ http://www.nj.com/politics/index.ssf/2014/12/last_residents_at_woodbridge_developmental_center_moved_out_by_christie_administration.html, accessed 6/19/18.

²⁷ http://www.nj.com/politics/index.ssf/2014/02/christie_defends_closing_developmental_centers_in_woodbridge_and_totowa.html, accessed 6/19/18.

recommended by a task force (Livio, 2012).²⁸ The Office of the State Auditor (OSA) scheduled an audit in 2016 of the program to assess the level of service received by patients living in group homes, a common community living arrangement for people with disabilities.²⁹ The audit found serious failures. The 2016 audit³⁰ examined 40 of the 204 people with disabilities and found serious treatment failures: lactose intolerant patients being fed milk, missed medical appointments, and service gaps (Livio, 2016a).³¹ The audit also found that the Department of Human Services failed to make the required number of site visits.

In a written response included in the audit document,³² the Human Services Commissioner stated that the failure to make the required number of visits was the result of case managers showing up to the site only to find no one home and failing to document the reason. The corrective action proposed was to ensure the proper documentation by case managers going forward. The Chief Executive Officer of the New Jersey Association of Community Providers, which represents 55 group homes and supervised apartments (Stainton, 2017),³³ promised to change group homes operations.

A bill search of “group homes” on the New Jersey Legislature’s website shows that the only bill during that period dealt with group homes required fire suppression and alarm systems (A2769).³⁴ It does not appear that the 2016 audit resulted in legislative action. Prior to the audit, however, Assemblywoman Valerie Vainieri Huttle, who opposed the transition, cited the speed with which patients were transitioned, the limited supply of living facilities, and the value in keeping the developmental centers open (Valerie Vainieri Huttle, 2015).³⁵ In 2015, she sponsored a bill that would regulate group homes for Alzheimer’s patients, which was eventually signed into law by Gov. Christie (NJTV News, 2015).³⁶ The demand for such a bill became clear by reports of patients wandering away from the homes while unsupervised (Rizzo & Koloff, 2015).³⁷ While the legislature was successful in passing legislation to regulate group homes generally, nothing specific seemed to happen after the audit report.

Oversight Through the Appropriations Process

Aided by the staff of the Legislative Budget and Finance Office (LBFO), the committees involved in the budget and in appropriations in both chambers demonstrate capacity and proficiency at holding officials and agencies accountable for their performance. These monetary committees use budget hearings and audit reports, including the OSA annual compliance report

²⁸ www.nj.com/news/index.ssf/2012/08/nj_task_force_ordering_closure.html, accessed 6/19/18.

²⁹ <https://mn.gov/mnddc/parallels2/pdf/80s/86/86-DHP-UCP.pdf>, accessed 6/18/19.

³⁰ <http://www.njleg.state.nj.us/legislativepub/auditor/544714.pdf>, accessed 6/18/19.

³¹ http://www.nj.com/politics/index.ssf/2016/07/audit_move_to_group_homes_caused_problems_for_some.html, accessed 6/19/18.

³² <http://www.njleg.state.nj.us/legislativepub/auditor/544714.pdf>, accessed 6/18/18.

³³ <http://www.njspotlight.com/stories/17/12/20/major-payment-reforms-to-programs-for-developmentally-disabled-in-new-jersey/>, accessed 6/19/18.

³⁴ <http://www.njleg.state.nj.us/bills/BillsByKeyword.asp>, accessed 6/18/18.

³⁵ http://www.valeriehuttle.com/new_jerseys_developmental_centers_should_stay_open, accessed 6/18/18.

³⁶ <https://www.njtvonline.org/news/video/bill-one-step-closer-to-officially-ending-return-home-new-jersey-program/>, accessed 6/18/19.

³⁷ http://www.valeriehuttle.com/new_jersey_families_welcome_regulations_of_group_homes_for_dementia_patients, accessed 6/18/19.

to monitor the performance of state agencies. Additionally, the Joint Budget Oversight Committee, responsible for approving agency transfers during session, demonstrates oversight capacity by monitoring agency spending. The LBFO prepares annually an analysis of the governor's proposed budget and tracks the hundreds of individual budget resolutions proposed by legislators. It also provides state revenue estimates and acts as the committee staff for the Joint Budget and Oversight Committee.

The Senate Budget and Appropriations Committee, the Assembly Budget Committee, and the Assembly Appropriations Committee are the committees responsible for reviewing the budget. The LBFO, a unit of the Office of Legislative Services, prepares fiscal information for the budget committees.³⁸ A budget battle demonstrates how evenly matched the legislative and executive branches can be during the appropriations process. In July 2017, Gov. Christie threatened to use his line-item veto to cut Democratic spending priorities from the appropriations bill unless Democrats passed an unrelated bill that would require the state's largest non-profit health insurance company, Horizon Blue Cross Blue Shield, to contribute \$300 million dollars to the state opioid-treatment program. After three days of government shutdown and media coverage, much of it unfavorable to the governor, Democrats in the legislature and the governor struck a deal that did not require the insurance company to immediately pay the \$300 million.

As noted earlier, OSA does follow up annually on audit recommendations and compliance. Every April, the OSA releases a compliance report showing for every audited agency the extent of compliance with financial issues found during financial audits and comments in performance audits. Doing so during the month of April is strategic because the legislature begins to hold appropriations hearings in May. These reports are sometimes used as a hammer during the appropriations process where the legislature often expresses agreement with audit findings and discusses future appropriations within this context (interview notes, 2018).

