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A GUIDE TO LEGISLATIVE OVERSIGHT

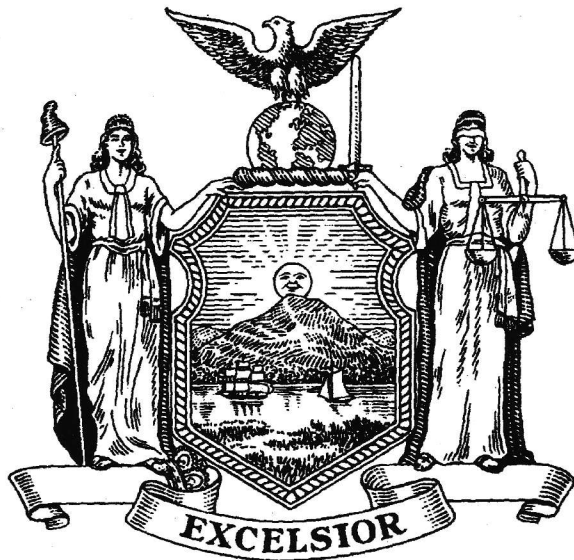
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A Report From James F. Brennan, Chair New York State Assembly Standing Committee On Oversight, Analysis and Investigation

Sheldon Silver, Speaker
James F. Brennan, Chair

February 2005

Acknowledgments

The Guide To Legislative Oversight was first issued in December of 1987 by Assemblyman Brian Murtaugh, then Chair of the Assembly Committee on Oversight, Analysis and Investigation. Primary research and staff work was done by Kathy Skowra and Jed Wolkenbreit, with assistance from Andrea Zaretzki and Ed Wassermann. Over time, minor updates were made to include references to new Court decisions and Assembly Rules. The updates were prepared by Committee Counsel Tom Fox.



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February, 2005

Dear Assembly Colleague:

Legislative oversight is the most effective means of enforcing legislative intent. Assembly Members will spend considerable time, skill and energy in establishing legislative goals and policies in statute and budget. Seeing that the program actually works and that the administrative agencies are following the agreed agenda is also important legislative work.

It is well settled under constitutional, statutory and case law that the Legislature has the authority to perform extensive oversight functions. The New York State Assembly has, furthermore, revised House Rule IV, section 1(b), to require all its standing committees to "devote substantial efforts to the oversight and analysis of the activities, including but not limited to the implementation and administration of programs, of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction".

The degree of oversight performed by a committee is largely dependent upon the direction and recommendations provided by the committee chairperson. The committee chairperson is in an especially strategic position to determine his or her committee's oversight direction. The chairperson needs to make many important decisions when determining which topics within the committee's jurisdiction need to be reviewed, when to conduct an investigation, and when to schedule an oversight hearing. For oversight to be truly effective, the committee chairperson must be committed to the cause.

This report is by no means intended to portray oversight as the primary duty of a standing committee. Standing committees have a tremendous number of responsibilities apart from oversight. However, it is our intention to demonstrate the usefulness of the oversight function as an integral part of a committee's day-to-day activities.

Oversight investigations, if well conducted, shed the light of publicity on the acts of government and assist in assuring honesty and efficiency in the administration of laws. Oversight also provides the basis for sound policy judgments, particularly within a State bureaucracy as tremendous as ours. How, for example, can government officials and the public determine whether to continue the existence of a program, or to increase an appropriation, if

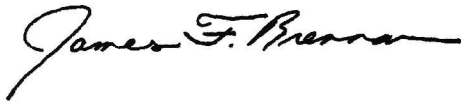
they lack sufficient information on how the program is actually working, or how the money is being spent? Questions such as these illustrate the need for constant review and evaluation of State agencies and the programs they administer.

Oversight can be difficult, but its effects are far-reaching and worthwhile. In this report, we have offered suggestions as to the various processes that can be employed to conduct an in-depth oversight project, as well as guidelines and techniques that make oversight easier to comprehend and administer.

The Standing Committee on Oversight, Analysis and Investigation is a resource to other standing committees and Members within the Assembly. Our involvement can range from providing advice in response to a specific oversight question, to actual hands-on participation with the project. Although the degree of our involvement is contingent upon the amount of time, staff and resources available at the time of the request, the Committee is always available to answer questions and provide advice regarding oversight proposals and activities within the Assembly.

We look forward to working with you.

Sincerely,

A handwritten signature in cursive script, reading "James F. Brennan". The signature is fluid and elegant, with a long, sweeping underline that extends to the left.

James F. Brennan
Chair
Committee on Oversight, Analysis and Investigation

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I. INTRODUCTION

Through legislative oversight, compliance with legislative mandates is determined. The process considers whether programs are operating consistent with the requirements placed upon them, and whether funds appropriated for a particular program are being spent effectively, efficiently and in accordance with legislative intent. Oversight improves the legislative decision-making process and ultimately State government, by providing information about the performance of State agencies and their programs.

Some key observers of the legislative process regard the oversight function as being equal in importance to the law-making function. Woodrow Wilson observed:

"It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and voice, and to embody the wisdom and will of its constituents."
(Wilson, Congressional Government (Houghton, Mifflin & Co., 1900), 14th impression, p.303.)

