



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Rhode Island

Capacity and Usage Assessment

Oversight through Analytic Bureaucracies:	Minimal
Oversight through the Appropriations Process:	Limited
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:	Limited
Judgment of Overall Use of Institutional Capacity for Oversight:	Minimal

Summary Assessment

Although Rhode Island's governor is weak in comparison with most other governors in the country, the legislature has few active mechanisms or institutions to engage in rigorous oversight of the executive. This relic of the past "supremacy" of the legislature leaves Rhode Island poorly positioned to adapt to its new constitutional separation of powers. The institutional resources to exercise oversight need to evolve to give more credence to checks and balances.

Major Strengths

The legislature has a great deal of influence over the appropriations process, largely owing to the governor's lack of a line-item veto. Standing committees occasionally produce investigative reports on topics of concern, and some of these seem to have resulted new legislation and in regulatory changes on the part of the agencies in question. Publication of an annual list of *Legislative Accomplishments* makes it clear what action the legislature has taken on key issues and indicates an active legislature in many areas of policy making.

Challenges

The Rhode Island Legislature faces a number of obstacles to strong oversight: it is understaffed, plays no role in developing administrative rules, and has little evident influence over state contracts. Although agency financial reports are submitted to the various fiscal committees

in the legislature, they are not always even reviewed. Despite the fact that the legislature coordinates the activities of the auditor general, very few audits of any kind are produced. Finally, in the absence of any kind of sunset regulations, there is little or no continuing review of regulations, boards, commission, or other statutory agencies. The Rhode Island Legislature's website, moreover, makes assessing the activities of committees and commissions quite difficult.

Relevant Institutional Characteristics

Rhode Island, the country's smallest state, has a part-time legislature combined with an extremely weak governor and a very small bureaucracy per capita. Rhode Island's legislature is classified as a "part-time LITE" legislature by the NCSL,¹ yet Squire (2017) ranks it at 28th with respect to professionalism. This reflects the length of the legislative session—approximately six months annually—and the size of the legislative staff. Despite the length of the sessions, legislators receive only \$15,630 per year and no per diem.² Staff resources also have declined in the past decade. Currently, there are 250 legislative staff members, all of whom are year-round employees. But as recently as 2009, the Rhode Island Legislature had a staff of approximately 500; nearly half of which were considered "in-session only" staff. Since that time, "in-session only" staff have been eliminated and the total legislative staff has been substantially diminished (NCSL, 2015).³ Notably, there are no legislative term limits in Rhode Island,⁴ nor do citizens have the option of public initiatives (Haider-Markel, 2009).

The Governor of Rhode Island is relatively weak and ranked 48th in the country in terms of institutional power (Ferguson, 2013). The governor has no line-item veto power over the budget. But tenure of the governor is limited only to two consecutive quadrennial terms. After sitting out for one term, the governor can run for election again. The governor and lieutenant governor are elected separately, and so they could be from different political parties. Until it passed a constitutional amendment in 2004, the state was noted as an example of legislative supremacy in which legislators chose members of major boards and commissions that implemented policies. Often legislators appointed themselves to these positions, a practice that facilitated political favoritism, patronage, and corruption (West Jr. 2016). As a result of these changes, the governor is responsible for making numerous top-political appointments, but most of these must be confirmed by the general assembly (Beyle & Wall, 2012).⁵

Finally, Rhode Island has one of the country's smallest bureaucracies per capita, with only 9.5% of the state's population employed by the state or local government, of which more than half work in education (Edwards, 2006). This means that the state's biggest public-sector industry, education, is still per capita one of the smallest in the nation.

¹ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 7/17/18.

² https://ballotpedia.org/Rhode_Island_General_Assembly, accessed 7/30/18.

³ <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx##session>, accessed 7/17/18.

⁴ <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>, accessed 7/17/18.

⁵ <http://knowledgecenter.csg.org/kc/content/book-states-2012-chapter-4-state-executive-branch>, accessed 7/17/18.

Political Context

Rhode Island's political history, notably the consolidation of power by the Democratic Party since the New Deal era (Haider-Markel, 2009), makes the state solidly liberal. Democrats tend to dominate Rhode Island local politics and have long controlled both chambers of the legislature. Currently, they control 31 of 38 senate seats in the general assembly and 62 of 75 seats in the house. Political pressures from a moderately left-leaning population mean that Rhode Island's Republican Party also tends to be more centrist and moderate than the national party, and Republicans are therefore not infrequently elected to key positions in state-wide elections. According to data from Shor and McCarty (2015), Rhode Island is among the least politically polarized states in the country; both the house and the senate Democrats are moderately liberal, while Republicans are the second least conservative voting in the country. Republicans often form coalitions with moderate Democrats, resulting in a legislature that is notable for its lack of partisan polarization. Indeed, each chamber has the 46th smallest partisan differences within the chambers (Shor & McCarty, 2015).