Over a two-year period, the rate of audit compliance for fiscal year 2015 recommendations rose to 88%.³⁹ Some of the increase in compliance is attributed to the appropriations hearings (interview notes, 2018). There was a slight decline in 2016. The 2017 Annual Report, the compliance review on findings related to audit reports issued during the fiscal year ending June 30, 2016, shows 83% of recommendations have been complied with, or management has taken steps to achieve compliance. If audit recommendations and compliance issues are not resolved after a three-year review period, they are added to the list of issues to look for when the next audit of the entity is conducted because most agencies are audited every three to five years (interview notes, 2018). Moreover, the agency's response to an audit recommendation constitutes corrective action. This is usually understood as the agency choosing how to correct the problem that the audit identified. The agency is expected to have a certain level of commitment to the corrective action it proposes (interview notes, 2018).

The Joint Budget Oversight Committee can also provide crucial ongoing oversight after the state budget is adopted. The committee consists of six members, three appointed by the president of the Senate and three appointed by the speaker of the Assembly.⁴⁰ The minority party is guaranteed one seat from each chamber. This committee oversees budget "transfers as prescribed in the annual appropriation act, bond authorization or bond appropriation acts, bond refinancing proposals, and claims presented to the Legislature." The Legislative Budget and

³⁸ <http://www.njleg.state.nj.us/legislativepub/budget.asp>, accessed 6/19/18.

³⁹ <http://www.njleg.state.nj.us/legislativepub/auditor/17ann.pdf>, accessed 6/21/18.

⁴⁰ <http://www.njleg.state.nj.us/legislativepub/Rules/SenRules.pdf>, accessed 6/19/18.

Finance Office staffs the Joint Budget Oversight Committee.⁴¹ A review of five years of activity shows three meetings during the 2016-2017 session⁴² (10:33, 8:52, 9:13), four meetings during the 2015-2014 session⁴³ (7:31, 2:36, 6:58, 7:35), and four meetings during the 2013-2012 session⁴⁴ (42:43, 3:32, 13:04, 5:50). The typical meeting is no more than 13 minutes. These meetings fall into three categories: meetings of six minutes or less were pro forma—roll call, approval of previous minutes, and then votes on the agenda items— without any questions; meetings between seven minutes and 14 minutes were more involved with legislators, mostly the committee chair, questioning officials; the lone 40 minute meeting that included substantial discussion of the agenda items with more questioning of officials.

An example of the first group is the July 30, 2012, meeting⁴⁵ that had two items: a Department of Treasury request to transfer various bonds funds and appropriations and a New Jersey Environmental Infrastructure Trust Request for Issue Refunding Bonds. An official from the Department of Treasury and Department of Environmental Protection was on hand to provide testimony and answer any questions, but in both cases, no questions were asked, and the meeting went right to a vote.

An example of the second group is the May 10, 2012, meeting⁴⁶ dealing with a request from the Department of Environmental Protection (DEP) to reallocate \$8 million in previously appropriated green trust local and non-profit program project funds. The proposal was for the funds to be shifted from various Green Acres bond acts and Garden State Preservation trust funds to a Blue Acres block grant appropriation for acquisition by counties and municipalities. In addition to the fund transfer, the DEP was seeking to broaden the number of municipalities eligible for Blue Acres funds. Legislators' questions were pointed and direct about why the funds were still available and how much of the transfer funds would go to projects as opposed to soft costs (such as survey, appraisal, preliminary assessment costs), and why the particular towns were chosen to be added. The motivation to change the funding in part was a result of damage by Hurricane Irene. The reallocation was passed by the committee.

The longest meeting during this period occurred on March 18, 2013.⁴⁷ This meeting dealt with the sale of bonds and was rather technical. The officials seemed to be seeking the option to receive more money up front and offload greater costs on future New Jersey citizens. The chairman probed both this fact and its merits. At one point the chairman took time to develop a metaphor—a couple buying their first house and borrowing from their parents for the down payment—in what seemed to be a clear effort to both make a point in his discussion with the official and to communicate with a wider audience in New Jersey. The officials were quick to point out that institutional borrowing should be distinguished from personal borrowing. The officials were also quick to point out that their request would simply give them this option if conditions became right to deploy it. At one point the chairman stated:

⁴¹ <http://www.njleg.state.nj.us/legislativepub/budget.asp>, accessed 6/19/18.

⁴² http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=JBOC&SESSION=2016, accessed 6/19/18.

⁴³ http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=JBOC&SESSION=2014, accessed 6/19/18.

⁴⁴ http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=JBOC&SESSION=2012, accessed 6/19/18.

⁴⁵ <http://www.njleg.state.nj.us/media/mp.asp?M=A/2012/JBOC/0730-0945AM-M0-1.M4A&S=2012>, accessed 6/19/18.

⁴⁶ <http://www.njleg.state.nj.us/media/mp.asp?M=A/2012/JBOC/0510-0230PM-M0-1.M4A&S=2012>, accessed 6/18/19.

⁴⁷ <http://www.njleg.state.nj.us/media/mp.asp?M=A/2013/JBOC/0318-1200PM-M0-1.M4A&S=2012>, accessed 6/19/18.

I'm not making this into a partisan issue. I'm just saying this is the third time we are issuing more debt to pay for transportation projects. I'm just trying to get a handle on what we are doing. We keep getting called here to do these. I'm just trying to get a handle. I'm not blaming anybody, I'm not turning this into a partisan, just trying to do our job here.

In addition to the hearings during the budget process, the Senate Budget and Appropriations Committee is involved in other hearings related to fee increases and other decisions with financial implications. For example, during the NJ Transit Corp. hearings, the Senate Budget and Appropriations Committee called officials in, asked questions, and discussed the merits of Gov. Christie's 90% subsidy reduction and considered the merits of restoring the subsidy. This committee also became involved in a regulatory conflict over the rules governing the hair braiding profession, which we discuss in the section on "Oversight Through Administrative Rule Review."

