

REPORT FROM THE NEW YORK STATE SENATE

COMMITTEE ON INVESTIGATIONS AND GOVERNMENT OPERATIONS

CHAIR
SENATOR JAMES SKOUFIS



Final Investigative Report: Examination of New York State Executive Reports & Studies

December 29, 2021

COMMITTEE ON INVESTIGATIONS AND GOVERNMENT OPERATIONS

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I. EXECUTIVE SUMMARY

Each legislative session, the New York State Legislature passes various bills directing State and local entities to conduct studies and issue corresponding reports on topics of public interest. Reports may be recurring on a set time frame or single examinations. Authorizing legislation typically instructs the reporting body on the following key expectations: minimum facts and figures to be included, any deadlines for publication, to whom reports should be submitted such as the Governor or Legislative Leaders, any external collaboration or coordination, and whether the report must be published on a public platform. As these studies touch upon necessity and properness, success and failure, general functionality, financial accounting, and other essential analysis of major public policy and/or programs, the Senate Standing Committee on Investigations & Government Operations (“Committee”) is of the opinion that full and timely compliance with reporting requirements is vital to effective decision-making by the Legislature and implementation by the Executive.¹

S.1677/A.2071 of 2021, introduced by Senator James Skoufis and Assemblyman Brian Barnwell, would direct the Department of State to evaluate and account for the study bills that have been recently enacted. To gather more information to support this legislation, the Committee opened an investigation in August 2021 into the overall completion and submission of these studies and reports. This inquiry focused on reports generated by State departments, offices, and other governmental bodies controlled by or working in conjunction with the executive branch of New York State government. A sample of 69 laws authorizing, amending, or repealing 63 studies from

¹ Reference to the “Committee” within this report refers to the actions and opinions of a majority of Investigation and Government Operations Committee members.

2016 to 2018 were selected for review. The Committee directly requested documents from each respective entity and the Governor's Office.

This examination, as well as the findings and policy recommendations incorporated herein, is the conclusion of the Committee's review of state executive-level reporting that will be further discussed in Section II. The Committee has identified the following findings, which will be detailed along with related recommendations in Section III:

- 41% of the studies – 26 of 63 – were never completed and/or submitted (the Committee received valid justification for five of the missing 26 reports);
- Missing publication dates make timeliness difficult or impossible to determine;
- Absent or vague references to authorizing statutes make it difficult to determine which report responds to which piece of legislation;
- The lack of a centralized submission mechanism or process by which reports are acknowledged as received leads to issues with accessibility and accountability; and
- A failure to display or post reports and studies on government websites makes it difficult for the public to access the information and findings within these reports.

II. NEW YORK STATE SENATE INVESTIGATION

a. Investigative Process and General Outcomes

The Committee opted to review legislation enacted during a three-year window between 2016 and 2018 in order to analyze reports whose submission deadlines have safely passed. Additionally, the Committee chose this timeframe in order to minimize potential conflicts with reports being due or completed during the ongoing COVID-19 pandemic of 2020-2021. Using the New York State Legislative Retrieval System, 69 bills that were signed into law between 2016-2018 that authorized or amended 63 studies across 24 state entities were chosen for testing, though some were legislatively repealed within that time frame.² This list is not exhaustive of every bill that was passed relating to a state study during the testing period, and it does not account for reports from several authorities, workgroups, task forces, and local or other groups that fall outside of immediate Executive oversight. Moreover, some reporting requirements were modified or eliminated through subsequent legislation enacted before or after 2018. Further, the Committee placed greater emphasis on single reports instead of those that were part of a recurring series; compliance with reporting requirements was judged by the submission of an initial document – as authorized, amended, or repealed by an enacted chapter of law within the sample.

² Sampled legislation authorizing, amending, and repealing reporting requirements pertained to the following state departments, commissions, task forces, and offices: Seafood Marketing Task Force, Federal Davis-Bacon Act of 1931 Work Group, Department of Health, Department of Agriculture and Markets, Governor’s Office of Storm Recovery, Department of Labor, Civil Service Commission, Department of State, Department of Financial Services, Department of Corrections and Community Supervision, Office of Mental Health, Office for People with Developmental Disabilities, Department of Transportation, NYS Education Department, Office of Children and Family Services, Department of Environmental Conservation, Department of Motor Vehicles, Office of Information Technology Services, Office of Fire Prevention and Control, Department of Taxation and Finance, Empire State Development, Office of Temporary and Disability Assistance, Department of Public Service, and the Long-Term Care Ombudsman Program.

