

# The Massachusetts Legislature: Democracy in Decline

Report of the Legislative Reform Working Group

A project convened by Progressive Democrats of Massachusetts

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<sup>1</sup> Levine, P., *Mass Forward: Advancing Democratic Innovation and Electoral Reform in Massachusetts*, Tisch College for Civic Life and MassINC (Nov. 2019), available [here](#).

<sup>2</sup> Creelan, J. & Moulton, L., *The New York State Legislative Process: An Evaluation and Blueprint for Reform*, The Brennan Center for Justice (2004), available [here](#).

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## **Executive Summary**

This report summarizes our research into how well the Massachusetts State Legislature (known formally as the General Court of the Commonwealth), fulfills its role as a democratically elected legislative body representing the people of the Bay State. Data from Massachusetts as well as from states with similar state legislature structures (California, Illinois, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin) were used to identify areas where Massachusetts practices deviate from norms and best practices. Areas of interest for this study were identified as either symptoms or causes of dysfunction in state legislatures, including the degree of control wielded by leadership, the functioning of committees, the amount of transparency as measured by public access to voting records, and the level of professional resources available to legislators to enable them to legislate effectively.

We find that the Massachusetts State Legislature, particularly in the House, can be broadly characterized by a disempowerment of rank-and-file legislators and a consequent disenfranchisement of the constituents they purport to represent. We have identified two causal contributors to this state of affairs: weak professionalism and over-centralization of power. These interrelated factors create a feedback loop in which low professionalism leaches power from individual legislators and reinforces the power of leadership, which in turn reduces professionalism to further concentrate power. Two other by-products of weak professionalism and over-centralization of power are the persistent lack of diversity in the Massachusetts legislature and the lack of transparency, particularly in the House.

The Massachusetts legislature no longer has an independent research bureau. Professional staff receive little to no formal training and are generally poorly paid and overworked. The combination means that the Massachusetts legislature ranks very low in professionalism relative to comparable states. It also means that legislators, denied access to independent sources of information, may be unable to counter positions staked out by leadership. While legislators are disempowered, lobbyists for corporate and other special interests are empowered. While legislators may not even have a seat at the table, corporate and special interests are relied on for expertise, supplying information about pending legislation, often drafting bills, etc.

This lack of professional capacity has contributed to an over-centralization of power in leadership that stifles and punishes dissenting voices. It has led to largely performative democracy, where committee hearings typically have little or no real influence on the outcome of legislation and even committee members are kept in the dark about the status of bills. Because legislators participate so little in the promulgation of legislation at the committee level, the House refuses to air its business to the public, notwithstanding widespread calls for greater public access, transparency, and accountability. It is also why the work product of the legislature is too often poorly drafted and ineffective in carrying out its intended purpose.

Legislators have become complicit in their own disempowerment, attacking grassroots efforts to make the legislature more transparent as they seek to conceal their lack of knowledge,

independence, and power. As legislators' individual roles in fashioning and furthering legislation are weakened, their dependence on and obedience to the leadership becomes more total. Those who seek power, status, and financial rewards are highly motivated to curry favor with leadership. Many of those who enter the legislature committed to real reform and the public interest leave in frustration; others become coopted. As a result, lobbyists, corporations, and other special interests hold far more sway over the public's business than does the public or its representatives.

This state of the legislature, particularly the lack of transparency and accountability, has eroded the public's faith in government. It has undermined democracy. This report concludes with a summary of possible strategies for reclaiming our legislature. We hope that this work will inspire a broad coalition of stakeholders to come to consensus on how best to proceed.

## **Introduction**

This project began, as many do, with a question: How could we, the Progressive Democrats of Massachusetts (PDM), set aside partisan issues to focus on exploring the strengths and weaknesses of the Massachusetts legislature? The answer we came to was to reach out to a wide coalition of stakeholders who share concern that our representative democracy on the state level is not working. Thus was born the Legislative Reform Working Group, convened by PDM but extending beyond it to activists, former legislators, and others who share the goal of effecting meaningful change to improve our democracy. The ultimate objective is for the Legislative Reform Working Group to build a broad coalition of stakeholder leaders to which will fall the tasks of deciding on goals and implementing strategies and tactics to achieve those goals.

This report is not intended to draw ire along partisan lines nor to further any specific political agenda, but rather to shed light on the causes of the dysfunction in the Massachusetts legislature and the ways in which Massachusetts's practices differ from those of other states.

Characterizing legislatures, as Alan Rosenthal noted in "The Good Legislature,"<sup>3</sup> published by the National Conference of State Legislatures, is highly subjective. The lens of personal political beliefs alters the picture. So do numerous structural and other real differences among states and their legislatures. Acknowledging the inherent difficulty in setting universal criteria for comparison and evaluation, Rosenthal developed a set of three key factors for evaluating the efficacy of a state legislature. A good legislature:

1. Balances power;
2. Represents constituencies; and
3. Makes laws.

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<sup>3</sup> Rosenthal, A. & Smith, E., *The Good Legislature*, NCSL State Legislatures (July 1999), available [here](#).

While one might suppose that an ideal government would maximize these features, Rosenthal also points out that there can be too much of a good thing. Each of these features has drawbacks. For example, while checks and balances help balance power between the legislature and the governor as well as between the chambers of the legislature, too much process can lead to inefficiency, and too many counterbalancing forces can lead to stasis. The line between fair representation and over-representation of the most strident or insistent voters is a fine one. Constituents' opinions should be heard and they should matter, but representatives should exercise informed judgment in crafting laws that meet policy objectives and that accomplish what they intend. A careful balance must be struck between open and accountable democracy and competent, efficient, and effective lawmaking. In many ways, crafting an ideal state legislature involves walking a tightrope.

Mindful that each legislature has its own culture and operates in its own political and structural context, we attempted both to unearth the secrets of how the Massachusetts legislature functions and to compare it to other similar state legislatures.

Our research revealed three broad categories as causes and/or symptoms of the dysfunction in the Massachusetts legislature: over-centralization of power, lack of transparency, and weak professionalism. The accretion of power in leadership is a root cause of several areas of dysfunction. Power highly concentrated in one person has resulted in a poor balance of power both internal to each chamber and in relation to both the governor and the other chamber of the legislature. It has also led to non-representation of the many constituents whose representatives are unable to express views and advance legislation on issues that are disfavored by the leadership. The lack of transparency in the Massachusetts House is less a cause of dysfunction than a symptom. Finally, weak professionalism -- poor pay and training for staff, an inadequate legislator-to-staff ratio, and the lack of a non-partisan, independent, professional research bureau -- are aggravating factors of the dysfunction, both symptom and cause. The result is inaction on many issues that enjoy wide popular support, excessive use of ballot initiatives to effect complex policy changes, and poorly drafted legislation.

Given the preliminary nature of our review, and our limited resources, this is by no means an exhaustive analysis of the Massachusetts State Legislature. It gives little attention to the history of the legislature and how it evolved. The state Senate was given short shrift, because, by most accounts, it is far less dysfunctional than the House, at least in recent years, and is less of an outlier in comparison to its sister bodies. There are more Senate aides, there is less concentration of power in the Senate President than in the Speaker of the House, and the Senate in 2018 adopted more transparent rules and practices, including making Senate committee votes public.

Due to lack of capacity, we did not pursue research into the effects of the Speaker's PAC or the lack of an independent redistricting commission. Indications are that both powerfully reinforce the Speaker's power over rank-and-file legislators. We also did not exhaustively examine the lack of progress made in achieving diversity and the ongoing problem of sexual harassment. A

deeper and more thorough review of these subjects, we submit, is warranted and should be undertaken.

In comparing the Massachusetts legislature to those in states that were chosen for their similarity in political climate and structure, we found that the Massachusetts House is an outlier in some respects, most notably in its lack of transparency and lack of professionalism. While centralization of power in the Speaker is not unique to our state (although the Speaker's control over legislators' pay and staff suggests it may be greater here than elsewhere), Massachusetts is rated very poorly nationwide on indicators of transparency and professionalism. It is nearly unique among its comparison cohort in its lack of an independent research bureau. Compounding the problem, Massachusetts has a low staff-to-legislator ratio. Both features reinforce the power of the Speaker and disempower rank-and-file legislators from doing the job they were elected to perform.

## **I. Disempowerment of Massachusetts Legislators**

### **A. An Analysis of Formal Power in the Legislative Process**

One of the principal findings of our research is that most members of the Massachusetts House of Representatives have little formal power to participate meaningfully in the legislative process. This finding is based on an analysis of the rules and practices that govern the legislative process in the House as well as several key features of institutional power and control that undergird it.

By "formal power" we mean power that 1) members have an equal right to exercise by virtue of their position as state representative; 2) members can reliably exercise at established times, in established settings, according to established and well-understood procedures; and 3) is not contingent on the discretion of others.

By "participate meaningfully" we mean participation that has real potential to influence legislative outcomes. Many factors determine whether a legislator's participation will in fact influence outcomes, including their knowledge, skills and personality, the openness of colleagues to their ideas, and other factors outside their control. However, if members cannot put forward their ideas or can only do so when the outcome is already determined, their participation is not meaningful.

Our finding is that the formal power of most members of the Massachusetts House to participate meaningfully in the legislative process is less than that of their counterparts in peer legislatures. It is also less than that of their counterparts in local legislative bodies in Massachusetts.

In finding that House members have little formal power to participate meaningfully, we do not mean they have no ability to influence legislative outcomes. They can and do seek to influence outcomes through ad hoc informal means. In contrast to formal power, these ad hoc informal means are not available by right to all members. Nor are they found in any written rules or other



document setting forth the time, place and manner in which they can be used. Rather they are discretionary and contingent. Whether they are available to a particular member depends on the discretion of others (specifically, legislative leadership) and whether members can exercise them meaningfully (that is, in a way that influences outcomes) depends on their satisfying contingencies set by others (again, leadership).

The limited formal power of most members of the Massachusetts House to participate meaningfully in the legislative process has many negative consequences:

- 1) **It undermines equal representation.** If members do not have formal power to participate meaningfully in the legislative process, their constituents cannot be sure they will be fully and effectively represented. This structural inequality is contrary to basic democratic principles and undercuts efforts to improve representation by expanding voting rights and promoting fair redistricting.
- 2) **It makes it more difficult to balance the interests affected by legislation.** Formal power to participate increases the visibility of the different interests affected by legislation. By contrast, in a system of discretionary and contingent participation, it is difficult to know if all interests have been heard and accounted for. The ability and responsibility to ensure they have been fall to a few members of leadership and places an enormous premium on their skill, fairness, and integrity.
- 3) **It favors powerful, connected interests.** When the legislative process devalues broad, open participation and places more reliance on closed-door, discretionary consultation and deliberation, it advantages those with power and connections.
- 4) **It contributes to lack of transparency.** A legislative process that relies on closed-door, discretionary consultation and deliberation is hostile to transparency, which reduces the power and flexibility of those who control it. Members who have little formal power of participation may also prefer a nontransparent legislative process, as it serves to shield from voters' view the relative powerlessness of their representatives and the compromises they make to preserve their informal access to those in control.
- 5) **It reduces legislative capacity and output.** A legislative process that relies on the meaningful participation of a small number of members and excludes the majority has less capacity to produce legislation. The resulting bottleneck means legislation that is not deemed essential by those in control, fails to get their limited time and attention, or is associated with members who do not meet the contingencies set for ad hoc informal participation does not advance irrespective of its merits or readiness.
- 6) **It impacts the quality of legislation.** The relatively small number of hands through which legislation passes during its development and the aversion to opening it up to careful review by

members, professional analysts, outside experts, and the general public prior to passage increase the chances it will suffer from quality issues.