We found evidence that the Senate Budget and Appropriations Committee, the Assembly Budget Committee, and the Assembly Appropriations Committee with the support of the LBFO engage in vigorous and effective oversight through the appropriations process. Audit reports and information about agency compliance with audit recommendations are considered during the budget and appropriations hearings. The Joint Budget Oversight Committee on the other hand does not appear to expend much time overseeing agency performance, despite its name.

Oversight Through Committees

New Jersey has standing committees of reference that deal with substantive policy areas and standing committees of administration that deal with legislative processes. These standing committees must coordinate with the appropriate unit within the Office of Legislative Services for analytic assistance in reviewing existing policies and processes. In some instances, the legislature will form special committees to generate policy alternatives. For example, in 2016 the New Jersey Senate formed the Senate Select Committee on Public School Funding Fairness. The Select Committee met four times in 2017 and took testimony from a wide array of interests including charter school groups, public school employees, education experts, as well as policy experts familiar with the existing funding formula (New Jersey Legislature, 2017). The lack of a regular sunset mechanism in New Jersey places additional onus on committee leadership to engage in program review.

Transcripts from the hearings make it apparent that the legislators on the select committee are knowledgeable about the issues under discussion. Witnesses were often asked questions and challenged. Not infrequently, witnesses were unable to immediately respond to the legislator's questions.

On the other hand, the 2014 the Fort Lee lane closures scandal resulted in multiple state legislative committees investigating the lane closures and Gov. Christie and his administration's involvement in them. These hearings had strong political overtones. The investigation began in the Assembly's standing Transportation Committee, which used its authority to subpoena witnesses from the Christie Administration to testify before the committee. Four months into the Assembly Transportation Committee investigation, both chambers formed separate special committees to investigate the scandal. Shortly after this, the legislature formed a Joint Special

Committee to oversee the investigation. Eventually, the parallel U.S. Attorney's office investigation led to the indictment and convictions of David Wildstein, Bridget Kelly, and Bill Baroni. While the investigations by the state legislature and later the U.S. Attorney's office failed to implicate the Governor himself, the investigation demonstrated a concerted effort to hold the executive branch accountable.

The Senate Legislative Oversight Committee and the Assembly Judiciary Committee meet jointly to oversee problems with the state's transit authority. This is a challenging assignment because the laws governing transit authorities often make it difficult for the legislature to monitor their performance, as the vignette below explains.

Vignette: The New Jersey Transit Corporation

A focusing event, a train crash in Hoboken September 29, 2016, drew attention to 90% reduction in NJ Transit Corp. subsidies accompanied by a \$3.44 billion diversion of its capital funds for operations. Federal inspectors conducted an audit, finding 787 rule violations during the first nine months of 2017 (Young, 2018).⁴⁸ Both of New Jersey's legislative chambers also investigated, demonstrating its ability exercise oversight despite three major obstacles: (a) challenges to committee authority by officials during hearings, which limited access to important agency information; (b) an apparent breakdown in ability to direct the OSA to audit; and (c) limited authority or capacity of the OSA to audit. The newly-elected governor, Phil Murphy, campaigned on fixing the trains, and has requested a state audit of the NJ Transit Corp. So, the train crash triggered multipronged oversight of a public corporation, the NJ Transit Corp.

During an August 2017 hearing, the Joint Legislative Oversight Committee, consisting of the Senate Legislative Oversight Committee and the Assembly Judiciary Committee, questioned Former Transit Executive Todd Barretta, who identified mismanagement, patronage, and corruption as rife within the commuter rail (Higgs, 2017a).⁴⁹ On September 11, 2017, the NJ Transit Corp. sued Barretta for "maligning" the agency during his testimony at the joint legislative committee in August 2017 (Hetrick & Cronin, 2017),⁵⁰ indicating the confrontational nature these hearings.

The Joint Legislative Oversight Committee held further hearings in September 2017. These uncovered key maintenance and safety positions left vacant (Higgs, 2016),⁵¹ violations cited by federal officials (The Associated Press, 2016),⁵² the highest breakdown rate among commuter railroads, overcrowding, delays, horrific details of the crash from first-hand witnesses, and a possible explanation for the crash: the train engineer suffered from an undiagnosed sleep disorder (Higgs, 2017b).⁵³ NJ Transit Executive Director Steven Santoro was

⁴⁸ <https://www.bloomberg.com/news/articles/2018-02-21/nj-transit-s-hidden-danger-bad-brakes-bare-wires-rotten-parts>, accessed 4/21/18.

⁴⁹ http://www.nj.com/traffic/index.ssf/2017/08/ex-nj_transit_officer_calls_agency_dysfunctional_ri.html, accessed 4/21/18.

⁵⁰ <http://observer.com/2017/09/nj-politics-digest-nj-transit-sues-ex-worker-over-explosive-testimony/>, accessed 4/21/18.

⁵¹ https://www.nj.com/traffic/index.ssf/2016/11/feds_nj_transits_trains_are_the_worst_breakdown_th.html, accessed 4/21/18.

⁵² https://www.nj.com/hudson/index.ssf/2016/10/source_agency_found_nj_transit_violations_before_c.html, accessed 4/21/18.

⁵³

http://www.nj.com/traffic/index.ssf/2017/09/nj_transit_still_in_crosshairs_a_year_after_fatal_hoboken_train_crash.html, accessed 4/21/18.

questioned at the hearing and assured the committee that steps were being taken to improve safety.