To ensure that documents were properly identified, the Committee directly approached each State entity with a list of chapters of law regarding the completion of a study and its corresponding report. Individual departments and offices were generally responsive and communicative, and correspondence continued until the Committee received documentation and/or any justification for non-delivery. Second, the Committee worked with the Governor's Office for any outstanding materials and additional justifications that were required. The Committee reviewed reports for completeness and timeliness, and the appropriateness of any explanations for undelivered documents was also considered. The Committee is appreciative of the fact that Governor Hochul's administration was fully cooperative with the Committee's inquiry despite any associated shortcomings that occurred during her predecessor's tenure.

b. Reasons Received for Lack of Completion

The Committee determined that 41% of mandated reports – 26 of 63 – were not officially submitted to statutorily prescribed recipients or otherwise not delivered or not accessible by the Committee. The Committee found the reasons provided for five of the 26 non-submissions reasonable: a subsequent chapter of law ceased the study, the report's responsibilities shifted to another entity, or the submission deadline had not yet been reached. However, the Committee did not find justifications that were given for 21 non-submissions reasonable.³ The Committee received three common explanations as to why studies and reports were not completed by specified due dates.

³ The bulk of reports (13) missing without reasonable justification were the responsibility of the Department of Health.

First, some reports sought to examine the utilization of State funds during a given year. Certain departments stated they had not been authorized to expend those particular funds, or those funds had not accrued in accounts for reporting purposes, and thus they did not issue the required report. That an agency did not spend appropriated funds is still information that is valuable to the Legislature and the public. If there are insufficient funds, missing or inadequate appropriations, or delays in expending appropriated money, both Legislators and Executive personnel would be well served to be informed by these reports so that they can address concerns or delays by legislative or executive action. Therefore, the Committee believes that reporting of this nature should be completed in all circumstances.

Second, some departments blamed a lack of adequate resources – financial or otherwise – for their inability to conduct the required study. The Committee does not find this argument to be valid as to why reports that are mandated by statute were not completed. If a matter of public policy or programming leads the State to require a report by statute on the subject, the report should be treated as a priority, and the entity responsible for it should dedicate the necessary resources to complete it. If the entity cannot do so, it should – at a minimum – inform the Legislature and Executive of its lack of resources instead of simply doing nothing, which is in violation of the law.

Third, the Committee was advised by some departments that non-submitted reports were the result of subsequent changes in laws, regulations, or other conditions. The Committee accepts that new circumstances and unanticipated factors may complicate the substance of a report as originally intended or even forestall major sections of analysis. However, if intervening events preclude meaningful reporting, those circumstances should be fully explained, thoroughly documented, and properly reported.

III. INVESTIGATIVE FINDINGS AND RECOMMENDATIONS

a. Missing Publication Dates

The overwhelming majority of laws that authorize or amend reports contain statutory language that explicitly sets deadlines for their submission. A report's findings and recommendations may be due by a specific month and year or within a certain number of months after the date on which the law becomes effective. A clear publication date for a report is necessary to assess whether a report was issued on time.

The Committee found that many reports are issued without a date on which the document was completed and transmitted to required recipients. Some annual or other recurring reports may only reference the year or quarter. Some reports are not dated at all or may only be labeled with the month in which it is due. Other reports did include a precise date of submission either in a cover page, transmittal letter, or the body of the report itself.

The Committee is of the belief that a firm date of a report's completion and submission should be part of uniform, identifying information within the document. Absent this basic criteria, the Legislature is unable to conclude whether submitted reports are timely and in accordance with the law. The Committee recommends that future legislation require submission dates as part of all reports.

b. Absent or Vague References to Authorizing Statutes

A description or statement of the authorizing statute should be basic, uniform, and consistent information included in all reports so that policymakers and the public understand which law generated it. Such descriptions should take the form of: "this report has been developed to

meet the reporting requirements established pursuant to [the chapter number and year of the law].” In several of the reports the Committee analyzed, there is no reference to any law at all.