The Legislature has given the Executive branch of government broad authority over a vast array of agencies and programs. As the State bureaucracy has grown, so has the need for the Legislature to oversee how the Executive branch administers the laws it has passed. Even a thoughtful, well-drafted law provides no guarantee that the policy intentions of the Legislature will be carried out. Thus, continuous review and monitoring by the Legislature has developed into a necessary function of government.

II. LEGISLATIVE PARTICIPANTS IN OVERSIGHT

The most common and effective way of performing oversight is by the proper functioning of standing committees. House Rule IV, section 1(c), strengthens and clarifies the Assembly's oversight activities by directing each standing committee to "devote substantial efforts to the oversight and analysis of the activities, including but not limited to the implementation and administration of programs of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction."

Furthermore, House Rule IV, section 1(d) allows a standing committee or subcommittee to jointly consider, study or investigate with another standing committee or subcommittee, any matter that falls within its jurisdiction. Additionally, House Rule IV, section 4(b), was made part of the Assembly Rules when Resolutions #6 and #7 were adopted on January 10, 2005. It requires each committee, after adoption of the budget, to hold at least one hearing on the implementation and administration of programs by agencies, authorities and other entities within the committee's jurisdiction.

Although oversight is generally considered a committee activity, both constituent casework and special projects conducted in a member's personal office can also lead to an adjustment in an agency's policies. Constituent letters, complaints and requests for projects and assistance frequently bring problems and deficiencies in State programs and administration to the attention of members and their personal office staff. Thus, personal staff reviewing constituent casework is in and of itself an effective form of oversight, and may also indicate a need for more thorough oversight review.

In addition, any legislative commission or task force which is specifically constituted to look into a particular topic can engage in oversight. The Administrative Regulations Review Commission is one such commission that has an ongoing oversight function.

The professional staffs of committees and commissions can provide the expertise necessary to perform oversight and investigations within their areas of jurisdiction. The Assembly's Program and Counsel, Fiscal, and Program Development staffs typically have the expert knowledge and experience to perform oversight activities for the committees, sub-committees and commissions they serve. The day-to-day contact such staff have with agency officials and staff promotes the whole concept of oversight. Formal, as well as informal, contact with state agencies acts as a reminder that the Assembly is exercising its oversight authority.

The institutional role of the Standing Committee on Oversight, Analysis & Investigation is to further the Assembly's overall oversight effort. The Committee, itself, performs specific oversight projects. The Committee also assists members and other committees in fulfilling their oversight responsibilities. This assistance may be in the form of identifying projects, advising on investigative methodologies, or conducting joint projects.

III. OTHER OVERSIGHT PROCESSES CURRENTLY IN OPERATION

FISCAL OVERSIGHT

The Legislature can also engage in oversight through the exercise of its appropriation power--the "power of the purse". For example, the Legislature may reduce unnecessary expenditures, or set reporting and program evaluation requirements to hold programs accountable to the Legislature for their actions.

Examples of specific fiscal oversight mechanisms currently in operation include the following:

- Pursuant to sections 27-31 of the Legislative Law, and Article VII of the State Constitution, the Assembly Ways and Means Committee is vested with significant oversight authority in relation to the formulation and enactment of the State budget. These sections enable the Ways and Means Committee to receive any information, data, or materials from State departments that is needed for the consideration of the budget submitted to them by the Executive. These sections also allow the committee to request the appearance of an agency or department head to appear before the committee to answer any questions or inquiries the committee may have in regard to its budget submission.
- Section 1174 of the Private Housing Finance Law requires the Division of Housing and Community Renewal to report to the housing committees of the Assembly and the Senate on the expenditure of funds pursuant to the National Affordable Housing Act. This is one example of the many particularized statutory reporting requirements that specific legislative committees receive information sufficient to conduct fiscal oversight.

EDUCATION POLICY OVERSIGHT

Members of the Assembly, acting in conjunction with Members of the Senate, jointly select the members of the Board of Regents.

- Section 202 of the Education Law provides that "...each regent shall be elected for a term of seven years, each such term to expire on the first day of April... each regent shall be elected by the legislature by concurrent resolution....If, however, the legislature fails to agree on such concurrent resolution...then the two houses shall meet in joint session...and proceed to elect such regent by joint ballot."
- The nomination and selection process provides a forum for the discussion of the policies and programs prospective candidates intend to pursue and for a dialogue about Education policy concerns of the Legislature.

The main focus of this report, however, is to provide assistance to members and standing committees in independently satisfying their oversight responsibilities. It is toward that end that we now turn.

IV. THE AUTHORITY FOR LEGISLATIVE OVERSIGHT

A. New York State Constitution

The basic power of the Legislature to conduct oversight activities is inherent in the law-making power conferred by Article III of the State Constitution. It has generally been agreed for some time that the power to legislate includes the power to investigate.

The Supreme Court of the United States has described the governing principles in this way:

"We start with several basic premises on which there is general agreement. The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes...." Watkins v. U.S., 354 U.S. 178, 187 (1957).