On January 4, 2018, the Senate Budget and Appropriations Committee became involved, and considered supplemental funding for the NJ Transit Corp (Alfaro, 2017).⁵⁴ The committee considered supplemental funding of \$85 million to address capacity and safety improvements, noting the diversion by former-Gov. Christie of capital improvement designated moneys to operations.

On January 5, 2018, former NJ Transit Corp. officials were subpoenaed and questioned at a two-hour Joint Legislative Oversight hearing that has been described as the legislature doing its best to “aid Gov.-elect Phil Murphy with his focus on issues with New Jersey Transit” (Khemlani, 2018).⁵⁵ This hearing focused on staffing, but past funding issues were raised, along with the need for a new “positive train control system” to improve safety. At a follow up hearing on January 8, 2018, of the Senate Legislative Oversight Committee and Assembly Judiciary Committee, legislators took an active role in questioning administrators including NJ Transit Executive Director Steven Santoro.⁵⁶

In February 2018, the Senate Transportation Committee considered bills but took no action (Higgs, 2018b).⁵⁷ The Assembly Transportation and Independent Authorities Committee passed a bill out of committee, A1241, which would change the governance of the commission overseeing NJ Transit Corp. to include three members who are regular NJ Transit commuters.⁵⁸ Republican legislators have made public their desire to discontinue what has been described as a “raft of reforms” (Reitmeyer, 2018).⁵⁹ The bill, approved by the Assembly committee by an 11-0 vote, is currently in Senate (Reitmeyer, 2018).⁶⁰ The 30 pages worth of reforms to the NJ Transit Corp. include mandating internal memos be reported to the legislature routinely.

The new governor signed an executive order (5) on January 22, 2018, directing the Commissioner of Transportation to authorize an independent audit of the NJ Transit Corp (ABC7NY, 2018).^{61,62} with performance, strategic, and financial dimensions.⁶³ It appears likely that an OSA audit will be forthcoming in fall 2018 in addition to the audit the governor has requested from his commissioner, but conducting an audit on the NJ Transit Corp. in all its functions is simply too large a task to be done by the OSA (interview notes, 2018). Therefore, it is important define a scope that is feasible for OSA and appropriate to address concerns and, moreover, does not overlap with the other audits.

The NJ Transit Corp.’s annual report indicates a financial audit conducted by Ernst and Young and an internal audit is completed on a yearly basis, but with no indication of

⁵⁴ <http://observer.com/2017/12/heres-what-the-nj-legislature-will-focus-on-before-the-end-of-lame-duck/>, accessed 4/21/18.

⁵⁵ <http://www.roi-nj.com/2018/01/09/industry/nj-transit-officials-testify-staffing-revenue-woes/>, accessed 4/21/18.

⁵⁶ <http://www.njleg.state.nj.us/legislativepub/pubhear/sloaju01082018.pdf>, accessed 4/21/18.

⁵⁷ http://www.nj.com/traffic/index.ssf/2018/02/can_these_watchdogs_reform_nj_transit_from_being_n.html, accessed 4/21/18.

⁵⁸ <http://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A1241>, accessed 4/21/18.

⁵⁹ <http://www.njspotlight.com/stories/18/02/04/state-lawmakers-call-for-30-pages-of-reforms-at-new-jersey-transit/>, accessed 4/21/18.

⁶⁰ <http://www.njspotlight.com/stories/18/02/04/state-lawmakers-call-for-30-pages-of-reforms-at-new-jersey-transit/>, accessed 4/21/18.

⁶¹ http://nj.gov/governor/news/news/562018/approved/20180122a_eo.shtml, accessed 4/21/18.

⁶² <http://abc7ny.com/traffic/governor-signs-order-calling-for-new-jersey-transit-audit/2977751/>, accessed 4/21/18.

⁶³ <http://nj.gov/infobank/eo/056murphy/pdf/EO-5.pdf>, accessed 4/21/18.

performance audits.⁶⁴ The US Department of Transportation reviewed the Ernst and Young audit and passed it without recommendation.⁶⁵ Although the OSA audits the Department of Transportation and its Trust Fund Authority from time to time, these audits expressly excluded the NJ Transit Corp., merely citing the NJ Transit Corp.'s own internal audits within the OSA's audit report.⁶⁶

Even before the crash, the Federal Railroad Administration uncovered a variety of problems with the NJ Transit Corp. (Fitzsimmons, 2016).⁶⁷ Despite this attention, the legislature only became involved after the crash. A journalist who has studied the NJ Transit Corp. for 20 years said the legislature ignored it, looking for opportunities to spend money on projects in their own districts, while the governor has done leg work to make reforms happen (Higgs, 2018a).⁶⁸

However, the NJ Transit Corp. is resisting (Young, 2017).⁶⁹ For example, health and human services administrators refused to answer questions when subpoenaed in a \$118 million contract for a software program that the contractor failed to deliver (Livio, 2015c).⁷⁰

Despite these obstacles, the legislature has held hearings and drafted legislation to address some issues with NJ Transit Corp. itself. This demonstrates New Jersey's legislative oversight capacity through standing committees, at least when triggered by a crisis (fire alarm oversight).

Yet, some problems identified by auditors receive limited attention for the legislature despite the need to change laws to facilitate agency performance. The New Jersey Prescription Drug Monitoring Program (NJMPMP)⁷¹ gathers data to detect patients shopping for doctors to prescribe opiates or other controlled substances (Brodesser-Akner, 2016).⁷² An OSA audit⁷³ recommended that the Department of Law and Safety Consumer Affairs Division "seek legislation for allowing NJMPMP data sharing to the New Jersey Medicaid program and other state sponsored and private prescription drug insurance programs" (p. 8). This recommendation arose because New Jersey state law prohibits Medicaid from allowing public access to its data (Livio, 2016b).⁷⁴ Other states' laws permit this access, so it is clear there are solutions to this problem. Yet, since the audit, there is no evidence on the New Jersey Legislative website of bills or laws addressing this issue despite a clear need for legislative action.