The Committee urges standardization and streamlining in this area. At a minimum, documents should unambiguously indicate the chapter of law directing the completion of a report. This information should be clearly marked early in a report, preferably within its cover page, transmittal letter, or executive summary. A plain statement of the chapter number and year at the commencement of a report allows legislators, the public, and others to quickly and easily verify its legislative purpose.

c. No Centralized Submission of Reports

An issue that became apparent during this examination was the lack of a unified repository or system that ensures reports are being submitted to all required recipients. The authorizing statutes for most reports include a provision along the lines of the following: “on or before [a certain date], the superintendent of [a department] shall submit to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate standing committee on [‘X’], and the chair of the assembly standing committee on [‘Y’], a written report detailing the findings and recommendations on the department’s study performed in accordance with [this law].” Delivery of a report to these select recipients should be easy to understand and accomplish. However, in practice, the decentralized style of submission leads to difficulty when attempting to locate the completed reports and verify they have been received.

Though the Committee primarily sought to obtain reports from executive branch bodies, investigative staff also reached out to other personnel within the Senate and Assembly for documents. There was no tracking or intake mechanism that standardized receipt of executive

branch reports in either House. This fragmented system of delivery and acceptance complicates legislators' ability to determine whether a report has been submitted and to whom. Thus, the Committee advises that, in addition to the typically prescribed government leaders, one consolidated body be permitted to receive and disseminate reports upon their submission. The Committee proposes that the New York State Legislative Library be tasked as the official storehouse of reporting activity. This way, reports will be found, verified, catalogued, and archived within a centralized location that can then distribute documents to individual recipients as needed or requested. Therefore, the Committee recommends that future legislation mandating reports contain language requiring they be submitted to the New York State Legislative Library.

d. Reports and Studies Omitted from Executive Websites

Despite the widespread use of the internet, not all reports are posted on a department's or office's official website. Alternatively, some reports are made available on a public site but done so in such a manner that makes finding and accessing them cumbersome, if possible at all. Authorizing statutes for reports occasionally include language requiring the department commissioning the report to publish the document on its official website. Absent that explicit directive, however, the Committee determined there is a strong likelihood a report will not be shared beyond the statutorily required recipients. Even with the publishing directive, a department or office has significant discretion as to how a document may be posted, leading to serious issues related to searches and public accessibility. Some departments lack a centralized "Reports" section on their websites, instead choosing to publish materials within issue-specific tabs, under umbrella topics, or as part of a much larger omnibus media section. Thus, even when a report is published on a website, policymakers and members of the public may not know where to find it.

Among the websites and online postings reviewed, the Department of Financial Services is one of the best – and only – examples of managing a dedicated, unambiguous, and intuitive section for “Reports & Publications,” which is clearly identified as a tab in the upper portion of its homepage. Subtabs for “DFS Annual Reports” and “Other Reports” are easily selectable, and documents are organized by topic and publication date. While many departments post reports within indexes at the bottom of websites or as part of bigger “Newsroom” sections – or not have any devoted forum at all, the Department of Financial Services’ approach affords much greater visibility.

The Committee supports the notion that reports should be readily available and conspicuously posted on departmental websites for public consumption, assuming there are no issues with private, proprietary, or otherwise confidential information. Reports should be identified and listed by title and date within their own section of a website to simplify public access. The Committee also proposes the uniform inclusion of language in any authorizing statute that requires the relevant agency to publish the report on its website.

IV. CONCLUSION

The Legislature does not pass bills that require executive agencies to study an issue and write a report just to generate paper. Rather, the Legislature requires these reports because their programmatic analysis, exploration of data trends, fiscal accounting, policy suggestions and critiques, and general status updates directly aid in the enactment or reconsideration of the laws and activities of New York State.