New York courts have followed the same line of reasoning. The Court of Appeals has stated:

"The law-making power given to the Legislature authorizes it, by inquiry, to ascertain facts which affect public welfare and the affairs of government. Such power of inquiry, with the process to enforce it, is an essential auxiliary to the legislative function. 'A legislative body may act upon common knowledge or information voluntarily contributed. At times it stands in need of more. There is then power to investigate by subpoena under the sanction of an oath.' Upon such inquiries the Legislature may compel the attendance of witnesses and the production of documentary evidence to the end that it may perform its constitutional functions by the enactment of laws to correct public dangers--either real or apprehended. This power may be delegated to a committee." In re Joint Legislative Committee, 285 N.Y. 1, 8-9 (1941) (citations omitted).

B. Other Constitutional Sources

Although it is well settled that the legislative oversight function deriving from Article III is inherent in the power to legislate, there are several other sources of oversight powers which are sometimes mentioned.

Article V, section 2 of the State Constitution provides that there shall not be more than 20 departments in State government, some of which are constitutionally created and some of which have been created by legislation. Section 3 gives the Legislature the right to assign new powers and functions to these departments, and to increase, modify or diminish their powers and functions. This power, as well as the power to create temporary commissions, invokes the right to inquire into how the functions are being carried out, and to determine what functions should be increased, decreased or otherwise modified.

The Constitution also specifies certain legislative powers and duties with regard to the State Debt (Article VII, sections 16,17); the continuity of government operations during emergency situations (Article III, section 25); the Barge Canal System (Article XV) and the creation, organization and functioning of local government (Article IX). Proper investigative and oversight powers are necessary and constitutionally implied to discharge these specific responsibilities.

C. Statutory Authority

While the oversight and investigatory powers of the Legislature are constitutionally derived, their implementation is also clearly set forth in statutory law.

1. State Finance Law

A discussion of legislative oversight authority would not be complete without a review of the State Finance Law. The power to appropriate money, and to decide how much is to be appropriated for what purposes, is in itself a powerful oversight functions. Several sections of the State Finance Law are often cited as specific instances where executive actions are restricted and where the basis for legislative oversight review is established.

- Section 41 prevents executive departments and officers from spending amounts in excess of money appropriated or otherwise legally available.
- Section 49 deals with so-called lump sum appropriations for personal services. The statute prevents the distribution of such moneys until proper schedules have been filed with the Chairpersons of the Senate Finance and Assembly Ways and Means Committees.
- Section 51 prevents appropriations from being increased or decreased by way of transfers except under certain very specific conditions set forth in statute.

These statutes support the proposition that control over how monies are appropriated implies the authority to investigate how such expenditures are being used.

2. Legislative Law

- Section 4 of the Legislative Law covers contempt of either house. This section permits each house of the Legislature to punish by imprisonment any person who, pursuant to subdivision 5:

"Neglects to attend or to be examined as a witness before the house or committee thereof, or upon reasonable notice to produce any material books, papers, or documents, when duly required to give testimony or to produce such books, papers or documents in a legislative proceeding, inquiry or investigation."

Subdivision 5, supra, has been held by the state's high court to be a valid and constitutional enactment (see People v. Keeler, 99 NY 463 (1885); see also People v. Learned, 5 Hun 626 (1875)).

-- Section 60 of the Legislative Law provides that a legislative committee may require the attendance of witnesses whom the committee may wish to examine. At least two of its members must be present for the committee to take testimony.

-- Section 61 of the Legislative Law provides that "whenever any committee of either house or a joint committee of both houses of the legislature shall be required to make an inquiry or investigation, such committee may appoint a subcommittee of not less than three of its own members to make such inquiry...." The subcommittee and its chairperson have all the powers and authority possessed by the "parent" committee and its chairperson.

-- Section 62-a allows the committee to enforce the attendance of a witness who may not want to appear voluntarily through the issuance of a subpoena, compelling the witness to testify, and in a proper case, to bring documents and records.

3. Civil Practice Law and Rules

There are specific rules with regard to the use of a subpoena that are set forth in Article 23 (sections 2301, et. seq.) of Civil Practice Law and Rules (CPLR). Section 62-a of the Legislative Law states that these general rules apply to legislative subpoenas. The rules are as follows:

a. The scope of the subpoena:

-- A subpoena requires the attendance of a person to give testimony.

-- A subpoena duces tecum requires the production of books, papers, or other things of a tangible nature.

b. The manner of service:

-- The subpoena generally must be served in the same manner as a summons that begins a civil action.

-- It is clearly preferable to obtain personal service on the individual to be served. While the statute technically allows for service by a substituted method, the commentaries suggest that this be done only in a dire emergency since it may prove very difficult to enforce the subpoena.

-- It is generally accepted that subpoenas cannot be validly served outside of the state.

-- A subpoena may be served by any person of the age of 18 years or older.

c. Method of attacking the subpoena:

- If a person served with a subpoena believes it improper, he must first request that it be withdrawn or modified and then if it is not, he may apply to the supreme court to quash, limit or modify the subpoena. Furthermore, it appears that the request to withdraw need only be made orally.
- The motion must be made in a "timely manner," as determined by the courts on a case by case basis.

d. Enforcement:

- Non-compliance with a subpoena is governed by section 2308 (b) and (c) of the CPLR. If a person refuses to comply with a subpoena, the committee issuing the subpoena can seek an order of the supreme court to compel compliance. If the court finds the subpoena authorized, it can order compliance and may issue an order to the sheriff requiring that the person be brought before the committee. If the person subpoenaed continues to refuse to comply, the court, upon proof by affidavit, may issue a warrant to the sheriff committing the person to jail until he agrees to answer. This commitment is to be reviewed every 90 days.
- The standard the courts apparently use in determining whether a witness before a legislative hearing should be committed to jail is not whether he has answered every question put to him, but rather if he has made a bona fide attempt to answer the question at all. (In the Matter of Joint Legislative Committee, etc. (Little), 177 Misc. 27,28 (Sup. Ct., Sp. Term, N.Y. Co. 1941).

e. Oaths:

- At a legislative hearing, an oath may be administered by any member of the legislative committee or by a notary public.