⁶⁴ http://www.njtransit.com/pdf/NJTRANSIT_2014_Annual_Report_Final.pdf, accessed 4/21/18.

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<https://www.oig.dot.gov/sites/default/files/QCR%20on%20Single%20Audit%20of%20NJ%20Transit%20Corp%5E8-24-16.pdf>, accessed 4/21/18.

⁶⁶ <http://www.njleg.state.nj.us/legislativepub/Auditor/033016.pdf>, accessed 4/21/18.

⁶⁷ <https://www.nytimes.com/2016/10/02/nyregion/nj-transit-was-under-investigation-before-fatal-crash-federal-rail-official-says.html?mtrref=www.google.com>, accessed 4/21/18.

⁶⁸ http://www.nj.com/traffic/index.ssf/2018/01/opinion_what_could_be_the_big_reveals_from_an_nj_t.html, accessed 4/21/18.

⁶⁹ <https://www.bloomberg.com/news/articles/2017-12-05/nj-transit-withholds-data-subpoenaed-for-lawmakers-safety-probe>, accessed 4/21/18.

⁷⁰ http://www.nj.com/politics/index.ssf/2014/12/nj_assembly_panel_delves_into_problems_with_118_million_canceled_social_service_contract_food_stamp.html, accessed 4/21/18.

⁷¹ <http://www.njconsumeraffairs.gov/pmp/Pages/default.aspx>, accessed 6/19/18.

⁷² http://www.nj.com/politics/index.ssf/2016/04/christie_adds_new_state_to_prescription_monitoring.html, accessed 6/19/18.

⁷³ <http://www.njleg.state.nj.us/legislativepub/auditor/661014.pdf>, accessed 6/19/18.

⁷⁴ http://www.nj.com/news/index.ssf/2016/09/njs_prescription_drug_monitors_are_outmanned_and_r.html, accessed 6/19/18.

Despite these occasional lapses, the New Jersey General Assembly appears to conduct more oversight through standing committees than most other states. Further evidence that the New Jersey legislature pursues oversight is provided by a list of the hearing during the 2017 lame duck session.⁷⁵ These include meetings of a joint legislative task discussing improvements to drinking water infrastructure, meetings of the Senate Health Human Services and Senior Citizens Committee to discuss problems with the medical examiners, and meetings of the Senate Law and Public Safety Committee examining media reports about alleged sexual misconduct at women's correctional facility.

Oversight Through the Administrative Rules Process

New Jersey is one of two states that enshrine in its constitution the legislative power to block new or existing administrative rules. In 1992, New Jersey passed a constitutional amendment under Art. V, Sec. IV, par. 6. To promulgate a new rule, agencies in New Jersey must first publish the proposed rule in the *New Jersey Register*. Thirty days are allotted for public comment. At the end of the 30-day comment period, comments are summarized and assessed. Next the agency submits the rule to the Office of Administrative Law, the assembly, and the senate. New Jersey does not have a Joint Committee on Administrative Rules or an equivalent institution, so rule changes submitted to the chamber leadership are assigned to the appropriate standing committee. If they do nothing, the rule will go into effect 120 days later. If they want to block the new rule, legislators in both chambers must issue a concurrent resolution within 30 days.

A source summarizes the next steps as follows:

1) Both houses of the legislature must pass a concurrent resolution finding the rule to be inconsistent with legislative intent; 2) the agency fails to amend or withdraw the rule, and a public hearing is held; and 3) both chambers of the legislature pass a concurrent resolution barring adoption of the rule.

The legislature may also invalidate administrative rules that have taken effect following the same three steps outlined above.

There is also an option for the public to challenge an administrative rule. In a challenge from the public, all the parties involved may present evidence before an administrative law judge who will then decide whether the rule may go into effect (New Jersey Legislature, 2017). It is possible for an individual legislator to use the public rule challenge as a form of individual legislative oversight (interview notes, 2018).

The public can challenge a rule within one year after the rule is promulgated for almost any reason. They can basically say [the agency] didn't follow the process. A member of the public can file a petition with the agency to change a rule. However, this does not have the same bite as a concurrent resolution. If a legislator really wanted to block a rule, they'd use the legislative process. It is

⁷⁵ <https://observer.com/2017/12/heres-what-the-nj-legislature-will-focus-on-before-the-end-of-lame-duck/>, accessed 1/10/19.

certainly the case that legislators and the influence they have in the community could pursue a challenge to an existing rule or petition to change a rule, but that doesn't have the force of a joint resolution. Of course, legislators know when the votes aren't there to challenge a rule, or they might know that the effort would be in vain so they could pursue a rule change with constituents or an advocacy group, that's for sure (interview notes, 2018).

The legislature does not often successfully use the power of a joint resolution to invalidate an administrative rule. Most attempts at concurrent resolutions to invalidate administrative rules simply fail to get the requisite votes (interview notes, 2018). There were three rules the legislature tried to block: one created by the Civil Service Commission⁷⁶ in 2013 (Johnson, 2016),⁷⁷ one created by the Department of Environmental Protection in 2016 (Johnson, 2018),⁷⁸ and one created by the Division of State Police regarding justifiable need for issuing concealed handgun permits in 2016.