**7) It enhances the House's power in interactions with the Senate and the Governor.** Limiting the formal power of House members reduces their opportunities to develop strong, visible positions on legislation that differ from those of leadership. The resulting ability of leadership to deliver a "unified" House position enhances its negotiating power vis-à-vis the Senate and the Governor.

**8) It reduces the House's responsiveness to pressures for change.** The deference House members must show to leadership to participate meaningfully in the legislative process also limits their ability to shape the makeup of that leadership. Leadership transitions have become top-down, scripted hand-offs of power, which reduces their responsiveness to changes in the makeup of the body and in the political outlook of the state as a whole.

House members have limited formal power to participate meaningfully in joint legislative committees, which are responsible for the initial review of most bills. Other than when they convene for public hearings, joint committees do not meet to work on legislation. Hearings are not run in a way that facilitates or incentivizes member participation. They are frequently held at times that conflict with House sessions and other committee hearings. It is indicative of low expectations for member participation that there is no quorum requirement for hearings and no record of which committee members attend.

There are no markups or other regular, open procedures for committee members to propose changes to bills. Joint committees no longer hold executive sessions at which members meet in person to discuss and redraft bills.

Members often have little time to review bills prior to a committee vote -- often less than a day. Redrafted bills are commonly distributed to members for a vote without a redlined version or other clear explanation of the changes.

In addition to having little time and information before taking a vote, members are devalued and disincentivized by the voting procedures of joint committees. With the suspension of executive sessions, there is no mechanism for committee members to seek a roll call vote. Most committees now routinely conduct electronic polls on bills, but there is no requirement that a majority (or other quorum) of committee members participate in a poll in order for it to be valid.

The lack of transparency around voting is a further factor that devalues and disincentivizes member participation. The only votes of joint committees that must be made public are roll call votes at executive session. Since executive sessions are no longer held, this requirement has no effect. In most instances, there is no easily accessible record of members' votes in joint committees, which reduces their incentive to participate.

As limited as it is in the joint committees, House members' formal power to participate is even weaker at the next stage of the legislative process. Bills reported favorably to the House from a joint committee are subject to further review by House committees, most notably the House Committee on Ways and Means and the House Committee on Steering, Policy and Scheduling. A report from one and sometimes both of these committees is necessary before a bill can advance to a vote in the full House.

House members have no formal power to participate meaningfully in the work of these two committees. They do not hold public hearings, convene their members to discuss legislation, or provide any formal channels for input from committee members, other legislators, or the public. Votes of the House Ways and Means Committee, which has thirty-five members, often happen on very short notice – sometimes less than an hour after a redrafted bill becomes available – and the results are not made public. In the case of the House Steering Committee, its eleven members do not vote on committee reports at all. The decision of the chair is deemed to be that of the committee. The lack of transparency around the votes of these committees both reduces the incentive of members to participate and shields from public view the reality of limited member participation.

While joint committees, unless granted an extension, must report all bills by the first Wednesday of the second February of the two-year legislative session, these two House committees face no comparable pressure to act. The House Ways and Means Committee typically takes no action on hundreds of bills referred to it over the course of a legislative session. Technically, House members have power to force discharge of a bill from House Ways and Means, but the barrier is high: it requires the filing of a petition signed by a majority of the House (normally eighty-one members). The House Steering Committee is technically subject to a discharge rule whereby any bills it fails to report within thirty days are deemed to advance. In most instances, however, such bills are not advanced without the approval of the House Speaker regardless of how long they have been in the committee.

When bills do emerge from these House committees and move to the House floor, all House members have the formal power to seek to amend them and ultimately to vote for or against them. However, they face challenges in exercising this power meaningfully. In part, this is due to pressure to defer to the lengthy closed-door consultations directed by leadership that have resulted in the bill presented to them for passage. But it is also due to the weakness of members' formal power both at this stage and those that preceded it. Bills can move to the House on short notice, giving members little time to read and understand them in detail. They know little about who participated in the development of the legislation. They receive no analysis or explanation of the bill from legislative professionals separate from the committee reporting it. They must rely heavily on bill summaries produced by that committee, which do not track the changes made to the bill over time or fully convey the arguments presented for and against it.

## **B. Power in the State House Is Excessively Centralized**

Legislators' lack of formal power at all stages of the legislative process is concomitant with, and likely a direct result of, over-centralization of power in the leadership. In recent years, this is particularly — although not exclusively — true with respect to the Speaker of the House. The position is intended to ensure order in the legislative process. But far beyond ensuring the orderly flow of business, the Speaker, who is not subject to term limits, enjoys virtually unlimited power over legislation. He, for there has never been a female Speaker, serves at his own pleasure, unless indicted, and hand-picks his successor. His control extends deep into many processes, from the mundane (office assignments and committee appointments) to the important (the framing of bills and deciding which bills will move forward).

The Speaker's deep-seated control over committee appointments means that the Speaker decides who has what position on what committee. The Speaker effectively controls which bills advance and which are buried in "study." In addition to controlling who is at, and what is on, the table for discussion, the Speaker also has the power to grant — or withdraw — committee leadership positions, which can boost legislators' pay by up to 50%, a powerful tool for control. Beyond committee leadership, House members in party leadership positions such as the Speaker Pro Tempore or the floor leader can earn an additional \$60,000 and \$50,000 respectively. The Speaker himself receives an additional \$80,000.

Speakers have not hesitated to use this power to reward and to punish. For example, in 2017, when Representative Russell Holmes publicly criticized the Speaker, he was immediately removed from his position as the Vice Chair of the Joint Committee on Housing.<sup>4</sup>

The Speaker is also in charge of determining building/office assignments and budgetary allotments for legislative aides. This power, too, has been deployed as a weapon to express displeasure. Decades ago, a young Ed Markey, then a representative from Malden, was both stripped of his position on the Judiciary Committee and evicted from his office for backing a court reform bill opposed by Speaker Thomas McGee. (Markey later famously used the incident in his first campaign for Congress, restaging the eviction by moving his desk into a hallway and intoning, "The bosses may tell me where to sit. No one tells me where to stand.")

Since speaking out means restricted ability to do their jobs and to support staff, the vast majority of legislators in the State House go along with the coercive system. Indeed, in 2021 (as of July 15), an average of 92% of representatives, including Republicans, voted in lockstep with the

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<sup>4</sup> Boghosian, A., *Lawmaker Says He Was Demoted after Commenting on Speaker's Succession*, The Boston Globe (July 17, 2017), available [here](#).

Speaker.<sup>5</sup> The resistance consists, typically, of a few on the progressive left and those on the right.

### ***The Power of the Speaker's Vote***

*As reported in Boston Magazine,<sup>6</sup> an incident on January 30, 2019, exemplifies the Speaker's hegemony over rank-and-file legislators. After a long day filled with the House rules debate, representatives were given three minutes to vote on a new amendment. The light next to Speaker Robert DeLeo's name on the large House scoreboard illuminated red to indicate a nay vote. Moments later, sixty-three Democratic members' names were also illuminated red. Suddenly, a scuffle erupted: the presiding House Member had made a mistake when counting DeLeo's vote. "It's a yes? Switch 'em, yes, yes, yes, yes," the House Member said into a live mic. Almost instantly DeLeo's light changed from red to green, and with it the lights of the 63 other members who had originally followed his lead in voting nay.*

### **C. Professionalism**

The terms "professionalism" and "capacity" refer to the resources and capabilities the legislature has at its disposal to enable it to evaluate policy, estimate the impacts of proposed legislation, and to draft and enact competent, effective legislation in a timely, efficient manner.

The Massachusetts legislature lacks professionalism and capacity, and lags far behind other states in this respect. First, the ability of legislators to dedicate their time and effort to legislative work is affected by their compensation. Second, legislators are not provided sufficient, well-paid and well-trained staff to assist them in legislating. Third, the lack of a formal research bureau hinders legislators from understanding policy issues independent of the information provided by lobbyists. Fourth, legislators are afforded almost no time to research the ramifications of a complex piece of legislation.

#### **1. Legislators' Salary and Stipends**

The 2021 base salary for legislators is \$70,536, significantly below the statewide median household income of \$81,215. Due to a constitutional limitation, this gap cannot be closed. In 1998, Massachusetts voters approved an amendment to the state's constitution (Article 118) that set legislators' base salary at the 1996 level and provided that, beginning in 2001, increases would be at the same rate as increases in the statewide median household income. In the House, members can receive additional pay beyond the base salary by serving in House or committee

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<sup>5</sup> General Court, 192nd House Journals (calculations from available roll calls as of July 15, 2021). Because getting a roll call implies dissent, the true average number of Representatives who follow the Speaker is undoubtedly higher, undercounted due to the lack of transparency.

<sup>6</sup> Bernstein, D., *Robert DeLeo Is King of the Hill*, Boston Magazine (Mar. 2020), available [here](#).

leadership positions. Members gain these positions and the stipends that come with them by appointment. The Speaker holds sole appointment power.

Prior to 1977, only nine members of the House received stipends in addition to base salary: the Speaker, the chair and vice-chair of the Ways and Means Committee, the Majority Leader and the Assistant Majority Leader, and the chairs of four major committees. In 1977, chairs of all the other House committees and joint committees began to receive stipends, bringing the total number to twenty-nine. In 1979, the size of the House was reduced from 240 members to 160, but the number of positions carrying a stipend stayed fairly constant. After 1995, it grew significantly: by 2015, fifty-five members of the majority party were entitled to stipends; by 2017, the number was eighty-three, and in 2021, ninety-three.

The size of the stipends also increased significantly. Prior to 2017, stipends ranged from a minimum of \$7,500 for committee chairs to a maximum of \$25,000 for the chair of the House Ways and Means Committee. Today, those same positions carry stipends of \$17,043 and \$73,851. Overall, the stipend system now consists of eight levels:

**Table 1: Stipended Positions in the Massachusetts House**

| Position                                   | Number of positions | Stipend  | Percentage of base pay |
|--|---------------------|----------|------------------------|
| Committee vice-chairs                      | 26                  | \$5,908  | 8%                     |
| Chairs, vice chairs, assistant vice chairs | 41                  | \$17,043 | 24%                    |
| Division leaders, chairs, vice chairs      | 19                  | \$34,085 | 48%                    |
| Assistant Majority Leaders                 | 3                   | \$39,766 | 56%                    |
| Speaker Pro Tempore                        | 1                   | \$56,808 | 80%                    |
| Majority Leader                            | 1                   | \$68,170 | 97%                    |
| House Ways and Means Chair                 | 1                   | \$73,851 | 105%                   |
| Speaker                                    | 1                   | \$90,893 | 129%                   |

As discussed below in the comparative analysis, it is not unusual for a speaker to have the power to appoint members to committees and to a leadership team. What is unusual about the Speaker's power in Massachusetts is the magnitude of the stipends associated with discretionary appointments relative to base pay. The ability of members to earn enough to permit them to devote themselves to legislative work, as opposed to other paid work, is contingent on the Speaker's discretion. The hierarchical structure of the stipend system adds further incentive for members to continuously meet those contingencies to maximize their compensation, and pension, over the long term.

## **2. Staff Allocation, Pay, and Training**

The legislator-to-staff ratio in Massachusetts for 2020 was 200:759,<sup>7</sup> roughly four legislative staffers per legislator. These legislative staff members are not evenly distributed; while some members of the House have only one staffer, many in the Senate have six. These staffers are not all working to understand policy, write bills and amendments, and decipher the technical jargon of bills written in other committees. Many are working on constituent services and communications. Many are managing the member's calendar and writing speeches. In the House, the Speaker decides how many staffers each legislator is assigned. There are no guidelines on how members may seek additional staff or what factors the Speaker should weigh in deciding whether to approve a staffing request. When asked why there is such a disparity in staffing levels among members of the House, one legislative staffer commented, "If you are a new representative, or a representative the Speaker doesn't like, you are probably the only staffer. So you do everything."