4. Penal Law

Contempt of the Legislature is punishable as a crime. Section 215.60 of the Penal Law provides:

"A person is guilty of criminal contempt of the Legislature when, having been duly subpoenaed to attend as a witness before either house of the Legislature, or before any committee thereof, he:

- 1) Fails or refuses to attend without lawful excuse; or
- 2) Refuses to be sworn; or
- 3) Refuses to answer any material and proper question; or
- 4) Refuses after reasonable notice, to produce books, papers, or documents in his possession or under his control which constitute material and proper evidence.

Criminal contempt of the Legislature is a Class A misdemeanor."

This crime is punishable by a term of imprisonment of up to one year, and/or a fine of up to \$1000.

D. Assembly House Rules

Committee structure and operation is governed by House Rule IV. This rule provides the following:

Standing committees are to operate on an annual basis and their jurisdiction shall include, but not be limited to, the subject of each bill or resolution referred to them by the Speaker (See section 1.c).

-- Committees are charged with the duty of conducting studies and investigations as may relate to matters within their jurisdiction (section 1.c).

-- Under a 1987 rules revision, Assembly committees are specifically required to devote "substantial efforts to the oversight and analysis of the activities, including but not limited to the implementation and administration of programs, of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction" (section 1.c).

-- Standing committees or subcommittees may jointly consider, study or investigate with another standing committee or subcommittee, any matter which falls within their jurisdictions (section 1.d).

-- Chairpersons of the standing committees may call public hearings during each legislative session to permit interested persons, groups, or organizations the opportunity to testify orally or in writing on legislation and other matters pending before the committee. However, each chairperson shall call such public hearings upon a petition signed by a majority of the members of the committee (section 4.a).

-- After adoption of the state budget, each committee must hold at least one hearing on the implementation and administration of programs, by agencies, authorities and other entities within the committee's jurisdiction (section 4.b).

-- The Speaker may direct a committee to conduct an investigation (Rule I, section 1.c(11)).

-- A committee's jurisdiction includes the subject matter of each bill or resolution referred to it (Rule IV, section 1.c).

V. THE BOUNDARIES OF OVERSIGHT POWERS

The broad investigatory powers of the Legislature do have political, prudential and legal limits. The legal limits circumscribe the scope of authorized subject matter, and the method and manner in which an investigation may be conducted. Court opinions over the years have set forth the constitutional boundaries for legislative investigations. The Legislature, itself, has enacted statutes establishing procedural rules for legislative investigations. The Assembly House Rules also set forth internal procedures for Assembly committees.

A. The Assembly Subpoena Cases

The power to subpoena can be an important tool in a legislative committee's investigation. Occasionally a subpoenaed party will contest the validity of a committee's subpoena in court. The judicial review of subpoenas is the main context within which the general investigatory powers of the Legislature has been considered by the judiciary. The legal boundaries drawn in these cases shape all legislative investigations and hearings, even those without subpoenas. Thus, a knowledge of these boundaries is essential in conducting any legislative investigation, regardless of whether subpoenas are contemplated.

Litigation over legislative subpoenas dates well back into the nineteenth century. However, from the 1950's until recently, very few legislative subpoena cases were litigated in New York. In the beginning a series of Assembly committee subpoenas resulted in several court decisions which reaffirmed the legislative power to investigate and subpoena, and which also further described some of the boundaries on that power.

In Urbach v. Farrell, 229 A.D.2d 275 (3d Dept. 1997), leave to appeal denied 90 N.Y.2d 888, the court upheld a Ways & Means Committee subpoena of a Tax & Finance Department contract. The state agency and the private company claimed that the legislative committee could not have the contract because it contained trade secrets. The court held that a legislative subpoena is valid so long as a committee's inquiry relates to a subject on which legislation may be enacted, and the information sought is material and relevant to that inquiry. The court further held that the N.Y.S Constitution's Speech and Debate Clause precludes further judicial review.

Three Assembly committees jointly subpoenaed witnesses and documents from two private corporations involved in funding Governor Pataki's inauguration and transition. The subpoenas were, for the most part, sustained in Kalkstein v. DiNapoli, 228 A.D.2d 28 (3d Dept. 1997), leave to appeal denied, 89 N.Y.2d 1008, subseq. app, 677 N.Y.S.2d 645(1998). Once again, the court reaffirmed the Legislature's power to subpoena relevant testimony. The court found a portion of the requested information to be extraneous to the committees' stated purpose for their inquiry. The court noted that a witness before a committee must be afforded his or her constitutional rights, including in this case the First Amendment right of political association.