For these reasons, the Legislature will continue to pass statutes authorizing such reports. Their timely and proper completion and delivery are essential to a well-functioning government. The Committee recognizes the capable work performed by many – though not all – departments, offices, and others in this area. The Committee also sees several opportunities for improvement – primarily in the areas of accessibility, accountability, and transparency – that would only benefit our State’s lawmakers and members of the public seeking the vital information contained within these documents. The Committee also believes that consequences should be considered for extreme or persistent non-compliance by agencies. Non-compliance constitutes a violation of state law, and consequences may not only compel adherence on a particular report but also act as a deterrent against future non-compliance.

V. APPENDIX: REPORTS AND COMPLIANCE

<u>Reporting Entity*</u>	<u>Chapter No. / Year of Law</u>	<u>Submitted</u>	<u>Timely</u>	<u>Dated</u>	<u>Statutory Reference</u>	<u>Misc. Notes</u>
Civil Service Commission	Ch. 17 of 2018	Yes	Unknown	No	Bill Nos.	
Civil Service Commission	Ch. 409 of 2017	-	-	-	-	Amended by Ch. 17 of 2018
Civil Service Commission	Ch. 439 of 2017	-	-	-	-	Amended by Ch. 49 of 2018
Civil Service Commission	Ch. 49 of 2018	Yes	Unknown	Year Only	Section of Law	
Dept. of Ag. and Markets	Ch. 256 of 2016	Yes	Unknown	No	No	
Dept. of Ag. and Markets	Ch. 35 of 2016	Yes	Unknown	No	Original Ch. No. and Year	
Dept. of Ag. and Markets	Ch. 37 of 2018	Yes	Yes	Month and Year Only	Ch. No. and Year	
Dept. of Ag. and Markets	Ch. 497 of 2017	-	-	-	-	Amended by Ch. 37 of 2018
Dept. of Corrections and Community Supervision	Ch. 17 of 2016	Yes	Unknown	Years Only	Sec. of Law	
Dept. of Corrections and Community Supervision	Ch. 361 of 2017	Yes	Unknown	Year Only	Ch. No. and Year	
Dept. of Corrections and Community Supervision	Ch. 429 of 2018	Yes	Unknown	Year Only	No	
Dept. of Environmental Conservation	Ch. 351 of 2017	Yes	Unknown	No	Ch. No. and Year	
Dept. of Environmental Conservation	Ch. 466 of 2017	Yes	Yes	Yes	No	
Dept. of Environmental Conservation	Ch. 61 of 2017	Yes	Unknown	Year Only	Sec. of Law	
Dept. of Financial Services	Ch. 12 of 2016	Yes	Yes	Yes	Ch. No. and Year	
Dept. of Financial Services	Ch. 23 of 2018	No	-	-	-	
Dept. of Financial Services	Ch. 367 of 2018	No	-	-	-	
Dept. of Financial Services	Ch. 394 of 2018	**No	-	-	-	**Not Yet Due
Dept. of Financial Services	Ch. 395 of 2017	Yes	No	Yes	Sec. of Law	

Dept. of Financial Services	Ch. 4 of 2017	Yes	No	Yes	Ch. No. and Year	
Dept. of Financial Services	Ch. 441 of 2017	-	-	-	-	Amended by Ch. 23 of 2018
Dept. of Financial Services	Ch. 61 of 2018	Yes	***Yes	Yes	Ch. No. and Year	
Dept. of Health	Ch. 111 of 2016	No	-	-	-	
Dept. of Health	Ch. 120 of 2018	**No	-	-	-	**Regulations to be reported upon became effective in 2021
Dept. of Health	Ch. 121 of 2017	No	-	-	-	Law Authorized 3 Reports
Dept. of Health	Ch. 215 of 2018	No	-	-	-	
Dept. of Health	Ch. 293 of 2018	No	-	-	-	
Dept. of Health	Ch. 294 of 2018	No	-	-	-	
Dept. of Health	Ch. 296 of 2016	Yes	Yes	Yes	Ch. No. and Year	
Dept. of Health	Ch. 337 of 2018	No	-	-	-	
Dept. of Health	Ch. 364 of 2018	No	-	-	-	
Dept. of Health	Ch. 374 of 2017	No	-	-	-	
Dept. of Health	Ch. 375 of 2017	No	-	-	-	
Dept. of Health	Ch. 401 of 2017	-	-	-	-	Amended by Ch. 46 of 2018
Dept. of Health	Ch. 432 of 2016	No	-	-	-	
Dept. of Health	Ch. 443 of 2016	No	-	-	-	
Dept. of Health	Ch. 46 of 2018	Yes	Unknown	No	Ch. No. and Year	
Dept. of Health	Ch. 471 of 2016	Yes	Unknown	No	Ch. No. and Year	
Dept. of Health	Ch. 66 of 2016	Yes	Unknown	Year Only	Section of Law	
Dept. of Health	Ch. 71 of 2016	Yes	No	Yes	No	
Dept. of Labor	Ch. 397 of 2018	Yes	Yes	Yes	Ch. No. and Year	
Dept. of Labor	Ch. 40 of 2018	**No	-	-	-	**Eliminated reporting requirement of Ch. 458 of 2017