Staff are underpaid. According to a 2020 pay equity survey, fifty percent of legislative staffers reported being unable to support themselves financially. Seventeen percent reported being food insecure. Many reported working sixty-hour weeks for an annual salary of \$30,000 — less than half the base salary of legislators.<sup>8</sup> Legislative staffers are also subject to the last-minute crush of work prior to a vote, trying to understand pending legislation in the brief time allotted for review.

Staffers report that formal training is almost non-existent and of low quality. Staffers learn on the job by asking questions from colleagues. Many are resourceful and inquisitive and reportedly do their jobs well, but that is a matter of personal commitment rather than institutional training and professional development.

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<sup>7</sup> National Conference of State Legislatures, *2021 Legislatures at a Glance*, available at [ncsl.org](https://www.ncsl.org).

<sup>8</sup> Schoenberg, S., *Legislative Staff Complain of Low Pay, Long Hours*, *CommonWealth Magazine* (May 25, 2021), available [here](#).

### 3. Abolition of the Legislative Research Bureau

Historically, legislators had little or no personal staff, but they had access to legislative research and drafting capacity outside their own staff. The Legislative Research Bureau was established in 1954 to “assist the members . . . in all matters requiring statistical research or fact-finding in connection with proposed legislation or other matters.”<sup>9</sup> The Bureau was overseen by a bipartisan council of senators and representatives and had a professional staff of more than ten. It was eliminated via budget cuts in the early 1990s. The House established a second entity, the Legislative Service Bureau, in the early 1970s. In the early 2000s, its budget too was eliminated. Nothing has taken the place of these bureaus to support legislative capacity. Legislators can seek research assistance from the staff of House or joint committees, but it is up to the committee chair whether to make staff available.

Independent research is discouraged, not only by the lack of staff and the lack of an independent research bureau, but by the lack of adequate time to study bills prior to votes. As noted earlier, committee votes frequently take place with twenty-four hours’ notice or less. Complex bills that undergo extensive revision in the Ways and Means Committee likewise frequently come to the floor with little time for members to review them.

Lack of professionalism leads to many poor outcomes, notably the often poor quality of the bills that are passed. A great many cases in the appellate courts arise out of poor drafting of legislation. Prosecutors struggle to enforce criminal statutes that cannot be reasonably parsed or cannot mean what they say. As one prosecutor stated, “Even when they pass laws, have you ever read them??? They clearly haven’t. Never seen a lawmaking body with less institutional interest in legislating.”

In the failure of the legislature to record many critical aspects of its proceedings, Michael Segal saw a business opportunity and launched InstaTrac. Here’s the blurb from Instatrak.com: *For twenty five years, InstaTrac customers have had a competitive advantage when it comes to influencing the Massachusetts State House. We offer MassTrac, our flagship service, and other tools necessary to add context and clarity on the legislative process.* In the absence of a nonpartisan legislative research, analysis and budget office, and for a fee, lobbyists get access to information denied to legislators and the public. As a direct result, members and their constituents are at a competitive disadvantage.

### 4. Legislative Outcomes in the State House

Around 7,000 bills are filed at the beginning of each two-year session of the Massachusetts legislature; in 2021, 7,141 bills were filed. Approximately 500 to 600 bills are passed into law

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<sup>9</sup> Acts of 1954, c. 607, § 2, codified at M.G.L. c. 3, § 59. The statute was repealed in 2012. Acts of 2012, c. 165, § 7.



each session, but of that number, only a small minority are substantive and statewide in impact. See Table 2. The rest affect only specified local jurisdictions or individuals.

A similar number of “outside sections” — riders on a must-pass bill, usually the budget — are passed. Some of these outside sections are bills that did not or could not get passed on their own. Because of the complexity of the annual budget bill, its focus on appropriations, and the tight time window for passing it, bills and other provisions tacked on as outside sections receive far less scrutiny than they otherwise might. They bypass the analysis, recommendations, and modifications of well-functioning legislative committees with expertise in the pertinent area of policy. While public hearings may be held on the budget bill as a whole, there are no public hearings focused on specific outside sections. Votes on individual outside sections do not occur either in the Ways and Means Committees or on the floor of the House or the Senate unless a legislator proposes to amend, delete, or add an outside section as an amendment to the budget bill. Because the leadership — the Senate President, House Speaker, and the chairs of the Ways and Means Committees — tightly control the budget process, there are limited opportunities to modify or block outside sections in any event. In short, the use of outside sections to pass important, controversial programs or policy, such as several recent tax breaks for businesses, stymies the ability of legislators, advocates, and the public to assess their impact and to weigh in.

Examination of bills passed in the 1990s reveals that approximately three-quarters of significant statewide policy enactments were accomplished via outside sections. While the total number of bills that are passed has declined somewhat in recent sessions, the use of outside sections remains very high, as Table 2 indicates.

**Table 2: Bills Passed by the Massachusetts Legislature<sup>10</sup>**

| <b>Year</b>          | <b>Outside Sections</b> | <b>Stand-Alone Bills Enacted</b> | <b>Appropriations/ Financial Bills</b> | <b>Significant Non-Financial Bills</b> | <b>Personnel</b> | <b>Local Bills, Home Rule Petitions</b> | <b>Misc.</b> |
|----------------------|-------------------------|----------------------------------|--|--|------------------|---|--------------|
| 2017                 | 236                     | 176                              | 9                                      | 14                                     | 46               | 92                                      | 15           |
| 2018                 | 318                     | 450                              | 17                                     | 61                                     | 74               | 272                                     | 26           |
| <b>Session Total</b> | <b>554</b>              | <b>626</b>                       | <b>26</b>                              | <b>75</b>                              | <b>120</b>       | <b>364</b>                              | <b>41</b>    |
| 2019                 | 261                     | 153                              | 9                                      | 17                                     | 47               | 74                                      | 6            |
| 2020                 | 282                     | 386                              | 12                                     | 54                                     | 42               | 258                                     | 20           |
| <b>Session Total</b> | <b>543</b>              | <b>539</b>                       | <b>21</b>                              | <b>71</b>                              | <b>89</b>        | <b>332</b>                              | <b>26</b>    |

Possibly because of the use of outside sections to pass important legislation, the legislature is routinely late in passing the state budget. Massachusetts is often one of the last states in the nation to accomplish this important annual task. The annual budget has not been passed by the July 1 start of the fiscal year for eleven years, and has only been passed on time five times in the last twenty-three years.

In 2020, according to the National Conference of State Legislatures, Massachusetts was one of only eight states that had not passed a budget by the start of the fiscal year. Ultimately, it was the last state in the nation to pass its budget, more than five months after the start of the fiscal year.

The delay does not ensure a more orderly and transparent process; the budget conference committee, composed of only three representatives and three senators, often makes last-minute changes that are opaque to most legislators and the public.

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<sup>10</sup> Notes:

- 1) Categorization is based on the title of the bill, which is definitive in most cases.
- 2) Number of outside sections includes all sections other than the main appropriations or bonding sections of appropriation/financial bills. Some outside sections are substantive legislation, while many are small changes or set the effective dates for other outside sections.
- 3) Not all outside sections are significant legislation; many effect minor changes or relate to other outside sections, for example, establishing the effective date.
- 4) “Personnel” refers to bills that relate to individual public employees, for example, bills related to a sick-leave bank.

### ***The Upskirting Statute***

*Normally, the legislature does not move quickly, but there are exceptions. When it legislates in reactive mode, the results are messy and ineffectual. Take the upskirting statute,<sup>11</sup> which was enacted to broaden the reach of the state's Peeping Tom statute. Whereas Peeping Tom statutes outlaw voyeurism of naked or partially nude bodies in private places, upskirting statutes typically outlaw voyeurism of clothed people in public spaces.*

*In August 2011, a man used his cellphone to take photos up the skirt of a female passenger seated across from him on an MBTA trolley. On March 5, 2014, the Supreme Judicial Court threw the case out because the Massachusetts Peeping Tom statute did not extend to surreptitiously video-recording the victim's clothed genital area while she was in a public place. In the wake of the ensuing uproar, two days later the legislature passed an amendment to "strengthen forthwith the laws relative to the expectation of privacy of one's person." The emergency legislation took effect immediately.*

*Although the legislature's intent to erase the distinctions between photographing clothed and unclothed genitalia in public and private places was discernible, the amendments were so poorly drafted that they resisted logical interpretation, particularly in the context of the existing Peeping Tom language which was not changed in any respect. The result was a hash in which separate provisions of the statute seemed to apply to the same conduct, and the new provision was mired in unnecessary verbiage about photographing "under or around" clothing which rendered the statute difficult to understand or enforce .*

*A year later, in 2015, Sam Wassilie was charged with violating the new upskirting statute when he propped his phone in a public restroom and videotaped multiple adults and children using the toilet. The trial judge could make no sense of the statute, writing "The insertion of the upskirting language ('under or around the child's clothing to view or attempt to view') makes any reasonable interpretation problematic, and therefore, I ignored that language." The trial judge vacated all the verdicts on charges stemming from the videotaping of the child victims on the grounds that the statute was unconstitutionally vague.*

*Many hundreds of hours of attorney and Court time later, and at very substantial public expense, in 2019, the Supreme Judicial Court issued an opinion that construed the statute in such a way as to save some of the charges on the child-related counts, but remanded the case for a new trial because the trial judge did not instruct the jury correctly. In trying to give effect to the legislature's intention without doing violence to its problematic language, the Court could not salvage what is now an incomprehensible system of penalties, in which videotaping a nude or partially nude child is subject to more lenient penalties than videotaping a clothed child. The*

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<sup>11</sup> M.G.L. c. 272, § 105.

*Court expressly left it to the legislature to fix the penalty provisions, correctly noting that it is not the province of the Court to do so. Wassilie was sent back to trial.*

*In the two years since the Supreme Judicial Court decided the Wassilie appeal, the legislature has not revised the statute.*

#### **D. Transparency**

Two nonpartisan nonprofits dedicated to research on the functioning of government, Open States and Public Integrity, each ranked Massachusetts very low relative to the other forty-nine states in the United States on public accessibility and transparency of its state legislature. In 2015, Massachusetts was one of four states to receive an F from Open States,<sup>12</sup> and, in the same year, was ranked 40th in the nation by Public Integrity.<sup>13</sup> It is unlikely Massachusetts would rank higher today because other states have instituted reforms and Massachusetts has not. The two nonpartisan research institutions graded transparency on a variety of scales, including the use of roll call votes, readability/navigability of online data sites, whether there are effective pathways to appeal denial of access to information, and whether there are oversight measures to ensure transparency.

The first issue with transparency is perhaps the most glaring: with no public record of House committee votes, there is no way for voters to hold their legislators accountable. Behind closed doors, legislators vote on bills referred to their respective committees, often silently killing bills they would not have dared vote against in the public glare of the main chamber of the House. Neither the public records law nor the open meeting law applies to the legislature, so representatives are able to vote in complete secrecy. Reportedly, even co-sponsors of bills defect behind the veil of anonymity, allowing them to save face while killing a bill they promised their constituents they would support. Non-public committee votes allow legislators to have it both ways: looking strong and independent to constituents and supporters, while kowtowing to leadership.