A third case re-affirming the legislative subpoena power was Brodsky v. Zagata, No. 419-96 (Alb. Sup. Ct. 2/15/96), subseq. app. 235 A.D.2d 764 (3d Dept. 1997). The subpoena and litigation in that case actually started before those in Urbach and Kalkstein. The lower court opinion in Brodsky was the initial re-affirmation of the Legislature's investigatory and subpoena power.

In Buono v. Brodsky, No. 8031-04 (Alb. Sup. Ct. 12/30/04), the court ruled that a legislative subpoena for public authority or state agency documents could not be avoided by an agency's claim that the documents were exempt from disclosure under the Freedom of Information Law. Additionally, on the facts of this case, the authority could not avoid the subpoena with a claim of deliberative process privilege or executive privilege.

Viewed together, these cases are instructive on several important points:

1. The Legislature's broad power to investigate, to conduct hearings, and to compel testimony by subpoena, has been authoritatively reaffirmed.
2. The legislative power may be exercised by one house, or by a legislative committee.
3. Private parties, as well as government officials, may be subpoenaed.
4. Both oral testimony and the production of documents may be compelled.
5. An investigation must be in pursuit of a legitimate legislative purpose. Any subject on which the State may legislate could be a legitimate legislative purpose. Examples include state agency actions and private fundraising upon which legislation is contemplated.
6. The legislative investigatory power does not override individuals' constitutional rights, as embodied in the Bill of Rights.
7. A legislative committee's entitlement to state agency documents is broader than what the general public is entitled to under the Freedom of Information Law. The fact that a document is not FOIL-able from a state agency or authority does not mean that it cannot be subpoenaed.
8. A legislative committee may compel the production of a company's trade secret documents.

B. Statutory Rules--N.Y.S. Civil Rights Law

Section 73 of the Civil Rights Law sets forth subpoena and hearing procedures for several kinds of state governmental entities, including legislative committees. Section 73 is generally considered to be a codification of the concept of due process as guaranteed by the United States Constitution. The "fair procedure" rights afforded by this statute have been judicially construed to provide "fundamental fairness" in investigations (See People v. Pastore, 50 AD 2d 1088 (4th Dept. 1975); Matter of Quinn v. Lane, et. al, 36 Misc 2d 2 (Sup. Ct., Albany Co. 1962).

Section 73 provides the following protections and privileges:

- Persons subpoenaed must be personally served a copy of section 73 and a general statement of the subject of the investigation.
- A copy of the resolution, statute, order or other provision of law authorizing the investigation must be furnished upon request.
- Witnesses summoned have the right to counsel to advise them of their rights; a witness's counsel has the right to submit proposed questions, which the committee shall ask the witness if the committee deems it appropriate to the inquiry.
- A record of the hearing must be kept and witnesses are entitled to a copy at their own expense.
- A witness who testifies has the right, at the conclusion of his or her testimony, to file a brief sworn statement relevant to his testimony, to be made part of the record.
- Any person who believes that testimony given at a public hearing tends to defame him may either appear to give testimony or, at the committee's option, be allowed to file a statement of facts which shall become part of the record.
- Evidence adduced at private hearings, preliminary conferences and interviews before a committee shall **not** be made public (except at a subsequent public hearing) unless a majority of the committee approves. To do so without majority approval is a misdemeanor.

C. Assembly Rules

A legislative committee, which issues a subpoena, must have jurisdiction under the rules of its house. Costiglio v. Strelzin, 98 Misc. 2d 548 (Sup. Ct., N.Y. Co., 1978). Strelzin was based on Civil Rights Law § 73 and due process considerations.

After Strelzin, the Assembly amended its Rules to clarify its processes for committee jurisdiction. Rule I, § 1c.(11) now clearly authorizes the Speaker to direct a committee to conduct an investigation. Rule IV, section 1.b, includes within the jurisdiction of standing committees the subject matter of each bill or resolution referred to them.

VI. SUMMARY OF OVERSIGHT AUTHORITY

The State Constitution, statutory law, case law, and Assembly Rules all provide the basic authority for the Legislature to conduct oversight. Even though this authority is limited at times to legitimate areas of committee jurisdiction, it is well established that the actual right to inquire and investigate into matters of public concern is a key component of the Legislature's part in the law-making process.

VII. TECHNIQUES USED FOR OVERSIGHT

A. Determine Scope of Jurisdiction

1. According to Assembly Rule IV, section 1.c, the jurisdiction of all standing committees includes, but is not limited to, the subject matter of each bill or resolution referred to them by the Speaker. It is very helpful for each committee, and the committee staff, to know the full range of matters under its purview.
2. Each standing committee should regularly monitor the application of laws, administration of programs, and implementation of any rule or regulation change within its jurisdiction. Maintaining an active liaison with agency personnel will help keep the committee informed and up to date on the latest developments within a particular agency.