The Civil Service Commission wanted to make it easier to move from a "3" civil service classification to a "2," by skipping required testing. The legislature passed a joint resolution stating that the statute requires a test be taken by the employee who is promoted from a three to a two. The rule is still on the books and not yet in effect because the commission is still studying the hundreds of job descriptions and tests involved. It is possible that the legislature's objections will persuade the commission to abandon the rule (interview notes, 2018).

The Department of Environmental Protection (DEP) proposed a rule regarding septic system density standards in a protected area of the state known as the Highlands. The rule would increase septic density to improve development and economic opportunities in the area. The Highlands are an important source of water for most of the state's population. The legislature passed a concurrent resolution citing concerns about the environmental impact of the rule change and its violation of the intent of the 2004 bill to limit threats to the water supply and environment. Prior to the concurrent resolution, the rule was challenged in court, where it was upheld. In response to the concurrent resolution, the DEP claimed it was flawed substantively and insisted the agency would go ahead with the rule, citing the court case that upheld the rule after weighing the evidence of environmental and economic impact considering the legislative intent (Goldshore, 2018; Danzis, 2018).^{79,80} Although the legislature's efforts appear procedurally flawed, Gov. Murphy is likely to be more sympathetic than his predecessor to the policy concerns expressed in the concurrent resolution.

The Division of State Police wanted to expand the definition of justifiable need for issuing a concealed handgun carry permit. The 2016 rule was met with the passage of two concurrent resolutions, one distinguishing the rule from legislative intent and the other reinstating the definition of justifiable need, NJAC 13:54-2.4.⁸¹ This issue did not receive media

⁷⁶ <https://caselaw.findlaw.com/nj-superior-court-appellate-division/1756147.html>, accessed 6/21/18.

⁷⁷ https://www.nj.com/politics/index.ssf/2016/12/nj_court_rejects_christie_administrations_civil_se.html, accessed 6/21/18.

⁷⁸ <http://www.njspotlight.com/stories/18/01/08/lawmakers-rap-dep-roll-back-rule-on-septic-tanks-in-highlands/>, accessed 6/21/18.

⁷⁹ <https://www.law.com/njlawjournal/sites/njlawjournal/2018/01/26/highlands-septic-system-density-rule/?slreturn=20180227114756>, accessed 6/21/18.

⁸⁰ <http://www.njherald.com/20180114/highlands-rule-will-stand-dep-chief-says#>, accessed 6/21/18.

⁸¹ http://www.njsp.org/news/pdf/pr/20170403_d063_njr668a.pdf, accessed 6/21/18.

coverage but seems to be an example of the legislature insisting that an agency be accountable to legislative priorities on gun control.

In addition to the formal administrative rules review process, standing committees can become involved in regulatory rules. In its capacity as a standing committee, the Senate Budget and Appropriations Committee became involved in the rules governing hair braiding.

Vignette: Occupational Regulatory Oversight: Hair Braiding Establishment Advisory Committee

The New Jersey State Board of Cosmetology and Hairstyling⁸² is the executive agency responsible for creating occupational regulations for hairstylists and barbers. The board requires practitioners to be licensed to do their craft professionally. Part of licensure requires graduating from beauty school which comes with a \$17,000 cost and 1,200 hours of cosmetology. Although the 1984 enabling legislation did not explicitly grant the board authority to regulate hair braiding—the closest activity that if granted is hair weaving—the board has acted within its discretion unchecked by the legislature until recent action. The practices of the State Board of Cosmetology and Hairstyling became the focus of a joint budget oversight committee hearing.

Melek Ustunluk, a professional hair braider, was arrested in 2014 by an officer for hair braiding in an unregistered establishment and without a license. The officer was a recent patron of Melek's services, and a judge later dismissed the charges.⁸³ Another hair braider in 2015 was fined \$1,150 for practicing without a license. The New Jersey Hair Braiding Freedom Coalition and the Institute for Justice have taken up advocacy for reforming occupational regulations on this issue.⁸⁴ The Institute for Justice has branded itself as "the National Law Firm for Liberty,"⁸⁵ and has close connections to the Cato Institute.⁸⁶ Its publication, "Barriers to Braiding, How Job-Killing Licensing Laws Tangle Natural Hair Care in Needless Red Tape" (Erickson, 2016),⁸⁷ has been cited in numerous state efforts seeking regulatory reform (Slone, 2016).⁸⁸

Assembly Bill 3754 would remove hair braiding from the board's regulatory authority and create a new Hair Braiding Advisory Committee for registering and regulating hair braiding establishments.⁸⁹ The bill has three primary sponsors (two Democrats, one Republican), eight co-sponsors (five Democrat, three Republican), and was passed (74 Ayes, 0 Nays, and six abstentions). The bill was referred to the Senate Budget and Appropriations Committee. While it made it out of the Senate Budget and Appropriations Committee (12 Aye, 0 Nay, one Abstention) At the time of writing, it awaits a floor vote.⁹⁰ The handling of the issue demonstrates a capacity on the part of the legislature to act in a bipartisan manner to hold an agency accountable for its performance and engage constructively in the regulatory environment.

⁸² <http://njpublicsafety.com/ca/cosmetology/>, accessed 5/28/18.

⁸³ http://www.nj.com/news/index.ssf/2018/05/hair_braiding_new_jersey.html accessed 5/28/18, accessed 6/19/18.

⁸⁴ <http://njhairbraidingfreedom.com/>, accessed 5/28/18.

⁸⁵ <http://ij.org/about-us/>, accessed 5/28/18.

⁸⁶ https://www.sourcewatch.org/index.php/Institute_for_Justice, accessed 5/28/18.

⁸⁷ <http://ij.org/report/barriers-to-braiding/>, accessed 5/28/18.