#### ***Ducking for Cover: “Inoculator” Amendments***

*Early in Robert DeLeo’s tenure as Speaker, an outside section seeking to reinstate the death penalty in cases where the victim was a police officer was added as an amendment to the budget. The leadership repeatedly postponed consideration of the amendment, in the vain hope that the sponsor would withdraw it. Legislators opposed to the amendment had amassed an overwhelming coalition prepared to vote it down. Even many of those in favor of the death penalty agreed that it was inappropriate to enact such a major policy change via an outside section to the budget. The stage was set for a single speech by the sponsor and then a vote. As*

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<sup>12</sup> Open States, *Open Legislative Data Report Card* (2015), available at [openstates.org](http://openstates.org).

<sup>13</sup> Ford, B., *Massachusetts Gets D+ Grade in 2015 State Integrity Investigation*, Center for Public Integrity (Nov. 2015), available [here](#).

*the amendment was called to the floor, the Speaker walked in and announced that he had a substitute amendment -- an inoculator amendment -- assigning the question to a study committee rather than taking a straight up-or-down vote. The Speaker explained that a few of the members wanted to avoid the vote out of concern for how their constituents might react.*

*In the past decade, the inoculator amendment has gone from being a rare parliamentary move to a commonplace way of avoiding debate and member responsibility on the House floor. Rather than transparently debating and voting on controversial issues, an amendment is filed to refer the issue to a study committee. The inoculator amendment helps account for inaction on many controversial and consequential issues before the House. Essentially, the inoculator amendment protects legislators from their responsibility to exercise the power conferred on them by their constituents, often in the name of shielding them from those constituents and always in the name of avoiding difficult decisions.*

There is also no record of the margin by which a bill passed or failed unless representatives are quick to stand up en masse (sixteen legislators for floor votes, two for committee votes) and demand that the count of votes be made public. This means that bills can be killed by a margin of two or a margin of thirty and the public would not know the difference unless a sufficient number of representatives stand up fast enough to demand a count.<sup>14</sup> Who decides whether they have? The Speaker.

The complicated way bills are maneuvered through the process makes it difficult for the public to follow. Instead of simply voting on each bill as it comes up, bills may be “sent to study” (code word for “killed”<sup>15</sup>), edited with amendments that may undermine the purpose of the bill or tack on unrelated issues, or they may be tossed into the queue to be voted on. In the latter situation, legislators are usually afforded less than twenty-four hours to read and digest the content before having to vote.

The Speaker, and indeed, the legislature as a whole, is impervious to criticism from any quarter. And there has been much criticism. What there has been little of is reform. As one legislative staffer intimated, the lack of transparency is intentional: without accountability, representatives are better able to bow to the whims of the Speaker while appearing responsive to constituents.

Lack of transparency infects other aspects of the legislature. For example, the staffing process is obscured from review. There is no publicly available staff roster showing which members of staff work for which members or committees. Moreover, since the early 2000s, information about the House budget has become increasingly opaque. Whereas earlier budgets had many separate line

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<sup>14</sup> Massachusetts Legislature Laws & Rules

<sup>15</sup> Katzen, B., *Police Reform Bill, Budget, Passed at Statehouse*, Lowell Sun (Dec. 6, 2020), available [here](#).

items for member salaries, staff salaries, and a wide range of House offices and functions, these are now consolidated into a single line item for all House expenses. All of this reinforces the discretion in leadership's hands and means members must pursue ad hoc informal channels, contingent on conditions set by leadership, to strengthen staff capacity.

***Promulgation of the 2021-2022 House Session Rules:  
Even the Vice-Chair of the Committee Does Not Know How the Sausage Is Made***

*After the grassroots organization Act on Mass mobilized its supporters to push for new House rules providing greater transparency and opportunity for public comment on pending legislation, the House Committee on Rules postponed the adoptions of rules from February to July, 2021. In April, the Legislative Reform Working Group inquired of Representatives William Galvin and William "Smitty" Pignatelli, chair and vice-chair, respectively, of the House Rules Committee, about the process and timing and opportunities for public input on the rules under consideration.*

*Representative Galvin never responded. Representative Pignatelli responded, in late May, that he was uninvolved in the work of the committee: "I'm not involved with any of the rules changes at this time. A special rules committee was put in place prior to the House reorganization and my subsequent appointment as Vice Chair of the permanent Rules Committee. I was not a part of this special committee and have had no involvement to date. Like you I await the recommendations of this group." This was the first public disclosure of the existence of a "special committee." No further information about this "special committee" -- who was on it, how it operated, who chaired it -- was forthcoming. A staffer later informed us that there would be no public hearing on the reform efforts. It would, however, be possible to leave a message with thoughts and opinions. In early July, the Rules Committee issued its report, the bulk of which was a call for greater transparency from, and oversight over, the very groups that had led the grassroots effort for greater transparency.*

**E. Diversity**

The membership and leadership of the Massachusetts legislature is overwhelmingly white and male, as it has been from its origins. Currently, only twenty-one (13%) of the one hundred sixty members of the Massachusetts House are persons of color. Of that number, seven are Black; seven are Latino males; and seven are Asian. Fifty members (31%) are women. The membership of the Senate is even less diverse: Only two of forty members (5%) are persons of color and none are Black. Twelve senators (30%) are women. Overall, twenty-three of two hundred (11.5%) members of the legislature are persons of color; only seven (3.5%) are Black.

Fifteen of the sixteen members (94%) of the House leadership are white; six (37%) are women. Three of the forty-one Democratic House members (7%) who serve as chair of House or joint committees are persons of color: one Asian, one Black, and one Latino, all male. All thirteen members of the Senate leadership are white; only four (31%) are women. The two

Democratic senators who are persons of color (a Latino man and Latina woman) hold three of the thirty-one chairs of joint committees and none of the eleven Senate committee chairs.

To distill one key statistic: *African-American members hold only a single committee chair position in the Massachusetts legislature.*

Progress towards a more representative body has been achingly slow. The legislature's diversity did not improve much from 2015 to 2020, when the National Council of State Legislatures ran the numbers prior to the 2020 elections. Whites declined from 92% to 87% and women increased from 26% to 29%. Latinos increased from 3% to 7%, but Blacks declined from 3% to 2%. One commentator explained that, so long as there is little party competition, there will be little incentive to bring people of color and women into the mix. Without pressure, the white male network will continue to dominate.

Professor Peter Levine of Tufts links the lack of capacity to the legislature's failure to make progress in reflecting the diversity of the citizens of Massachusetts. Prospective minority candidates may be discouraged by the prospect of working with few resources and no real power to effect change. Prospective minority staffers, less likely to have access to other resources, may not be able to afford to work for the legislature. Representatives who feel stymied by leadership and by the lack of resources and access to power, and who refuse to be coopted, are likely to leave for greener pastures.

## **II. Comparative Analysis of Massachusetts State Legislature**

Each legislature is unique. Despite overall trends in practices and procedures, it is simply not possible to prescribe "best practices" that are universally applicable. It is also nigh impossible to have complete assurance that the data on any given parameter is comparable. With some trepidation, therefore, we embarked on trying to identify areas where the Massachusetts legislature deviates substantially from similar bodies in similar states.

The following criteria were used to guide the selection of comparable states for our analysis:

- Size of the legislature
- State House capacity, i.e., part-time, hybrid, and full-time
- Unbalanced party division in the state and in the legislature
- Presence of a large urban population center as well as rural areas
- State characteristics such as population, demographics, budget, etc.

The National Conference of State Legislatures classifies legislatures into three categories: part-time, hybrid, and full-time.<sup>16</sup> These terms are used to describe how much time legislators are expected to work and how much compensation they receive in return. Full-time legislatures, as in California, New York, and Pennsylvania, are those in which legislators are well-compensated, supplied with ample staff, and in exchange are expected to work virtually full time. Hybrid legislatures fall in the middle of the spectrum between full-time and part-time, with medium-range compensation and a time commitment of about two-thirds a full-time job. Many members of a hybrid legislature will continue to carry independent employment or career on the side. Florida, New Jersey, Maryland, and Minnesota have hybrid legislatures. The Massachusetts legislature, like those of Ohio, Wisconsin, and Illinois, lies between a hybrid and a full-time legislature.

States used for comparison also fall in the range of full-time to hybrid. Three, Illinois, Ohio, and Wisconsin, are, like Massachusetts, in-between. California, Michigan, New York, and Pennsylvania, all full-time legislatures, were included for a variety of reasons including Democratic Party dominance, presence of one or more large cities, and because of reform efforts. New Jersey, a hybrid legislature, was included because of its proximity and political similarity.

The following subsections will explore how Massachusetts compares to these other states on the issues of centralization and dysfunction that were identified in the first section.

#### **A. Centralization of Power**

Centralization of power in the Speaker is a common feature of all eight legislatures. Speakers in each legislature appoint committee members and chairs. Illinois Policy, a group working to reform this practice, notes:

*In 13 state legislative chambers, committee chairs are appointed by a designated committee, often known as a “committee on committees.” The speaker may appoint the members of a “committee on committees,” but that committee votes to appoint the leadership of all the other committees in the chamber, providing a check on the speaker’s power.*

*In the Arkansas, South Carolina, and Virginia senates, committee chair positions are based on seniority: The committee members who have served the longest become the leaders of the committees.*

*In other states, the process varies. For example, in the South Carolina House, although committee members are appointed by the speaker, committee chairs are elected by the*

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<sup>16</sup> National Conference of State Legislatures, *Full- and Part-Time Legislatures* (June 14, 2017), available at [nsl.org](http://nsl.org).



*members of the committees themselves. And while Alaska and Hawaii allow the leadership to appoint the chairs, the appointments must be approved by a majority vote of the chamber. In Nebraska, chairs are elected by secret ballot on the floor of the legislature.*<sup>17</sup>

In Massachusetts, in contrast, the Speaker of the House nominates the chair of each committee, as well as vice-chairs, and assistant vice-chairs, subject to the pro forma approval of the majority party caucus.<sup>18</sup> Massachusetts parallels states such as Illinois, Ohio, and Michigan, where committee chairs receive extra stipends. Illinois Policy infers from 2016 NCSL data that such compensation is relatively rare across the rest of the United States as “more than two-thirds of the committee chairs in the nation’s 99 state legislative chambers receive no compensation for their committee leadership positions.”<sup>19</sup> As one would expect, stipends for committee leadership are more common in full-time or hybrid legislatures. Lastly, in almost every state studied, the Speaker exercised a large degree of control over the House budget. Table 2 summarizes Speaker-controlled benefits in comparable states.

**Table 3: Speaker-Controlled Benefits by State**

| <b>State</b> | <b>Extra Payment for Committee?</b> | <b>Official In Charge of Committee/ Leadership Appointment</b> | <b>Speaker In Charge of Finances?</b> |
|--------------|-------------------------------------|--|---------------------------------------|
| CA           | No                                  | Speaker  | No                                    |
| IL           | Yes                                 | Speaker  | No                                    |
| MI           | Yes                                 | Speaker  | Yes                                   |
| NJ           | No                                  | Speaker  | Yes                                   |
| NY           | No                                  | Speaker  | Yes                                   |
| OH           | Yes                                 | Speaker  | No                                    |
| PA           | No                                  | Speaker  | No                                    |
| WI           | No                                  | Speaker  | No                                    |

<sup>17</sup> Tabor, J. & Dabrowski, T., *House Rules: How Illinois Gives Its House Speaker Power to Manipulate and Control the Legislative Process*, Illinois Policy (Dec. 4, 2020), available [here](#).