B. Special Studies and Investigations

1. Investigations by the staffs of committees and individual members play a vital role in the oversight process.
 - a. Committee staffs, through data collection, field investigations and on-site agency visits, may conduct their own evaluation of a specific agency or program.
 - b. Findings from such investigations can be compiled in a report, complete with recommended steps to take to get the program back on track.
 - c. Recommendations can be incorporated into the law making process, through both the budget and legislation.
2. The following information should be collected by committee staff when conducting an oversight project or investigation:
 - a. Background Information
 - Library searches for New York State reports on the topic
 - Data base searches for relevant newspaper articles
 - Reports from the State Comptroller
 - Annual agency reports
 - Reports or transcripts from any legislative committee hearings
 - Reports from any legislative commissions, task-forces, sub-committees, etc.

b. Legislative Intent and Focus

- Relevant statutes
- Bill jackets
- Floor debate record
- Agency rules, regulations, directives, policies and guidelines
- Pending legislation on the subject

c. Fiscal Data

- Five year appropriation history
- Five year actual expenditure history

3. Methods of Data Collection

- a. On-site agency visits.** These should be done in groups of two, and notes should be kept of every agency visit. Sometimes it might be advisable to take along a camera.
- b. Surveys and questionnaires.** If properly designed these can be helpful in collecting information from the general public, or from a targeted group of people throughout the state on a particular agency or program, or from particular state agencies.
- c. Interviews and meetings with agency personnel.** Formal and informal meetings with agency officials and staff is an excellent way of informing the committee on the general operation of an agency. Sometimes agency staff can bring attention to a problem that the committee was not aware of.
- d. Public hearings** are a classic way of allowing the committee to obtain valuable information on how an agency operates a particular program, and the administrative procedures that are followed.

C. Communication with the Media

- 1.** Public exposure of a problem is an excellent way of publicizing an oversight investigation. The results of an investigation will gain the attention of not only legislative and executive officials, but also the general public. Public officials seem much more responsive to correcting a problem or deficiency **after** the issue has been covered by the press.
- 2.** Effective communication with the media is based on the knowledge and understanding of each of the media forms.
- 3.** Depending on the subject matter of the investigation, it is sometimes advisable for all involved staff persons to keep details of the project confidential until it is officially released.

4. Press Conferences

- a. The periods between 10 A.M. and 2 P.M. are preferable. Early morning press conferences are often unattended because reporters on daily newspapers generally don't start work until mid-morning, and late afternoon press conferences conflict with the deadlines of most newspapers.
- b. Press conferences can be held in a member's office or in the LCA rooms in the Legislative Office Building or Capitol. Thought should be given to the amount of room available for audio and visual crews to operate.
- c. It is advisable that the press corps be notified in writing as far in advance as possible. A press advisory the day before a press conference is recommended, as well as a "follow-up" call the day of the conference to the press corps.
- d. A brief opening statement should be read outlining the oversight investigation, paying special attention to the critical findings of the study.
 - i. Leave plenty of time for questions and, if possible, do not restrict the area of questioning.
 - ii. Anticipate some of the questions and have answers prepared.

5. Press Release

- a. A good press release answers in one page or less, the questions where, when, who, what, how and why.
- b. A good release should:
 - contain the name and phone number of the member's contact person;
 - be "for immediate release";
 - quote the member directly;
 - avoid excessive use of the member's name;
 - avoid needless words, and long sentences and paragraphs;
 - make the point quickly, clearly and directly.

D. Hearings

- 1. In terms of oversight, hearings serve a number of purposes:
 - a. briefing members and staff on the organization, operations and programs of an agency;

- b. determining how an agency intends to implement any new legislation;
 - c. obtaining information on the administration, effectiveness and efficiency of agency operations and programs.
- 2. Hearings benefit the committee by:
 - a. helping members keep up to date on important administrative developments;
 - b. serving as a forum for exchanging views on important problems;
 - c. providing background information that could assist members in making sound judgments.
- 3. When the committee wants to receive testimony from only certain persons, consideration should be given to alternative formats, such as private meetings with a small group of agency personnel, workshops, or private hearings.
- 4. The Assembly's authority to conduct a hearing is provided for in:
 - a. Section 60 of the Legislative Law;
 - b. House Rule IV, Section 4.
- 5. It is extremely important for members to focus on meaningful issues at an oversight hearing, to ask penetrating and specific questions of the witnesses, and to follow up with appropriate, additional questions based on the testimony given.
- 6. It is important that specific letters be sent by the committee to the agency witnesses so that the witnesses will have prior knowledge of the scope of inquiry, and hence will be better prepared to answer questions.

E. Hearing Checklist

- 1. Define the scope and purpose of the hearing. The hearing agenda should not be so nebulous that very little specific information will be collected. The scope of an oversight hearing should be manageable and targeted toward a specific topic.
- 2. Identify potential witnesses.
- 3. Staff should prepare a preliminary hearing memorandum for the committee chairperson, outlining the scope of the hearing, specific topics to be covered, and potential witnesses.
- 4. If possible, coordinate the hearing with other Assembly or Senate committees for a joint oversight hearing.