Dept. of Labor	Ch. 458 of 2017	-	-	-	-	Amended by Ch. 40 of 2018
Dept. of Labor	Ch. 460 of 2016	Yes	Yes	Month and Year Only	Ch. No. and Year	
Dept. of Motor Vehicles	Ch. 192 of 2017	Yes	No	Yes	Ch. No. and Year	
Dept. of Public Service	Ch. 333 of 2018	Yes	No Explicit Due Date Required	No	No	
Dept. of State	Ch. 32 of 2016	No	-	-	-	
Dept. of State	Ch. 480 of 2018	No	-	-	-	
Dept. of Taxation and Finance	Ch. 222 of 2018	Yes	No	Month and Year Only	Ch. No. and Year	
Dept. of Taxation and Finance	Ch. 315 of 2018	Yes	No	Month and Year Only	Ch. No. and Year	
Dept. of Taxation and Finance	Ch. 501 of 2017	-	-	-	-	Repealed by Ch. 315 of 2018
Dept. of Transportation	Ch. 361 of 2018	Yes	No	Yes	Ch. No. and Year	
Dept. of Transportation	Ch. 445 of 2016	Yes	No	Yes	Colloquial Name of Law	
Empire State Development	Ch. 398 of 2018	Yes	Unknown	Years Only	No	
Federal Davis-Bacon Act of 1931 Work Group	Ch. 461 of 2017	No	-	-	-	
Governor's Office of Storm Recovery	Ch. 3 of 2016	Yes	***Yes	Yes	Ch. No. and Year	
Long-Term Care Ombudsman Program	Ch. 259 of 2018	Yes	Unknown	Year Only	Ch. No. and Year	
NYS Education Dept.	Ch. 174 of 2017	No	-	-	-	
NYS Education Dept.	Ch. 460 of 2018	**No	-	-	-	**Reporting shifted to OCFS per Ch. 196 of 2019
Office for People with Developmental Disabilities	Ch. 125 of 2018	Yes	Yes	Yes	Ch. No. and Year	
Office for People with Developmental Disabilities	Ch. 210 of 2018	No	-	-	-	
Office for People with Developmental Disabilities	Ch. 250 of 2016	Yes	Yes	Month/Quarter No. and Year Only	No	

Office of Children and Family Services	Ch. 196 of 2019	Yes	Yes	Yes	Ch. No. and Year	
Office of Fire Prevention and Control	Ch. 334 of 2017	Yes	Unknown	No	Sec. of Law	
Office of Information Technology Services	Ch. 29 of 2018	No	-	-	-	
Office of Information Technology Services	Ch. 427 of 2017	-	-	-	-	Amended by Ch. 29 of 2018
Office of Mental Health	Ch. 375 of 2016	Yes	Yes	Quarter No. and Year Only	Sec. of Law	
Office of Temporary and Disability Assistance	Ch. 375 of 2018	**No	-	-	-	**Reporting shifted to DOH per Ch. 57 of 2021 but has not yet been submitted
Seafood Marketing Task Force	Ch. 180 of 2018	Yes	Yes	Yes	Senate Bill No. and Signing Date	

**Only the first named reporting entity found within a report's authorizing statute is listed.*

***Justifications for non-submission accepted by the Committee.*

****Reports dated within the month of their submission deadlines have been classified as timely.*