<sup>18</sup> See Massachusetts House Rule 18. House Rule 18B provides that "if a motion to ratify the appointments by acclamation is made and seconded, no written ballot shall be required."

<sup>19</sup> Tabor & Dabrowski, *supra*.

Source: State websites on Rules and compensation.

## **B. Professionalism**

Massachusetts is also an outlier in its lack of professionalism as measured by the staffer-to-legislator ratio and the lack of an independent research bureau to support legislators in making informed decisions. It is also on the lower end of the spectrum with respect to base legislator pay.

Most strikingly, Massachusetts is the only state, not just out of its cohort, but out of ALL fifty states (as well as the District of Columbia) that does not have any legislative services agency.<sup>20</sup> Some states have separate agencies for fiscal analysis and for general research. New York, the only other state without a research agency, has a legislative bill-drafting commission. Because there is no professional research bureau in Massachusetts, and because legislative aides are in short supply, are overworked, poorly trained, and underpaid, legislators lack resources to research and make judgments about the bills before them, leaving them reliant on what insights and information the Speaker's team gives them. This seriously reduces legislator independence.

The Speaker's power of appointment to committee and leadership positions is not unique. Most legislative bodies give the presiding officer the power to appoint members to a leadership team and committees. Some states, however, have alternatives to Speaker appointment, such as seniority or election, and some require that Speaker appointment be confirmed by a vote of the members. Massachusetts legislator baseline compensation is lower than most of the cohort group, making the financial rewards of falling in line with leadership in order to receive stipends for committee leadership positions more attractive. What is striking about the Massachusetts House is the close and powerful connection between the Speaker's power of appointment and the total compensation members can receive. The House is unusual in the extensiveness of its stipend system and the magnitude of the benefits associated with it. This feature, too, reinforces the Speaker's control. See Figure 1.

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<sup>20</sup> Ballotpedia website, available [here](#). The form such agencies take varies from state to state.

**Figure 1: Legislator Base Pay by State in 2021<sup>21</sup>**

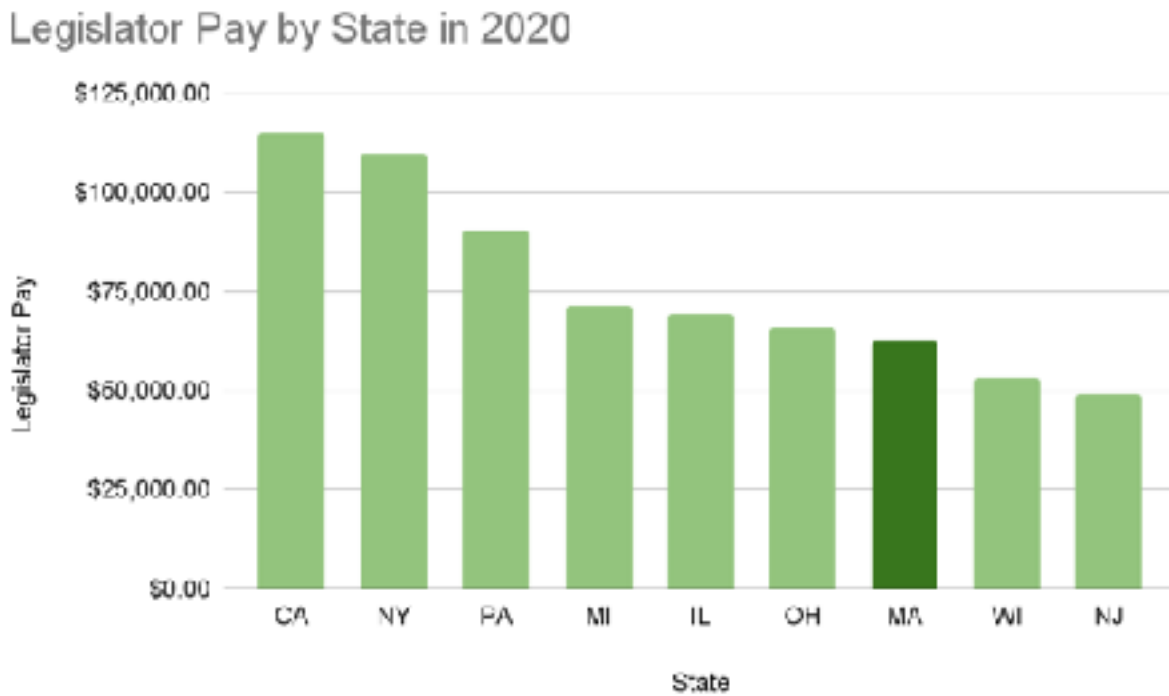


Chart Source: National Conference of State Legislatures. *2020 Legislator Compensation*.

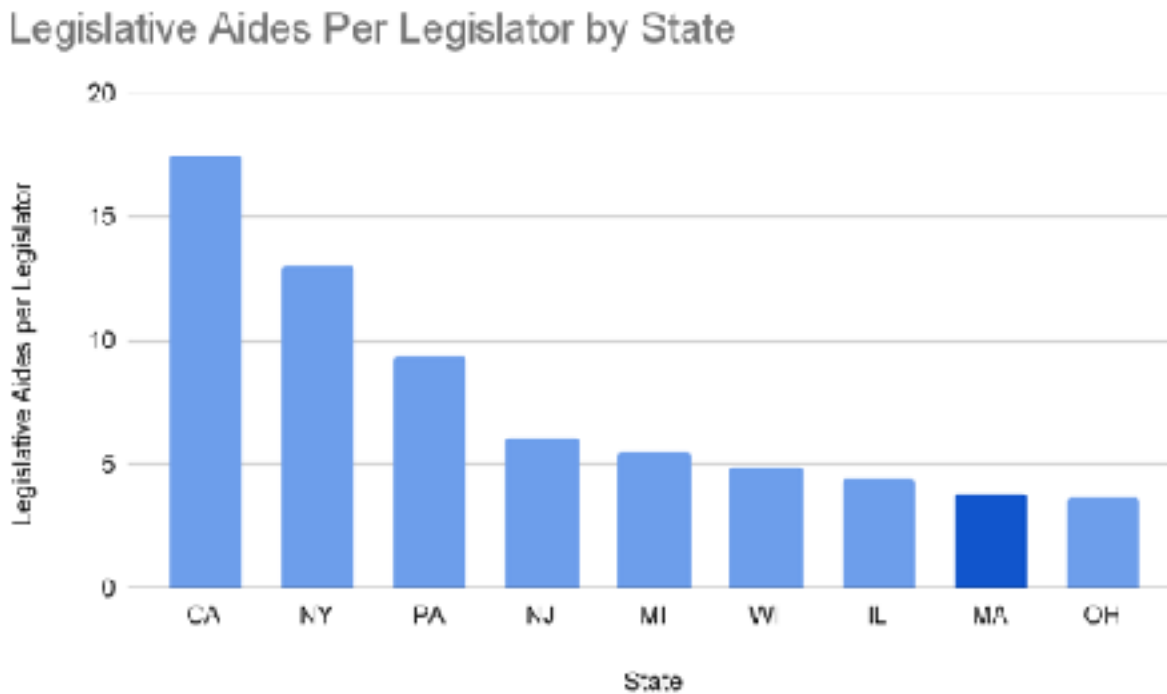
In 2019, the \$66,257 base salary of House members was nearly 20% (\$14,958) below the statewide median household income (\$81,215). In 2020, the base pay went up to \$70,536, still substantially below the statewide median household income and below most of its cohort group. The take-away here is not that Massachusetts legislators are underpaid. Indeed, it can be argued that they are overpaid given their largely ceremonial role in the House. What is important is how low base pay feeds the power of the Speaker and reduces diversity as discussed earlier.

Massachusetts also ranks very low on another indicator of professionalism: staffing levels. Figure 2 reflects the number of legislative aides per legislator of each state in the cohort group. The Massachusetts data includes both House and Senate staffing levels.

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<sup>21</sup> Values for legislator pay, excluding additional stipends, are as follows: CA (\$114,877), NY (\$110,000), PA (\$90,335), MI (\$71,685), IL (\$69,464), OH (\$65,528), MA (\$62,500), WI (\$52,999), NJ (\$49,000).

**Figure 2: Legislative Aides per Legislator by State**



Source: National Conference of State Legislatures. *2021 Legislatures at a Glance*.

### C. Transparency

When it comes to transparency, there is no doubt that the Massachusetts House is in a distinct minority, having failed to enact reforms that many of its legislative peers, including the Massachusetts Senate, have already adopted. Seven out of the eight states studied make committee voting records public. So does the Massachusetts Senate. In contrast, the Massachusetts House voted in July 2021 to reject calls for greater transparency in committee votes, deciding to make public only negative votes. The House Rules Committee expressed grave concern about the transparency of grassroots groups calling for reform.<sup>22</sup>

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<sup>22</sup> H. Report 3928 (July 1, 2021), entitled *Report of the Committee on Rules (under the provisions of House Order No. 60) of its investigation and study of the existing House standing and emergency rules to ensure efficiency and transparency in the legislative process and in the administration of the House of Representatives, 9, et seq.*

**Table 4: Public Availability of Committee Voting Records**

| <b>State</b> | <b>Are Committee Votes Public?</b> |
|--------------|------------------------------------|
| CA           | Yes                                |
| IL           | House Yes, Senate No               |
| MI           | Yes                                |
| NJ           | Yes                                |
| NY           | Yes                                |
| OH           | Yes                                |
| PA           | Yes                                |
| WI           | No                                 |

Source: State Voting Records

The Massachusetts House is clearly an outlier: making a public record of committee and floor votes is something most state legislatures manage to do. Each of the seven comparable states with public votes has a website where such information is readily available, readable, and searchable by representative and by bill.

#### **D. Diversity**

According to the National Conference for State Legislatures, in 2015, Massachusetts ranked in the bottom quartile on diversity.<sup>23</sup> While there has been some improvement in the years since assessment, the Massachusetts legislature continues to be decidedly non-diverse, and falls in the bottom third of its cohort group for racial diversity. Massachusetts made gains in the number of women in the legislature in the past election, but fell in the bottom half of its cohort group.

**Table 5: Diversity in Comparable Legislatures**

| <b>State</b> | <b>Percent of the Legislature that is Female (2021)</b> | <b>Percent of the Legislature that is White (2020)</b> |
|--------------|---|--|
| <b>MA</b>    | <b>31%</b>  | <b>87%</b>   |
| CA           | 33.3%   | 55%  |

<sup>23</sup> Halper, J., *The Mass. Legislature is not diverse, and that's probably not changing next year*, The Boston Globe (Aug. 7, 2018), available [here](#).

|    |       |     |
|----|-------|-----|
| IL | 38.4% | 71% |
| MI | 35.8% | 78% |
| NJ | 30%   | 73% |
| NY | 28.6% | 68% |
| OH | 31.1% | 82% |
| PA | 27.3% | 90% |
| WI | 31.1% | 87% |

**III. Reform Is Hard to Do: Assessing effective ways to create change**

The foregoing analysis demonstrates how the legislative process limits House members’ formal power and how key institutional features of the House further condition members’ ability to participate meaningfully in the people’s business. It helps explain why legislators, with rare exceptions, acquiesce in these rules and structures. By the rules and practices of the House, leadership has discretion to empower compliant members and exclude noncompliant ones from the legislative process. By the structures of the House, it can materially determine their work conditions and capacity. The result is a self-reinforcing dynamic in which dissenting members see no choice in the short-term but to acquiesce and pursue ad hoc informal ways of influencing legislative outcomes.