5. If necessary, interview potential witnesses to determine their desirability in terms of their connection and involvement with the selected hearing topic.
6. Select witnesses and decide in what order they should testify. It is sometimes advantageous to allow persons with critical testimony concerning an agency or program to testify before calling the agency itself to testify.
7. Poll committee members for a date that they would be available. After agreement is reached, schedule a tentative time, date and place for the hearing. This is done through the Program and Counsel Public Hearing Conference Coordinator.
8. Once the subject of the hearing has been decided, and the tentative time and date have been selected, the chairperson of the committee holding the hearing gives advance notice to the Speaker.
9. Upon approval, the Program and Counsel Public Hearing and Conference Coordinator will officially schedule the hearing, and will include the hearing announcement on the Hearing Calendar which is issued each Friday.
10. Develop the hearing notice so that it articulates for the general public the scope of the hearing. The notice should include the legislative purpose of the hearing, and specific questions to which witnesses should focus their testimony.
11. Reserve a hearing room through the Assembly's Public Hearing Coordinator.
12. Secure a court stenographer, or arrange for the hearing to be taped. Again, this can be done through the Public Hearing Coordinator.
13. Send letters to witnesses requesting their appearance and their submission of written testimony preferably two weeks prior to the hearing. The letter should include:
 - a. The time and date of the hearing;
 - b. The subject and legislative purpose of the hearing.
 - c. The number of copies of testimony requested.
14. Prepare briefing books for the members. The books can include the following:
 - a. A summary of the issue which is the subject of the hearing. Special reference should be made to the way the issue illustrates a particular statutory or administrative problem.
 - b. Outline of the pertinent statute and rules and regulations. Also included should be a summary of legislative and administrative history, indicating legislative intent, and the administrative procedures followed.

- c. A summary of any relevant court decisions.
 - d. A summary of the issue as it appears to:
 - depart from the legislative intent;
 - depart from the published rules and regulations of the agency;
 - suggest a flaw in either the statute or rules and regulations;
 - suggest improper or questionable behavior;
 - highlight the attainment or lack thereof of program objectives.
 - e. If appropriate, include a comparison of how the same or similar problems have been handled by another agency.
 - f. Prepare a chronology of significant events concerning the issue. This information should be easily available, if committee staff keep an active list of events occurring within an agency.
 - g. Prepare a list of witnesses in order of their appearance with a summary of what their testimony will cover.
 - h. If necessary or appropriate, prepare biographical data on each witness, paying special attention to how each witness is connected to the issue.
 - i. Prepare a list of specific, focused questions that members might ask of witnesses, with reference made to back-up material if appropriate. To get the right answer, you must ask the right question.
 - j. If appropriate, prepare a list of exhibits with a summary of each.
 - k. Bind all material in a three ring binder with tabs for easy access to each section.
15. Send briefing books to members at least two weeks before the scheduled hearing.
16. Committee staff should conduct a verbal briefing for members after the briefing books have been preliminarily reviewed by the members.

17. Contact the media for print, radio and video coverage.
 - a. Develop and maintain a current list of newspaper, radio and television contacts.
 - b. Identify particular press who have already covered the issue that is the focus of the hearing.
18. Prepare the opening statement for the chairperson. The opening statement should include the subject of the hearing and its legislative purpose. This can be included in his/her briefing book.
19. Be sure there are sufficient copies of:
 - a. Members' opening statements;
 - b. Exhibits;
 - c. Hearing notices;
 - d. Witness lists;
 - e. Witness testimony.

These should be available for the press and other persons attending the hearing.

20. Committee staff may wish to reference Public Hearing Guidelines for additional guidance in preparing for hearings. This guide is available from the Program & Counsel Public Hearing and Conference Coordinator.

F. The Hearing

1. Start the hearing on time.
2. The chairperson should read the opening statement.
3. Swear in the witness (at the chairperson's discretion).
4. At the close of the hearing, have the chairperson request approval to leave the record open for receipt of additional written information.

G. Subpoenas

1. Legislative committees sometimes find it necessary to issue a subpoena to compel a witness to testify before the committee.
2. Uses of a subpoena:
 - a. To require the attendance and testimony of a witness;
 - b. To require the production of books, papers or other things of a tangible nature.

3. The power of a legislative committee to issue a subpoena is granted under section 62-a of the Legislative Law.
4. It is advisable that a subpoena be issued only as a last resort as frequent use of a subpoena will dilute its effectiveness.
5. Pursuant to Section 73 of the Civil Rights Law, a recipient of a subpoena must be furnished with:
 - a. A general statement of the purpose of the investigation;
 - b. A copy of Section 73 of the Civil Rights Law.
 - c. A copy of the resolution, statute, order or other provision of law authorizing the investigation, if requested;

The committee is encouraged to seek the advice of the Speaker's Counsel prior to the issuance of a subpoena.

H. Post Hearing

1. Prepare a brief summary of the hearing, with highlights of major points for next day distribution to all committee members and the press.
2. Write a letter to the agency asking follow-up questions to clear up points raised, but not resolved at the hearing.
3. Write letters to those witnesses who had agreed to provide additional information or material at the hearing. Requests should be specific, citing each promised piece of information, and the letters should be written one to three days after the hearing.
4. Prepare and issue a committee report that summarizes the oversight hearing, including any recommendations developed by the committee as a result of the hearing and any other information gathered.
5. Distribute the committee report to appropriate and interested parties. If the subject is of major significance, schedule a press conference or distribute the report with a press release to the LCA and other media mailing lists.

I. Monitoring Agency Rules and Regulations

1. State agency rules, regulations and proposed rules are published in the State Register, which is distributed once a week by the Secretary of State's office.
2. Regular monitoring of the State Register by committee staff may help identify proposed rules and regulations that may require further attention by the committee.
3. The Administrative Regulations Review Commission can be a resource for tracking and monitoring proposed agency rules and regulations.