While the preceding three governors of Rhode Island were Republicans, dividing government for a decade, the office is presently held by a Democrat, making Rhode Island one of a few Democrat-trifecta states. Unfortunately, the historical dominance of the Democratic Party and the prevalence of "machine" politics resulted in an environment in which "insider dealing, patronage, and corruption" became commonplace (Haider-Markel, 2009). Although efforts have been made to make Rhode Island politics more accountable and transparent, corruption remains a problem in its politics (Arsenault & Andersen, 2014; Providence Journal, 2017). Furthermore, legislative oversight, unfortunately, has not played a major role in addressing Rhode Island's corruption issues. Rather, the State of Rhode Island Ethics Commission⁶ is empowered to "draft and enact ethics-related legislation over and above legislation enacted by the state legislature," where proposals to enact certain measures like creating a dedicated anti-corruption unit in the Attorney General's Office have "repeatedly stalled."⁷

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Office of the Auditor General is a legislative agency established by statute (Rhode Island General Laws Section 22-13)⁸ in 1974 to evaluate existing administrative programs for their financial efficacy, program performance, and statutory compliance. It is tasked with investigating state agencies, as well as municipalities and school districts when appropriate. The auditor general is appointed by the Joint Committee on Legislative Services (JCLS)⁹ (Rhode Island Statutes Ch. 22-13), which is comprised of three house representatives and two senators. The Office

⁶ <http://www.ethics.ri.gov/>, accessed 7/16/18.

⁷ https://www.law.columbia.edu/sites/default/files/capi-data/reports/rhodeisland_2018.pdf, accessed 7/16/18.

⁸ <https://law.justia.com/codes/rhode-island/2013/title-22/chapter-22-13>, accessed 7/17/18.

⁹ <http://www.rilin.state.ri.us/Pages/JCLS.aspx>, accessed 7/17/18.

of the Auditor General employs a staff of 41, 13 of whom are CPAs.¹⁰ The auditor general performs financial post audits, performance audits, “agreed upon procedure” audits, fraud audits, and oversees municipalities’ financial audits and “fiscal health.”

The auditor general seeks approval from the JCLS to perform audits (Rhode Island Statutes Ch. 22-13-4).¹¹ In general, few audits of any kind are performed. In 2016, the auditor general performed seven audits and in 2017 they produced eight audits (both including their respective Comprehensive Annual Financial Report).¹² Two of the 2017 audits were of the state lottery and the state employee retirement plan. These programs, along with the State Employees’ and Electing Teachers OPEB System, are subjected to financial audits on an annual basis. Importantly, the auditor general does not have the independent authority to issue subpoenas to perform their duties. Instead, the auditor general must request that the Joint Committee on Legislative Service issue a subpoena on its behalf (Rhode Island Statutes Ch. 22-13-4).¹³ The JCLS also determines which audits, in addition to the annual single-financial audit, are to be performed. No performance audits appear to have been conducted in recent years.¹⁴

Copies of final audit reports are distributed to each member of the JCLS, of which is required to disseminate any relevant reports out to the house and senate standing committees responsible for executive oversight: The House Committee on Oversight and the Senate Committee on Rules, Government Ethics and Oversight. We found no evidence that these committees made use of any audit reports during hearings.

Oversight Through the Appropriations Process

Since 2012, state expenditures in Rhode Island are capped at 97% of revenues collected (Constitution of Rhode Island, Article IX, Section 16).¹⁵ Moreover, the governor must present a balanced budget to the legislature, at which time the general assembly “may increase, decrease, alter, or strike out any item in the budget,” as long as the balanced budget is maintained. The governor does not have line-item veto power and can only veto the entire budget. This veto is subject to an override by a three-fifths vote of the legislature. Although battles over the budget do happen in Rhode Island, a 2004 law that continues the previous year’s budget in the event that a new budget is not passed ensures that government shutdowns do not occur as they do in other states (Mackay, 2017). Partly because of the governor’s limited power over the appropriations of the process, when impasses over the budget are reached, as occurred in 2017, they are often due to infighting between the house and senate leadership, rather than protracted battles with the executive (Towne, 2017).

Rhode Island lacks a robust staffing structure for supporting substantial oversight via appropriations. The Senate Fiscal Office, for example, is staffed by only seven employees, while the House Committee on Finance has nine analysts and a lawyer. These analysts are responsible

¹⁰ <http://www.oag.ri.gov/about.html>, accessed 7/17/18.