Many of the interviewees echoed each other in describing the symptoms and causes of dysfunction in the legislature. They had widely varying prescriptions for reform. Among the proposed solutions were rules changes to address structural problems, a raise in legislator base pay to foster greater independence from leadership, Speaker term limits, reinstating an independent research bureau, taking control over the House budget and personnel away from the Speaker, and running candidates against incumbents who have not demonstrated independence from the Speaker. There are many others. The feasibility of these goals, and the tactics most likely to affect reform, should be examined thoroughly by the coalition in formation.

A report by a blue-ribbon panel, like the Brennan Center’s report on the New York legislature, and like the report prepared by the Visiting Committee on the Courts headed by J. Donald Monan, then the chancellor of Boston College (the “Monan Committee”) almost two decades ago, may lend gravitas to the reform effort. But, neither the Brennan Center’s excellent report, nor the Monan Commission’s take-no-prisoners scathing assessment of the Massachusetts court system spurred change from within. Both had some success in spurring change from the outside and in documenting for the public just how bad things were.

Karl Kurtz and Brian Weberg, close observers of our nations’ state legislatures, acknowledge that “solutions are the challenge.” In an article assessing the problems legislatures continue to face

forty years after major reforms,<sup>24</sup> they observe that “The realities of today’s government and politics require a new approach to strengthen legislatures. What’s needed is a process that clarifies the current problems, what changes are needed and how to put those remedies into place.” They argue, “Legislators, staff, academics and committed citizens need to come together to draw up a new agenda to strengthen legislatures.”

Our research and findings, we hope, will spur just such a coming together to draw up a new agenda. We are persuaded that our best chance for real reform is a broad-based coalition, backed by research, coming to a consensus as to goals, strategies, and tactics, drawing up an agenda for culture change and reform, and amassing and deploying the necessary resources to put it into action.

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<sup>24</sup> Kurtz, K. & Weberg, W., *What Legislatures Need Now*, National Conference of State Legislatures (July/August 2010), available [here](#).

**Table 6: Key Reforms of Massachusetts and Comparable States**

| Key Reforms   | CA   | MN   | OH   | OR   | WA   | WI   | MA House                                |
|---|--|--|--|--|--|--|---|
| <b>Nonpartisan analysis for all bills</b>                 | Every bill that receives a hearing is analyzed by a partisan committee staffer | Nonpartisan staff prepare analysis of bills that have been scheduled for public hearings | Nonpartisan staff prepare analysis of bills that have been scheduled for public hearings | Nonpartisan staff prepare analysis of bills that have been scheduled for public hearings | Nonpartisan staff prepare analysis of bills that have been scheduled for public hearings | <input checked="" type="checkbox"/>                            | <input type="checkbox"/>                |
| <b>Summarizes the bill</b>                                | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>                            | <input type="checkbox"/>                |
| <b>Includes policy background</b>                         | <input checked="" type="checkbox"/>  | <input type="checkbox"/>   | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                                       | <input type="checkbox"/>                |
| <b>Includes arguments from supporters and opponents</b>   | <input checked="" type="checkbox"/>  | <input type="checkbox"/>   | <input type="checkbox"/>   | <input type="checkbox"/>   | Oral public testimony is summarized and included as part of bill analysis                | <input type="checkbox"/>                                       | <input type="checkbox"/>                |
| <b>Analysis is updated as bills advance</b>               | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/><br><small>(subject to change)</small>                | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | Only if bill text is entirely replaced                         | <input type="checkbox"/>                |
| <b>Nonpartisan analysis for all amendments</b>            | <input type="checkbox"/>   | <input type="checkbox"/>   | <input type="checkbox"/>   | <input type="checkbox"/>   | <input checked="" type="checkbox"/>  | Only for those amendments which entirely replace existing bill | <input type="checkbox"/>                |
| <b>Amendment analysis made available prior to a vote</b>  | <input type="checkbox"/>   | <input type="checkbox"/>   | <input type="checkbox"/>   | No, but amendments must be public for at least an hour before they are voted on          | <input checked="" type="checkbox"/>  | Only for those amendments which entirely replace existing bill | <input type="checkbox"/>                |
| <b>Committee hearings and floor sessions are recorded</b> | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>                            | Not all committee hearings are recorded |



|   |   |   |                                     |   |   |                                     |   |
|---|---|---|-------------------------------------|---|---|-------------------------------------|---|
| <b>Recordings include transcripts</b>                               | <input type="checkbox"/>  | <input type="checkbox"/>  | <input type="checkbox"/>            | No, but timestamps highlight bills and speakers   | <input checked="" type="checkbox"/>                               | <input type="checkbox"/>            | Some floor sessions are transcribed               |
| <b>Hearings and floor Sessions are archived</b>                     | <input checked="" type="checkbox"/>                                       | <input checked="" type="checkbox"/>                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/>                               | <input checked="" type="checkbox"/> | Those hearings and sessions recorded are archived |
| <b>Committee votes are made public online</b>                       | <input checked="" type="checkbox"/>                                       | <input checked="" type="checkbox"/>                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/>                               | <input checked="" type="checkbox"/> | <input type="checkbox"/>                          |
| <b>Written public testimony is made available online</b>            | Organizations registered for and against a bill are documented            | As a practice, testimony is typically posted to committee websites      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | Oral public testimony is summarized and included in bill analysis | Yes, if bill gets hearing           | <input type="checkbox"/>                          |
| <b>Mandated waiting period before floor vote</b>                    | 72-hour notice is required before a vote, except in rare cases of urgency | 12-hour waiting period for a conference committee report to be voted on | 24-hour waiting period              | No, but bills cannot be amended on floor; 72-hour notice requirement for committee meetings | <input type="checkbox"/>  | <input type="checkbox"/>            | 24-hour waiting period                            |
| <b>Lobbyists must disclose meetings with legislative leadership</b> | <input type="checkbox"/>  | <input type="checkbox"/>  | <input type="checkbox"/>            | <input type="checkbox"/>  | <input type="checkbox"/>  | <input type="checkbox"/>            | <input type="checkbox"/>                          |

## **Methodology**

Information compiled for this report comes from a variety of sources, including state government websites, Ballotpedia, and media outlets as cited.

We relied heavily on state government websites for information about legislative rules and the allotment of stipends, committee assignments, and other manifestations of power held by the leadership.

The National Conference of State Legislatures' (NCSL) compilation of data on the salary and travel reimbursements of state legislators served as the source for salary and benefits information (all of which was confirmed on state government websites). The NCSL "Legislatures at a Glance" served as the source for the staffer-to-legislator ratio data.

Interviews were conducted by Linda O'Connell and Zia Saylor. As noted, interviews, podcasts, and other material have been edited for brevity and clarity, and several have been redacted to protect the interviewee.

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## APPENDIX

### *Voices of the Legislature*

What follows are excerpts of interviews and public statements on key points of this report, Disempowerment of Legislators, Transparency, Professionalism, Diversity, and Reform. Interviews have been edited for brevity and clarity. The identity of certain speakers, while known to the authors, has been concealed at their request.

#### **I. Disempowerment of Legislators**

##### A. Interview with current “Staffer C”<sup>25</sup>

*On very rare occasions [the] committee process works. Largely no. It’s political theatre. People have to have their hearings and will testify, but it doesn’t have a huge bearing on [whether] things make it out of the committee or not. Before chairs [of committees] do anything, they will check in with the Speaker’s office. They know if they do something he doesn’t want they won’t be chair of the committee much longer. [They are] largely beholden to one person. Those are the biggest issues. The chairs still have to get an okay from the Speaker’s office to move anything.*

*The Speaker has untold power. The Speaker is the most powerful person in Massachusetts. So much of what happens only happens because the Speaker wants it. Also the physical building and legislative process. The process is so convoluted and not easily accessible. Most people don’t know how the process works so they don’t know how to properly advocate. I think that’s intentional. They don’t want this to be easily accessible or else they’d be held accountable.*

##### B. Interview with former “Rep A”, who served in the House for decades

*[The legislature] definitely [changed over the years]. It became a lot more centralized. Power started to centralize away from the individual committees, and their chairmen, to the Ways & Means Committee and its chairman. . . . And the chairman of Ways & Means has become more powerful since they decide how [many] bills . . . are reported out. Since representatives can say they need money for a district project, then the chairman [of the Ways & Means Committee] does favors for rank-and-file members to get the money they need for their district project. So the chairman can grant individual favors to build up a power base and create a path to Speakership.*

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<sup>25</sup> The names, assignments, and years of service of several representatives and staffers have been redacted at their request due to fear of reprisal.

*[Really,] Tom Finneran<sup>26</sup> changed the House more than [any]one. Everyone else had less and less power than he had. No more debates. The Ways & Means Committee would have people come into the back room and offer a consolidated amendment. They said it was more efficient and cooperative. The system was you don't challenge leadership, you want to get something done you work with leadership to get your amendment accepted as a consolidated amendment. There were great debates [before this change]. [Now] leadership controls very much the agenda and items that are debated.*

*There's a power structure in the legislature. There's always internal jockeying among the members for a better committee position. You see that someone who chairs the Ways & Means Committee is going to have a greater ability to raise campaign funds than someone who chairs the Committee on Elder Affairs. All men are created equal but in the legislature, [but] some are more equal than others.*

*One man's trash is another man's treasure. It depends on what side of the aisle you sit on, whether you're close to leadership or against the leadership will impact your ability to get things done.*

*I think the legislature reflects the personality of the person that's leading. This legislature is not one I was introduced to when I was first elected. I can see the reasoning behind consolidated amendments and trying to streamline and make sure leadership leads. But I've watched the legislature for 40 years[.] . . . I've seen the changes in the legislature that resulted in the changes of power. While there's a plus side of managing the efficiency of time, you sacrifice the ability of individual members to have an impact as a result.*

*It's really a cult of personality in the legislature. The camaraderie on the Hill is a lot less than when I first got to the legislature. By design, it seems as if the legislature is kept apart from having formal sessions. [When I started] there was a camaraderie, as we'd be there till 2, 3am and the Speaker would then have a dinner break and a bunch of reps would go to dinner together, and it's the best way to get to know your fellow house member. There's no way otherwise that a rep from the Berkshires would ever know anything about a rep from the Cape.*

*When Tom Finneran became Speaker, he eliminated dinner breaks, would order food in and made people eat in the members' lounge. There was a lot more controlling of the agenda. There were fewer formal sessions that broke down the camaraderie.*

*And the Speaker battles created scars that lasted for years. And long after the battle had passed there were grudges that were harbored by people who had lost leadership positions because of being on the wrong side of a Speaker battle.*

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<sup>26</sup> Thomas Finneran served as the Speaker of the Massachusetts House of Representatives from April 1996 to September 2004. He resigned from his position after pleading guilty to obstruction of justice for committing perjury in a federal case regarding his influence over redistricting following the 2000 census.