J. Legislative Techniques

1. Reducing appropriations. The "power of the purse" is a very strong factor in controlling the fate of programs.
2. Reporting requirements. Reporting requirements placed in statutory and budget language obligate an agency to be accountable to the Legislature for its actions.
3. Program evaluation requirements. Placing program evaluation requirements in legislation when creating new programs or when reauthorizing established programs is an excellent way of ensuring that information on a program will be provided to the Legislature. These requirements will provide timely evaluative information for both budget and oversight purposes.
4. Sunset review clauses. These require the review of programs on a predetermined schedule. Sunset review allows the Legislature to reassess the value of the program, and to determine whether or not to continue its existence in its current or modified form.

VIII. SUMMARY REVIEW OF OVERSIGHT TECHNIQUES

A. Techniques, Guidelines and Suggestions for Preparing for Oversight

1. It is extremely helpful for the committee to understand its full authority, to know the agencies and programs within its jurisdiction, and to be familiar with the administrative practices of those agencies.
2. It is equally important for members and staff to get to know agency officials and, if possible, to establish a good working relationship with the agency and constituency groups that interact with the agency.

B. Techniques Used in Selecting Topics for Investigation

1. Target oversight proposals to those priority areas of both the committee chairs and the Assembly leadership.
2. Review any previous reports, audits or other relevant studies issued on a specific program for appropriate and needed areas of review. The reports may not have covered an area of interest to a committee, or there may be room left to elaborate on a point that was not adequately covered. Additionally, a committee can determine whether follow-up on compliance with recommendations from previous reports or audits has occurred.
3. Review constituent casework in a member's office and make special note of continuing complaints about a specific program or agency. Complaints from the general public are often indicative of major problems. The member's staff, after screening and evaluating the complaints, may want to bring certain problems to the attention of committee staff or members.
4. Review the State Register for an agency's proposed rules and regulations. It is a good practice for committee staff to continually monitor this document for a rule change that may require further legislative attention.
5. Review the budget for any major funding increases, any evidence of overstaffing within an agency, or problem areas. If possible, target inquiries to those agencies and programs receiving large appropriations.
6. If possible, coordinate activities with other standing committees. Coordination can help to prevent duplication of effort, to maximize oversight activities, and to promote a good working relationship among the committees.
7. When selecting a topic for an oversight project, it is important to focus on substantive issues. However, it is also necessary to pay attention to those topics that are newsworthy and have statewide appeal.
8. An oversight project can occur as part of an upcoming sunset review.

C. Techniques Used in Investigations

1. Collect all background information that is available on the topic.
2. Communicate with the agency in question through letters, phone conversations, meetings and hearings. When consulting with an agency, have questions prepared beforehand. **To get the right answer, you must ask the right question.**
3. In appropriate cases, legislative committees may use a subpoena to compel the testimony of a witness, or the production of relevant documents, by following required procedures.
4. Pressure can be applied to an agency to explain their actions through:
 - a. legislation;
 - b. budgetary process;
 - c. the press.
5. Press releases can be issued by a committee publicizing an oversight investigation.
6. Stay in control of the situation. Do not let the agency attempt to delay or run the investigation.

D. Techniques Used in Hearings

1. Types of Oversight Hearings:
 - a. Budget hearings are used to examine an agency's budget request and to make inquiries concerning how an agency intends to spend its appropriation. It is important that agencies not be allowed to "assume their appropriation."
 - b. Joint hearings provide a united front against an agency. It is important, however, that one committee does not dominate the hearing.
 - c. Investigative hearings bring suspected problems or deficiencies with a program out into the open and require agencies to explain their actions to the committee, the press and the general public.
 - d. Remember: To get the right answer you must ask the right question.
2. Witnesses:
 - a. Select the most knowledgeable and articulate witnesses to testify.

b. Balance the hearings with witnesses on both sides of the issue. Consider testimony from persons in the private sector, public interest groups, and citizens who have had considerable contact with the agency.

c. Pay particular attention to the order in which the witnesses testify. An important factor to consider is setting the appropriate stage for the hearing, to generate a strong press interest and help take the committee where it wants to go.

d. If an important witness refuses to testify, the committee can pursue:

- the issuance of a subpoena; or
- court action for contempt.

3. Techniques to ensure a good oversight hearing:

a. Be prepared. Collect all relevant information before the hearing and, whenever possible, prepare briefing books for the members. Members should be given the briefing books at least two weeks prior to the hearing.

b. Brief the press on the hearing so that there will be adequate coverage of the proceedings.

c. If possible, obtain witness testimony in advance of the hearing to eliminate any surprises. Some of the questions prepared for the members can be based on this testimony.

d. Leave the record open for receipt of any additional information that may be requested from the agency at the hearing.

E. Legislative Techniques

1. Reducing, eliminating or otherwise modifying agency appropriations is a particularly strong weapon the Legislature can use in exercising control over a State agency.

2. Inserting reporting requirements in legislation and budget language requires agencies to be responsive to the Legislature. Agencies can be required to report on how money is being spent, how a particular program is running, and how the agency is operating generally.

3. Requiring program evaluation reports from an agency will allow the Legislature to review programs for their effectiveness, efficiency and overall worth.

4. Inserting sunset review clauses in legislation will allow for the review of programs on a systematic basis.