¹¹ <https://law.justia.com/codes/rhode-island/2013/title-22/chapter-22-13>, accessed 7/17/18.

¹² <http://www.oag.ri.gov/reports.html>, accessed 10/1/18.

¹³ <https://law.justia.com/codes/rhode-island/2013/title-22/chapter-22-14>, accessed 10/2/18.

¹⁴ <http://www.oag.ri.gov/reports.html>, accessed 7/17/18.

¹⁵ <http://webserver.rilin.state.ri.us/RiConstitution/C09.html>, accessed 7/17/18.

for assisting in the fiscal evaluation of all of Rhode Island’s departments, agencies, and commission and their nearly 24,000 full and part-time employees. Agencies are required to submit annual revenue reports, but according an interviewee, the Fiscal Office sometimes does not even review these reports (interview notes, 2018). On the other hand, the Senate Finance Committee holds annual public hearings featuring testimony from agencies. These hearings feature “questions around expenditures and . . . spending, and what [an agency’s] future budget is. . . . Sometimes these hearings can be quite heated” (interview notes, 2018). In most cases, agencies are only brought before the committee once annually, although in rare cases, agencies are summoned back to give further testimony if the agency is not satisfied. This occurred twice in 2018.

Oversight Through Committees

All senate committees are tasked officially in the Senate Rules with performing oversight functions.¹⁶ During committee hearings, agency representatives give testimony and take questions from legislators. During a May 2018 meeting of the Senate Committee on Rules, Government Ethics, and Oversight on the Rhode Island Department of Labor and Training programs called Real Jobs and also Real Pathways, the acting chair noted that “[the] policy staff is going to want [witnesses] to hit on as much data as possible.”¹⁷ She went on to say that, “what we’re interested in . . . is just making sure that the message gets out there as to what you’re doing, how you’re doing it, and how you’re helping Rhode Islanders.” The director mentions providing the committee with performance indicators. The chair states that the committee already knows that the program is successful but wants to make sure that others learn about the positive programs. Questions asked by legislators are “how” and “what” questions rather than “why” questions. The tenor of the hearing can best be described as friendly and supportive.

Similar to the senate, House Rules determine the authority of various house committees, including the House Oversight Committee, formally known as the Separation of Powers and Oversight Committee. According to Speaker Gordon Fox, “The function of the Oversight Committee is to review the operations and efficiency of various state agencies and fulfilling the legislature’s oversight role following implementation of separation of powers.” As of 2017, the committee consists of 12 Democrats (including the chair), one Republican, and one third-party member.¹⁸ Video archives reveal that in 2017, the committee held 14 meetings. They also listen to presentations of audit reports by the auditor general, such as on May 3, 2018.¹⁹

Vignette: UHIP/RIBridges and the House Committee on Oversight

The Oversight Committee members engage in in-depth questioning and critique of executive agencies. For instance, the chair criticized the Department of Health and Human Services for contracting with Automated Health Systems (the call center for UHIP), as the CEO of the

¹⁶ <http://www.rilegislature.gov/SiteAssets/rules/Rules%20of%20the%20Senate.pdf>, accessed 7/31/18.

¹⁷ <http://ritv.devosvideo.com/show?video=8d976bee00bd&apg=46373b64>, accessed 7/17/18.

¹⁸ https://ballotpedia.org/Oversight_Committee,_Rhode_Island_House_of_Representatives, accessed 10/3/18.

¹⁹ https://www.law.columbia.edu/sites/default/files/capi-data/reports/rhodeisland_2018.pdf, accessed 7/16/18.

company is under investigation for tax fraud. UHIP (Unified Health Infrastructure Project, also known as RIBridges), built by the company Deloitte, was intended to distribute “Medicaid, food stamps, and child care assistance for . . . Rhode Islanders.” But after launch, the computer system was reported by users for “missing benefits [and long] call wait times” for the Department of Human Services. The agency was aware of the investigation and kept checks on their contract, although was still criticized for not disclosing this information to the public and the legislature sooner (Campbell, 2018a). A month prior, Deloitte testified in front of the committee and apologized for the dysfunction of the program. Now, Rhode Island is being challenged by two federal lawsuits over claims of inadequate notice of the termination of benefits and “illegal delays in providing SNAP benefits” (Campbell, 2018b). During the hearing with the Department of Health and Human Services on May 10, 2018, a minority of committee members questioned the agency, although these questions were very thorough. During the hearing with Deloitte on April 12, 2018, a majority of committee members participated in in-depth questioning, with one referencing an audit report.