*Now there are very few independent bills that are offered. Bills usually come out of leadership. They'll set forward what they see as the priorities for this year. If it's not on the legislative leadership agenda then it won't get the same attention it once might have.*

C. Interview with former Representative Jay Kaufman (served 1995-2018, representing the 15th Middlesex District)

*If anyone were to ask me about whether or not to run for office, I would first give them a long list of reasons not to. Especially if you're passionate about getting something done, rooted in a set of values, believe in democracy, and engaging, you'll find it a frustrating place. Going along to get along is rewarded. You are isolated and marginalized if you do anything but. The culture is very white-alpha-male dominated.*

*There's a demand for loyalty on the part of the Speaker. I found caucuses to be absolutely nauseating for all the public displays of affection displayed to the Speaker. Criticism is absolutely not invited. People were falling over each other to prove how loyal and obedient to the Speaker they were. It makes me sick. There are a myriad of ways in which the Speaker's dominance is enforced -- committee assignment, room assignment, staffing assignments.*

*A Speaker battle will always be divisive because there will be a winner and a loser. What you can do to minimize the pain there is to limit the number of ways in which the winner can punish the vanquished. If committee chairs are handed out by the winner, then anyone associated with the loser won't get one. If there were another way to have committee chairs then you would eliminate that.*

*The other truth is given the inability of us to get to know one another and grow, there is no pipeline to the next Speakership other than being a part of the current Speaker's power and currying favor with him and that's why everyone assumes the next Ways & Means chair is in line for the Speakership. That's why it becomes a self-perpetuating cycle because there's no independent route to show skills to one another. There's no healthy pipeline or succession. No path to succession except through the incumbent. That's not succession, that's self-perpetuation.*

*What [Finneran] did was divide and conquer. For the 18 progressives who acted out, he made it clear we were radioactive. With him began an intentional game of divide and conquer. The House met less frequently, had many fewer opportunities for social engagement, we didn't hang around together while we were waiting for something to happen. It has become a much lonelier job over the years and that is no accident. It's how the power brokers maintain their power. We don't get the chance to debate, to know one another, to develop our skills, so there isn't a path to greater efficacy or impact because that path has been shut off.*

*The only thing that is like a Speaker battle in its ability to threaten a legislator is redistricting. The only way to address that is to have an independent redistricting commission which limits the threat the Speaker will redistrict you out of existence. That's a lever of power that can and should be taken out of the Speaker's hands. There's a built-in tension that legislators feel in their loyalty to the Speaker and their district. Former Congressman Barney Frank spoke to this several years ago about how there really is no other authority figure where you're divided the way you are as a legislator. We have to be responsive to the Speaker or we lose our efficacy. You have to walk a very fine line. Absent their constituents, the only voice the legislators hear is from the Speaker, and that's up to We the People to change that. "Power yields nothing without a demand," said Frederick Douglass. We the People have to make demands on our legislators or they won't change their behavior. They're too rewarded to go along to get along.*

D. Interview with former Representative Jonathan Hecht (served in the House 2009-2021, representing the 29th Middlesex District)

*I'm a big believer that institutions and structures and rules help explain culture. They're not independent. . . . The culture is one of extreme deference. I think it's a learned behavior. Most people come into the State House, especially if they have local legislative experience, very much intending to be meaningfully and purposefully engaged in the process, and what they come to realize over time is that in the House, the place is set up in terms of rules and structures and incentives to make it very difficult for members to operate autonomously in the legislative process. You have no formal right to be meaningfully involved in the legislative process. Everything is subject to the discretion of leadership and is subject to you meeting their conditions.*

*Many people accept that as the way it is and they do their best with those limitations to try to move the needle, but ultimately their ability to represent their constituents in a meaningful and autonomous way is incredibly constrained.*

*[I]f members are not able to meaningfully participate in a way that's based on the regularly established open procedures that empower them by virtue of their election as representatives of a district, if they're unable to use that voice to meaningfully participate because the process takes that power and gives it to a small number of people in that body, then it's difficult to say that their constituents are being heard.*

*When it's done more in an ad hoc, discretionary, behind-closed-doors kind of way, . . . then the people behind the doors have a huge responsibility to make sure they're accounting for all the points of view. It's not realistic to think they will. [P]eople who have access to those doors [will] have their voices heard and magnified.*

*In a system where a relatively small number of people hold sway over the fortunes of legislation, there's a huge temptation for those who are trying to see their bills or budget line items advance*

*to do whatever they have to do to make that happen. It introduces some instability into the system. If the power were more broadly distributed, there wouldn't be such temptation to try to influence the few powerful.*

*[Re strengths and weaknesses of the House]: I'm trying to acknowledge some sort of strength. It's sort of two sides of the same coin: you could say it's a strength that in times of the financial crisis, having a strong leadership allows for things to get done more quickly and decisively. Finneran felt that the legislature was too chaotic and couldn't get its act together to deal with the tough questions of cutting spending, increasing taxes. I guess you could say that's a strength.*

*But the flip side is you run the risk of not being able to hear all voices and not bringing in all the people that will be affected. For me, that concern far outweighs any potential upside of authoritarianism and the risks of corruption that impact the stability of the legislature. That argues in favor of a more deliberative legislature even if it's not the most efficient.*

*Back [when] there were term limits on the Speaker, there were people who, if they had a different vision on how the House should be run, could contemplate the idea for four to six years knowing that after eight years there would be a change and they could take things in a new direction. Now with a system of succession that's become a hand-off system, members have no confidence that if they're willing to step out of the successful range of behavior then an end to their personal hell will come someday.*

E. Jordan Berg Powers, Executive Director of Mass Alliance<sup>27</sup>

*Our State House is fundamentally broken in every possible way you could think of it being broken.*

*If you want to vote your own way ... the people in charge ... allegedly... pull you into a room, and they literally yell at you. I have spoken to many legislators who have been yelled at who have been told that . . . bad things will happen, that they're saying that their constituents won't get the things that they need. . . . You will get threatened by the people until you either pull the amendment or . . . don't bring it to the floor; don't cause complaints, if you don't vote the right way. So they will literally threaten you, with yelling, with people, all sorts of threats.*

*And the other part of that is that that becomes a culture. So you'll see people will talk . . . to each other, and they'll say, "Oh, you don't want to do that. You'll run afoul of the Speaker. Oh, you don't want to talk about that that way. The Speaker will be mad." So you get this system which polices itself through the culture, the culture of the Speaker having absolute say, becomes so*

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<sup>27</sup> The following quotes are taken from the transcripts of episodes of the podcast "Incorruptible Massachusetts" hosted by Anna Callahan. Jordan Berg Powers's remarks were originally featured in Season 1, episode 2 (2019), Season 4, episodes 4, 5, and 9 (2021), and are reproduced with his permission. They have been edited for brevity and clarity.

*corrosive, because they enforce it on each other. . . . The same way that all institutions of oppression . . . systems of racial oppression, systems of gender oppression, all of those boxes that we put people in. . . . It's the same thing here.*

*[P]eople have an ire towards the [then-]current speaker Bob DeLeo, but . . . I don't think that he's fundamentally the problem. The system is the problem. He just inherited it and exploits it. But somebody else in that position will do the exact same thing.*

*Eighty is a majority in the State House. So if you have only 160 reps, and if 80 of them, their pay is linked to being loyal to the Speaker [since they are committee chairs], then you've built in a system whereby they will always have the majority. Occasionally the Speaker will put his foot down and say, I want this to pass and I'm going to force it through. . . . But most of the time what happens is . . . big policies just won't even come up [be]cause no one [has] the guts to push it forward.*

*We had a new person come [in], tried to reform it, tried to meet outside the system. And that person successfully organized on some policy, we actually won something . . . through their organizing effort, but then that person had another rep tell on them to the Speaker. And then that person felt like they got stabbed in the back and they stopped trusting people and stopped going to the Progressive Caucus meetings. And then that person's like, "Well... if I can't organize, because I can't trust anyone, . . . I might as well try for my district and for the things I care about, try to move up into leadership because at least that's a path, right?" . . .*

*So you get this self-reinforcing system, where because the leadership has been able to infect such distrust . . . , you get this place where no one trusts each other. And to be clear, they shouldn't, because people will trade information for access and moving up. They will trade your . . . faith in them [for] minuscule opportunities for self-perceived power, which is disheartening and disquieting, but the reality.*

F. Excerpt from Open Letter by Becca Glenn and Other Staffers<sup>28</sup>

*It is no secret that Speaker DeLeo has continued in former speakers' footsteps. Crossing him carries consequences. If the offender is a representative, the consequences include loss of leadership positions, the death in committee of any bill that person introduces, constant haranguing from colleagues, assignment to the worst offices, and the outright ignoring and silencing by the presiding officer we saw directed at three female representatives on the floor of the House just a few weeks ago. If a representative voted against the Speaker but did not face consequences like this, you can be sure they received permission from the Speaker in advance to*

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<sup>28</sup> Glenn, B., et al., *House Hit as Authoritarian, Top-down Organization*, CommonWealth Magazine (Nov. 13, 2019), available [here](#).

*vote off, usually in order to protect that person from their constituents' anger about a policy that is going to pass anyway.*

## **II. Transparency**

### **A. Interview with Jonathan Hecht**

*The common perception that the House is a place where legislation is deliberated, revised, debated, you know, by 160 people, is completely inaccurate. The classic civics textbook description of a deliberative body is not at all what goes on. The committee process is the most obvious way into understanding that. Committees don't operate as committees. A lot of the reason that members have resisted transparency in committee votes is they have no idea what the bills are because they don't have the time to read them, and they know that the recommendation of the chair on the bills is already agreed on by the leadership. And on the leadership side, they don't want to have members invested in a public way, because then that doesn't give them the latitude to shape the bills the way they want to shape them. The lack of transparency is a symptom of the lack of meaningful participation. And that carries through to the floor actions as well. We don't have many votes on the floor because members haven't really been involved and they don't want to be held responsible for votes on bills they haven't done much to shape. They're happy with the deal: leadership shapes the bill, brings it to the floor, they vote it up [or] down.*

### **B. Interview with Becca Glenn, former legislative staffer**

*The secrecy [is a major weakness of the House]. Nobody can figure out what the hell is going on from the outside, but from the inside everyone knows what's going on but they don't think they can say what's going on because they're afraid for their job and there's no proof of it.*

*I think people on many occasions are very surprised by what their representative is actually doing. Overwhelmingly, people think that their rep is doing progressive things that they support. If that was true for everyone in Mass[achusetts] then we would have some very different policies. Most reps are not doing what you think behind the scenes and are going along to get along and doing shady things behind closed doors. There's a lot of lobbying to the Speaker to ask [to not] have to vote on a controversial bill.*

### **C. Becca Glenn in "Conversations with Barbara"<sup>29</sup>**

*So in Massachusetts, I would say a big part of the problem is that a lot of what goes on does not happen in the Chamber, so when you're watching a legislative session of the House, you can be very confused as to what is going on because all you'll see is a bunch of people milling around, and eventually someone will come out, call a vote, and that's it. The reason is because most of*

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<sup>29</sup> *Conversations With Barbara: Becca Glenn from Mass Alliance*, Kanellopoulos, Barbara, director (Mar. 4 2020), available [here](#).

*what's going on is going on behind closed doors and the Speaker of the House is calling people one by one into his office and they're negotiating and debating what will be in the bill. Nobody has access to that: not the media, not the public, not the other representatives. And then they come out with the finished bill.*

*The bill that comes out was not the same bill that was introduced. It's coming out, it's already a finished product, it's nothing like the product that went in. When the final product comes out, it's usually so complex there's usually not a whole lot of choice between different reps. For example, during the House budget process, there are thousands of amendments, they'll go into the backroom and then come back out with ten consolidated amendments and that's all that's on the record for a vote. They design these so that nearly everyone has something in it that's good. People cannot say no to one part and yes to another. They would have to say no to the whole thing including some parts that are good.*

*It's not that the problem [of transparency] doesn't exist on the Senate side but it's much worse on the House side.*

*[Representatives] often don't even know what they're voting on, and if they do, they know there are some pretty severe consequences for not doing what the Speaker told them to do, so they do.*

*I had a representative say to me privately "If committee votes are public then more people will call my office." And I said, "Yes. They will. That is your job."*

*What ends up happening in a committee is the bill just sits there, and what's actually happening is the committee chair is just sitting there waiting for the Speaker to say "I want that bill, send it to me." And otherwise it just sits there. There is no public explanation of why this bill or what are the problems with this other bill.*

*The majority of bills die in committee, and they usually say they'll send it to study, but no study is ever done on these bills. . . Usually they won't appoint someone to do the study or fund the study, it's just a way to get rid of the bill.*

D. Representative Erika Uytterhoeven and former Representative Denise Provost (2006-2021) (27th Middlesex District)<sup>30</sup>

*Uytterhoeven: When I say [the legislature is] broken, it happens at all sorts of levels. Many times reps are voting on things and they don't know what they are voting on. The public has very little time to engage with the bills. Oftentimes, when Commonwealth magazine and other sources of media get a chance to finally understand what's going on, the vote has already passed. We're doing retrospective – this is what happened – rather than this is what they're voting on and*

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<sup>30</sup> Mohl, B. *Retiring Rep, Rep-Elect Share Insights on State House Opacity*, Commonwealth Magazine (Nov. 23, 2020), available [here](#).