⁸⁸ http://www.indianapolisrecorder.com/business/article_117a2d7e-a1e9-11e9-11e6-86bd-372a67e94abd.html accessed 5/28/18.

⁸⁹ http://www.njleg.state.nj.us/2018/Bills/S3000/2510_S2.PDF, accessed 6/18/18.

⁹⁰ <http://www.njleg.state.nj.us/legislativepub/calendar/061518.pdf>, accessed 6/18/18.

New Jersey's legislature has the capacity to block administrative rules, but this power is not used frequently. The myriad reviews and analysis required can thwart efficient oversight as rules languish in the review process. The legislature, in practice, appears to wait for these reviews to conclude before voting to block the rule. For example, one study examined 1,707 rules promulgated during two time spans (1998-99 and 2006-07). This study found that only thirty of these rules received large numbers of public comments, and among those "only four had impact statements that contained actual numbers to describe economic impacts" (Borie-Holtz & Shapiro, 2009). It appears that there is little to impede the vast majority of administrative rules in New Jersey.

Oversight Through Advice and Consent

There are ample opportunities for the governor to make appointments of administrative officials and for the legislature to exercise advice and consent. Out of 46 administrative officials, 24 of them are appointed by the governor and require the advice and consent of the New Jersey Senate (Wall, 2014). Despite these opportunities, the New Jersey Legislature very rarely blocks executive branch appointments even during periods when the executive and legislative branches are controlled by different political parties.

However, Democrats have regularly refused to allow the governor's judicial nominees to be seated. In the case of Mercer County, only six of the county's 24 superior court judge positions are filled (Murray, 2016). Additionally, the legislature is more active in blocking agency reorganization efforts by the governor. Recent examples include successfully blocking the Governor's attempt to transfer the state's addiction and mental health services from the Department of Human Service to the state's Department of Health (Johnson & Livio, 2017; Jennings, 2017).

New Jersey's governors appear to issue about 50 executive orders per year—at least that was true for Gov. Christie during his first year in office and for current Gov. Murphy. The substantive of these rules have only one limitation—they may not be used to reorganize state agencies. Hence in addition to lowering flag and declaring emergency flood zones, some of the executive orders make policy. For example Gov. Murphy issues executive orders that facilitate the development of a clean energy economy or mandate that technology contracts insure that all parties accept net neutrality rules. The only recourse for the legislature if they want to overturn these orders is to pass legislation.

On the other hand, government reorganization in New Jersey depends on legislative action. Three example of state government reorganization in New Jersey in 2010 all involve legislation passed by the legislature. For example, SB 2406, which converted the state's public broadcast system.⁹¹

⁹¹ <http://www.ncsl.org/documents/fiscal/eliminations2011.pdf>, accessed 1/10/19

Oversight Through Monitoring of State Contracts

In general, the legislature does not systematically oversee state contracts; contracts are overseen by the state comptroller, an executive agency. The exceptions are audits produced by the OSA and active investigations or probes conducted by the legislature. Two examples to be discussed exemplify some of the difficulties the legislature has had policing contracts: Aramark contracts for food services in jails and prisons and Hewlett-Packard and Maximus.

In 2013, journalist Chris Hedges reported that Aramark, a private vendor, which has had a contract with New Jersey since 2004, delivered spoiled food to inmates (Hedges, 2013).⁹² In addition to concerns about the quality of food Aramark was serving, in 2005 an Aramark employee was arrested for attempting to sell drugs to kitchen prison workers (Dannenberg, 2006).⁹³ Prison officials considered contracting for food service from another provider, but continued the contract on a month-to-month basis because Aramark was the only bidder (Dannenberg, 2006).⁹⁴ This situation demonstrates a need for legislative oversight, but we can find no evidence that any monitoring occurred. This issue received no coverage on the OSA website,⁹⁵ the legislature's website,⁹⁶ and media coverage of the legislature using the search terms "prison," "jail," and "food."

New Jersey entered into a \$118.3 million contract with Hewlett-Packard to produce a computer system to simplify citizen enrollment into social welfare programs, called the Consolidated Assistance Support System (CASS) that would replace a system from the 1980s (Livio, 2015b).⁹⁷ The system is needed due to the length of time it takes for recipients to receive benefits. For example, the US Department of Agriculture has threatened financial sanctions unless New Jersey reduces the time it takes applicants to receive SNAP benefits (Livio, 2014c).⁹⁸ Discussions about CASS began in 2005; work began in 2007 with an expectation completion date of 2010. Former-Gov. Christie cancelled the project in November 2014 without explanation, citing ongoing talks with Hewlett-Packard. A December 2014 audit⁹⁹ showed the contract lacked a key "element found in nearly every other state contract: language that would have given the state power to penalize the vendor should something go wrong" (Livio, 2015c).¹⁰⁰ The audit also revealed the cost ballooned to \$227 million and that the state could be liable for a much larger share of the cost if the project was left unfinished, otherwise the federal government pays 90% for a program seen to completion. An agreement was reached with Hewlett-Packard to finish the

⁹² <https://www.truthdig.com/articles/food-behind-bars-isnt-fit-for-your-dog/>, accessed 6/19/18.

⁹³ <https://www.prisonlegalnews.org/news/2006/dec/15/aramark-prison-food-service-with-a-bad-aftertaste/>, accessed 6/19/18.

⁹⁴ <https://www.prisonlegalnews.org/news/2006/dec/15/aramark-prison-food-service-with-a-bad-aftertaste/>, accessed 6/19/18.

⁹⁵ http://www.njleg.state.nj.us/legislativepub/auditreports_department.asp, accessed 6/19/18.