Overall, legislators have relatively few staff at their disposal to perform detailed investigations of the agencies that their committees oversee, and most committee meetings last for one hour or less. Despite their limited resources, the substantive standing committees do engage in oversight of the executive agencies. For example, in 2017, the Rhode Island Senate filed five special reports, three prepared by standing committees and two prepared by a special commission. They were on the practice of solitary confinement in Rhode Island; the Department of Children, Youth, and Families; health literacy; the construction of a ballpark in the city of Pawtucket; and the Rhode Island Department of Health and Human Service’s mental health programs. These five special reports contained recommendations by the committee/commission to be implemented by the respective agencies.

The legislative accomplishments for each year are posted on the Rhode Island Legislature’s home page, which makes it easy for the public to determine whether laws have been passed on specific topics.²⁰ An inspection of these reports for 2016, 2017, and 2018 did not reveal any action in response to an audit report²¹ describing problems with a Health and Human Service IT system, RIBridges, which suggested formulating broad procedures to govern contract monitoring. Neither the 2017 nor the 2018 list of Legislative Accomplishments includes changes to the contract monitoring procedures. An interviewee indicated that statutory changes in response to studies by special commissions or standing committees are rare (interview notes, 2018). For example, a 2017 report by the Child Fatality Review Panel repeatedly mentions recommendations that were made by a previous panel but not acted upon, either by the legislature or agencies. On the other hand, reports for special legislative commissions, like one pertaining to solitary confinement, have produced regulatory changes within the departments in question (Whitty, 2017). The Special Legislative Commission to Study and Assess the Use of Solitary Confinement in Rhode Island ACI, which consisted of 19 members a few of whom were legislators, produced a report in collaboration with the Department of Corrections and other stakeholders that altered state policies and practices.

²⁰ <http://www.rilin.state.ri.us/Pages/Default.aspx>, accessed 7/31/18.

²¹ http://www.oag.state.ri.us/%5C/reports/UHIP_RIB_HSRI_CostsReport2017.PDF, accessed 7/13/18.

Oversight Through the Administrative Rules Process

Agencies wishing to propose a new rule in Rhode Island must first submit their proposals to the Office of Regulatory Reform (ORR), which is a subdivision of the executive branch Office of Management and Budget. A public comment period then ensues, after which “[s]tate agencies . . . consider all submissions received during the public comment period . . . incorporate or reject comments, and . . . note the reasons for their actions.”²² Once that process concludes, they are submitted to the ORR for “final post-comment review.” Once ORR approves the regulation, it is filed with the secretary of state. There is no formal process for legislative review of either new or existing administrative rules. Rhode Island has no equivalent of a Joint Committee for Administrative Review or similar joint committee. Nowhere in the Administrative Procedures Act is there any mention of action or involvement or notification of the legislature during the rules formulation process.²³

The lack of legislative authority is the result of a historical dispute over separation of powers in Rhode Island that began in the 1980s in response to corruption scandals in the state (West Jr., 2016; Hufstader, 2007). Until recently, the Rhode Island Legislature was able to control state agencies by using boards and commissions whose members required legislative confirmation. Court rulings determined that the Rhode Island Constitution did not include separation of powers between branches of government—that the state’s government was the “quintessential parliamentary supremacy” (Bogus, 2004). These rulings led to a lengthy campaign to pass a constitutional amendment that instilled the separation of powers principal of which succeeded in 2003. More than a decade later, it appears that “[t]he legislature and governor may still be feeling out the boundaries of their new relationship, but they could take this opportunity to rethink the appropriate division of roles for the oversight of administrative regulations” (Schwartz, 2010 p.358). It is therefore possible that an administrative rules review process will evolve in Rhode Island in the future now that state agencies are no longer under the complete control of the legislature. However, reining in legislative control of administrative rules was a key part of the debate over separation of powers, so the historical tensions involved continue to have implications for current rule review procedures—or rather the lack thereof.

Oversight Through Advice and Consent

According to the Rhode Island Constitution (Article IX, Section 5),²⁴ gubernatorial appointments are subject to senatorial approval. All committees are tasked with evaluating the political nominees of the governor that fall within the committee’s substantive jurisdiction. Committees vote to pass the nomination on to be considered by the full chamber with either a “favorable” or an “unfavorable” review. The chamber then votes to either nominate or block the nomination thereby fulfilling their constitutional duty to grant advice and consent. However, here is no evidence that the legislature has recently used its power to block an appointment.