*here's how you can have your voice heard. We know that debate happened, but it does not happen in the public eye. It happens behind closed doors. What is on display for the public to view is strictly performative politics.*

*Provost: Certainly, the State House is an opaque place. The experience of working remotely and engaging with constituents who are trying to follow the Legislature has made that abundantly clear to me.... Many people find our State House mystifying.*

E. Jordan Berg Powers<sup>31</sup>

*You know, the problem is the lack of transparency, the lack of votes that are public. And these are basic things that other states do. We're like one of the only states that don't make committee votes public. I mean, it's shameful. These are basic democratic things that aren't happening. And so [the Speaker] just inherited this terrible system.*

*The State Senate is entirely different because it has opened itself up. . . . The State Senate posts its votes publicly. You know, it passed a transformative climate change [bill]. It wouldn't have fixed everything, but it was an important step in the right direction. Dies in the House. We don't know why.*

*Our State House votes in committee on policy. So a bill comes before a small committee. How a bill becomes a law, when they vote about what to do with that bill, most of the time, 99.9% of the time, we have no idea how that vote happened. So a bill could die, and what they mean by 'send to study,' means it will not come before, it will not get a chance to be read and debated — although there's never any debate in the State House — it won't be debated. We don't know when that happens. There's no public recording of the committee votes, which are critical.*

*Let's say a bill gets out of committee, and it goes to another committee usually around Ways & Means because it usually has some money attached. That process, the one that's most critical, how our money is spent, is totally not transparent. So again, it goes to another place where we don't know how it votes or what's happening or, or how it's going. Testimony that's given, so people saying what they think about it — that is not public.*

### III. Professionalism

A. Interview with “Rep A”

*The legislature had a research bureau that fell victim to budget cuts, but I think there was another motivation as well. The control of information is power. You had an independent research bureau that any legislator could access about anything. It provided them with an*

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<sup>31</sup> Incorruptible Massachusetts podcast, Season 1 episode 2.

*independent source of information that oftentimes countered the information that the research from committee staff came up with.*

*Some people thought that should reside in the individual staff of the committee. Depending on where you are in the totem pole, every house member is guaranteed at least one aide. You have a legislator that has three or four people and that's three or four people able to help him do his job as opposed to just one aide. If you have just one staffer then you don't have a lot of time to do research and so you rely on the committee staff to research. [This is especially true] if you are on a complicated committee like insurance law or retirement law or taxation and it would take your staff longer to get to know the statutes [on their own].*

#### B. Interview with Jay Kaufman

*Not only is there a culture of isolating members from one another, but there is also precious little in terms of resources that individual members can have access to get professional information or judgment. You have to work hard to get information any place or out of the Speaker's office or team, and they are very stingy and selective with what they give you. The information flow is not what it should be.*

#### C. Interview with Jon Hecht

*As far as the legislative process is concerned, most reps are pretty marginal. If that's what the taxpayers think they're paying for, they're overpaying. So, legislators today are in this funny situation where they're nominally full-time legislators but they don't have much power or resources to be effective legislators.*

#### D. Interview with "Staffer A"

*I did a lot of constituent work in the beginning because that's where I was focusing. Then it shifted and we hired someone else to do constituent work and I spent a lot of time with policy and policy work. I would read up a lot, go to all the briefings. I was very fortunate because my boss would take me to conferences; I went to a lot of the NCSL conferences, and I was able to meet a lot of other legislators from a lot of other states and that was a really important thing for me. There's a real lack of staff development opportunities at the State House. It meant so much for me to be able to engage with peers [at the NCSL conferences]. The statehouse could use a little more academic professionalism. Let's put thinking caps on, have more space for critical thinking, let's have a roundtable.*

*There was no training process. My first day was my supervisor bringing me through the State House to sign paperwork, a light tour.*



E. Interview with former “Staffer B”

*[The public might have the idea] that the boss is training the staff or running the office. The boss is showing up two hours later than the staff and has no idea what’s happening in most cases, but this really varies by legislator. One representative said to me as a joke acknowledging all staff does, “I think it’s debatable if [staff member] works for me or if I work for him.”*

*[T]he biggest part of my job was babysitting my boss. I probably did a little less on constituent services since [they] liked to do that. For policy I would write [their] testimonies and go to all the meetings since [they] couldn’t be bothered. Quite a bit of my job was scheduling.*

*First thing was all the staffers had to go to this thing that they had at Suffolk Law and they gave us an overview. It wasn’t that helpful. It was mostly about ethics law. Electeds are allowed to take things from lobbyists up to a certain amount of money, but staffers can’t take anything no matter how trivial.*

*If there were things I needed to do then I would just go to the House clerk and they were super helpful and would teach you anything. I felt well-prepared like I didn’t know what I was doing but I knew where to go to learn how to do what I needed to. For the most part, staff are extremely knowledgeable and know what to do.*

F. Interview with “Staffer C”

*You don’t get trained in the State House. The only reason I knew what I was doing was because I interned in the State House with a good supervisor. A lot of it you learn on the job. In the Senate Office, that’s a little easier because the least tenured person had been here three years and the most tenured twelve years, so I had people around me who had been doing this for a while. [The experience is] not something you have if you’re the only staffer for a representative. . . . [In the Senate] the little formal training we have is not good training.*

G. Jordan Berg Powers<sup>32</sup>

*Another legislator that I really like got on a committee that this person knew nothing about, they went and [dug] into the issue. They then created a policy to fix the issue the committee oversees, and they lost their seat on that committee. They were told explicitly that the bill they researched to solve the problem would never go anywhere. And for the nerve of learning about the topic for the committee they’re on, proposing a solution to the problem and working to get it out of the*

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<sup>32</sup> Incorruptible Massachusetts podcast, Season 4 episode 6, edited.

*committee without the say of leadership they lost their seat on that committee. . . . You tried to legislate and DeLeo was like, 'No, we don't do that,' essentially, to this legislator.*

#### **IV. Diversity**

##### **A. Interview with Professor Erin O'Brien, UMass Amherst**

*But [for] representation [of] women and women of color in the state legislature, Massachusetts does really poorly. It does worse than its New England neighbors, once we control for the big differences in how diverse the populations are. We're really far behind there.*

##### **B. Interview with Anonymous "Staffer B"**

*When you're a staff of color, you have no bar to hold yourself to because you're holding yourself to these folks [white people] as a bar . . . and you have no sense if you're doing enough or if you're doing too much or if you're being exploited.*

*The statehouse tends to be populated by a lot of staff that are the same, that went to a particular crop of colleges, studied with the same professors, have parents in politics, or business, have a particular understanding already of how the building works and how politics in general operates.*

*The legislature is towny. We are a city whose capitol is a very towny type of place. [It has a] legacy and history of being oppressive and invasive for people of color that have tried to live here. These dynamics are certainly at play [in the Statehouse].*

#### **V. Reform**

##### **A. Interview with Jonathan Hecht**

*I tried to [make changes] within the House for 12 years. I tried appealing to my colleagues' sensibility and pride in their own work. I can't say I had much success. I tried to frame it in terms of making it easier to do their jobs.*

*[Representatives] do enough to go back to their district and say "I've done good stuff" even if they haven't actually done that. They are very attentive to their districts in the budget. They are more than happy to shield members from having to take controversial and difficult votes. Members give leadership a free hand to do most stuff, and in turn, they're not put in many difficult positions. Members find a lot of reasons to tell themselves the current system is okay.*

*Lurking not far beneath the surface is that cost-benefit calculation and risk-benefit calculation around whether it's worth trying to change the system when that makes it very difficult to operate*

*within the system in ways that will get you the things you want out of the leadership-controlled system. . . . At the end of the day, members don't feel enough outside pressure to try to take that risk inside the building. What that suggests is there does have to be outside pressure. There does have to be an unease among members that if they don't do things to address their constituents' concerns about the way the House operates, whether that be transparency that animates some voters, or whether it's the broader idea of whether members are really doing anything effectively as players in the legislative process.*

*Outside pressure is absolutely critical. Ideally, it would be both outside and inside pressure. Unfortunately, even a lot of the really very outstanding and smart and principled and well-intentioned reps who came into the building in the last four to six years seemed to have decided they won't fight this fight anymore from inside. . . . The pressure inside comes when there's pressure from outside.*

#### B. Interview with Becca Glenn

*The change is never going to come from inside the statehouse. The way it's set up, it has to come from the outside. The problem is right now it's hard to get change to come from constituents because they don't know what's happening.*

#### C. Interview with Jordan Berg Powers

*I am cynical about them being able to reform themselves in any sort of real way. . . . Pick one thing, show up for it, and it will change, and it'll happen.<sup>33</sup>*

#### D. Interview with "Staffer C"

*What needs to happen at the State House is there needs to be a culture shift. I think rules change needs to be part of this. [But] even once you change rules, they can be re-changed or ignored. It makes it tough.*

*Going against the Speaker requires the expenditure of political capital. To get legislators to use their capital on something like rules that change and can be suspended, that's a really hard thing to get legislators to do.*

*We need a culture shift. That's a lot harder. Rules change without culture change won't do anything.*

#### E. Interview with Frank Mauro, former director of the Fiscal Policy Institute

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<sup>33</sup> "Incorruptible Massachusetts" podcast, Season 1 episode 2, Season 4 episode 5.

*[Reform] takes a leader who is committed to legislative independence. Reform is more likely when it comes from within, when the majority party conference pushes reform. I don't know if you can force reform. I don't think you can force reform on a House Speaker or a Senate Majority Leader by energizing only a small portion of a majority party conference.*

F. Interview with Jay Kaufman

*One [option] is rules reform, the other is reform by legislation, the other is initiative petition legislation, the fourth is grassroots. All of them are worth pursuing. I would say the value grows as you go down that list.*

*I don't see much hope for a rules reform effort with the current rulers being productive. We've proven that doesn't work. I was involved with a bunch of efforts with rules reform along the way. I will not devote my time to rule reform, only ruler reform. I don't have much faith in a legislative route to change the culture because the sitting legislators will not be allowed to do that.*

*The initiative petition is somewhat limited and I don't know enough about this to speak authoritatively, and I think it would be difficult to change the rules of the House by initiative petition alone.*

*That leaves the fourth. Run a bunch of new people into the House, hold them both accountable and together to effect change.*

*The Speaker has a PAC into which lobbyists and commercial interest groups pour a lot of money which is then spent on supporting the campaigns of people in favor. I'd get rid of that. Why should the power of a powerful person be enhanced by big money?*

G. Interview with "Staffer A"

*Any shift [in the culture] has to contend with what we do with the people in the line of succession. The only solution is to primary those people and find people to run against those chairs. Make sure the people in the leadership positions have opponents.*