⁹⁶ <http://www.njleg.state.nj.us/>, accessed 6/19/18.

⁹⁷ http://www.nj.com/politics/index.ssf/2014/11/nj_ends_118_million_contract_to_boost_enrollment_in_obamacare_other_social_service_programs.html, accessed 6/19/18.

⁹⁸ http://www.nj.com/politics/index.ssf/2014/08/njs_slow_handling_of_food_stamp_program_could_cost_it_money_feds_say.html, accessed 6/19/18.

⁹⁹ <http://www.njleg.state.nj.us/legislativepub/auditor/543213.pdf>, accessed 6/19/18.

¹⁰⁰ http://www.nj.com/politics/index.ssf/2014/12/nj_assembly_panel_delves_into_problems_with_118_million_cancelled_social_service_contract_food_stamp.html, accessed 6/19/18.

project by April 2016 (Seidman & Hanna, 2014)¹⁰¹ but a month after the agreement was made, both Hewlett-Packard and Gov. Christie reached termination agreement (Livio, 2015a).¹⁰²

Maximus was hired as an additional quality assurance consultant, paid \$10 million, and advised the state that the project was in danger of losing federal support. All the while stories were written about the deplorable benefit wait times (Kitchenman, 2014):¹⁰³

News reports from 2014 showed pictures of floors in county hallways lined with stacks of applications that needed to be processed by hand and quoted county officials complaining that their employees had stacks under their desks to get to “someday.” New Jersey ranked dead last in the time it took to deliver benefits (Nurin, 2016).¹⁰⁴

The legislature, for its part, held hearings into the project and benefit delays. In December 2014, the Assembly Human Services Committee,¹⁰⁵ chaired by Valerie Vainieri Huttle, held a hearing¹⁰⁶ at which State Auditor Stephen Eells testified regarding the audit. He criticized the Human Services Department for not letting the Treasury Department know about the problems with the contract (Livio, 2015c).¹⁰⁷ Chairwoman Huttle also wrote an open letter to the Human Services Commission seeking an explanation for the delays.¹⁰⁸ The State Human Services Commission’s longest serving member resigned in February 2015, on the heels of the CASS contract revelations and the closure of the developmental centers that were described earlier in this report (Livio, 2015d).¹⁰⁹ As of 2016, KPMG was hired at a cost of \$850,000 and recommended implementing “incremental strategies and establish clear leadership.” Since then, a series of stop-gap measures have been adopted (Nurin, 2016),¹¹⁰ but the state is still depending on private vendors to fulfill contract obligations.

Although performance audits provide some leverage for legislative oversight, this case also demonstrates the need for a formal process through which the legislature can systematically monitor contracts for state services. The New Jersey General Assembly appears to use the limited power it has fairly well, but, as is the case in most states, the increasing reliance of state on private contractors poses a challenge for legislators trying to insure that government services are delivered effectively and equitably.

¹⁰¹ http://www.valeriehuttle.com/medicaid_enrollment_problems_plague_n_j, accessed 6/19/18.

¹⁰² http://www.nj.com/politics/index.ssf/2015/01/it_company_will_refund_nj_75_million_but_will_not_deliver_on_contract_to_automate_social_service_pro.html, accessed 6/19/18.

¹⁰³ <http://www.njspotlight.com/stories/14/12/11/endless-computer-delays-threaten-food-health-aid-to-low-income-families/>, accessed 6/19/18.

¹⁰⁴ <http://www.njspotlight.com/stories/16/02/24/stopgap-system-helps-social-services-speed-medicaid-application-process/>, accessed 6/19/18.

¹⁰⁵ https://ballotpedia.org/Human_Services_Committee,_New_Jersey_General_Assembly, accessed 6/19/18.

¹⁰⁶ <http://www.njleg.state.nj.us/media/mp.asp?M=A/2014/AHU/1211-0100PM-M0-1.M4A&S=2014>, accessed 6/19/18.

¹⁰⁷ http://www.nj.com/politics/index.ssf/2014/12/nj_assembly_panel_delves_into_problems_with_118_million_cancelled_social_service_contract_food_stamp.html, accessed 6/19/18.

¹⁰⁸ <http://www.assemblydems.com/pdf/1415Session/SNAPletterDHS.pdf>, accessed 6/19/18.

¹⁰⁹ http://www.nj.com/politics/index.ssf/2015/02/njs_longest-serving_human_services_commissioner_to.html, accessed 6/19/18.

¹¹⁰ <http://www.njspotlight.com/stories/16/02/24/stopgap-system-helps-social-services-speed-medicaid-application-process/>, accessed 6/19/18.

Oversight Through Automatic Mechanisms

New Jersey lacks a regular mechanism that brings programs up for review, but legislators may attach sunset provisions to bills in a case by case basis. Baugus and Bose (2015) describe New Jersey’s system as an irregular or *ad hoc* sunset mechanism, meaning that legislators may elect to add sunset provisions to bills on a case-by-case basis. Although the legislature could add sunset provisions, no examples could be identified, (interview notes, 2018).

Methods and Limitations

New Jersey provides public and online access to transcripts, agendas,¹¹¹ and audio of committee hearings, although, video exists for voting sessions (interview notes, 2019). The legislature has copies of meeting minutes that can either be ordered through a physical book or sought by contacting “the OLS committee aide for specific committees . . . [to] see if they have the minutes available . . . ” (interview notes, 2019). For New Jersey, out of the five people that were contacted, five people were interviewed.

¹¹¹ <http://www.njleg.state.nj.us/legislativepub/pubhearings2017.asp#SFF>, accessed 1/5/19.

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