Executive orders do not appear to be especially common in Rhode Island. While 17 executive orders were issued in 2015, only two were issued in 2016. However, 10 were issued in

²² <http://www.dhs.ri.gov/Regulations/Procedures.php>, accessed 7/17/18.

²³ <http://webserver.rilin.state.ri.us/Statutes/TITLE42/42-35/INDEX.HTM>, accessed 7/17/18.

²⁴ <http://www.rilin.state.ri.us/riconstitution/Pages/C09.aspx>, accessed 7/17/18.

2017 and 2018 has seen six executive orders promulgated.²⁵ (Office of the Governor, 2018). These orders are not governed by the state’s Administrative Procedures Act nor do they require legislative approval (Council of State Governments, 2012). Rhode Island’s governor can issue executive orders to reorganize specific agencies or to create executive branch agencies (Council of State Governments 2014, Table 4.5). Gov. Raimondo in 2015 relied on a contract with a private corporation to develop a plan to reorganize the state’s department of transportation. As noted elsewhere in this description, these gubernatorial powers were established as the result of a lengthy legal battle within the state over separation of powers (West Jr. 2016). In the aftermath of the constitutional amendment providing for separation of power laws such as RI Gen L 42-72-22 (2014) even provided directors of some state agencies with the power, in this case the Department of Children, Youth, and Families, with the approval of the governor, divide, consolidate, abolish or otherwise reconstitute the agency.²⁶

Oversight Through Monitoring of State Contracts

All major procurements in Rhode Island must be obtained through a competitive bidding process (Rhode Island General Laws S. 37-2-1).²⁷ This process is administered through the Division of Purchases,²⁸ whose “goal is to streamline the procurement process to provide more opportunities to the vendors, especially small businesses, women owned businesses, and minority owned businesses.”²⁹ The rules and regulations that govern the Division of Purchases specify that “periodic summary reports of all transactions” should be furnished to the legislature and the governor. Rhode Island also has a Legislative Oversight Commission for Consulting Contracts, which is “empowered to conduct evaluations and reviews of any and all consulting contracts entered into by and or on behalf of the state or any subdivisions or entities of the state” (Rhode Island General Laws S. 22-14-1).³⁰ Attempts have been made to reorganize this commission into the Senate Committee on Rules, Government Ethics, and Oversight,³¹ but these have not passed. Additionally, as noted above, the auditor’s report on RIBridges points out the need for improved monitoring of contracts by the legislature.

Oversight Through Automatic Mechanisms

Rhode Island has no active sunset or sunrise mechanisms (Baugus & Bose, 2015). While statutory entities can be scheduled to expire on an individual basis, in the absence of a specific date of expiration, it is assumed that it is “the intent of the general assembly to continue the entity in existence until the general assembly by specific legislation ends the statutory existence of the entity” (RI Gen L § 22-14-5.3).³² In 2004, Auditor General Ernest Almonte gave testimony

²⁵ <http://www.governor.ri.gov/newsroom/orders/>, accessed 7/17/18.

²⁶ <https://law.justia.com/codes/rhode-island/2014/title-42/chapter-42-72/section-42-72-22/>, accessed 12/16/18

²⁷ <https://law.justia.com/codes/rhode-island/2012/title-37/chapter-37-2/>, accessed 7/17/18.

²⁸ <http://www.purchasing.ri.gov/>, accessed 7/17/18.

²⁹ <http://www.purchasing.ri.gov/mission/mission.aspx>, accessed 7/17/18.

³⁰ <https://law.justia.com/codes/rhode-island/2012/title-22/chapter-22-14.1/chapter-22-14.1-1/>, accessed 7/17/18.

³¹ <http://webserver.rilin.state.ri.us/BillText06/SenateText06/S2357.htm>, accessed 7/17/18.

³² <https://law.justia.com/codes/rhode-island/2016/title-22/chapter-22-14/section-22-14-5.3>, accessed 7/17/18.

to the house, highlighting the importance of sunset laws and calling for the creation such laws in Rhode Island (Almonte, 2004).³³ The legislature, however, ultimately did not enact such a law.

Methods and Limitations

Out of the 14 people that were contacted, seven people were interviewed. The Rhode Island House provides public and online access to audio and video for their committee hearings. The senate also provides public and online access to video, although, not every committee has video.³⁴ In both chambers, there are no official minutes or transcripts. Current and recent agendas are up on the committees' websites or are in the committees' possession, while anything that is two years old or older can be requested from the secretary of state (interview notes, 2018).

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³³ <http://webserver.rilin.state.ri.us/genmenu/soplg/documents/almontehousesop042804.ppt>, accessed 7/17/18.

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