WAYNE STATE UNIVERSITY

Checks and Balances in Action:

Legislative Oversight across the States

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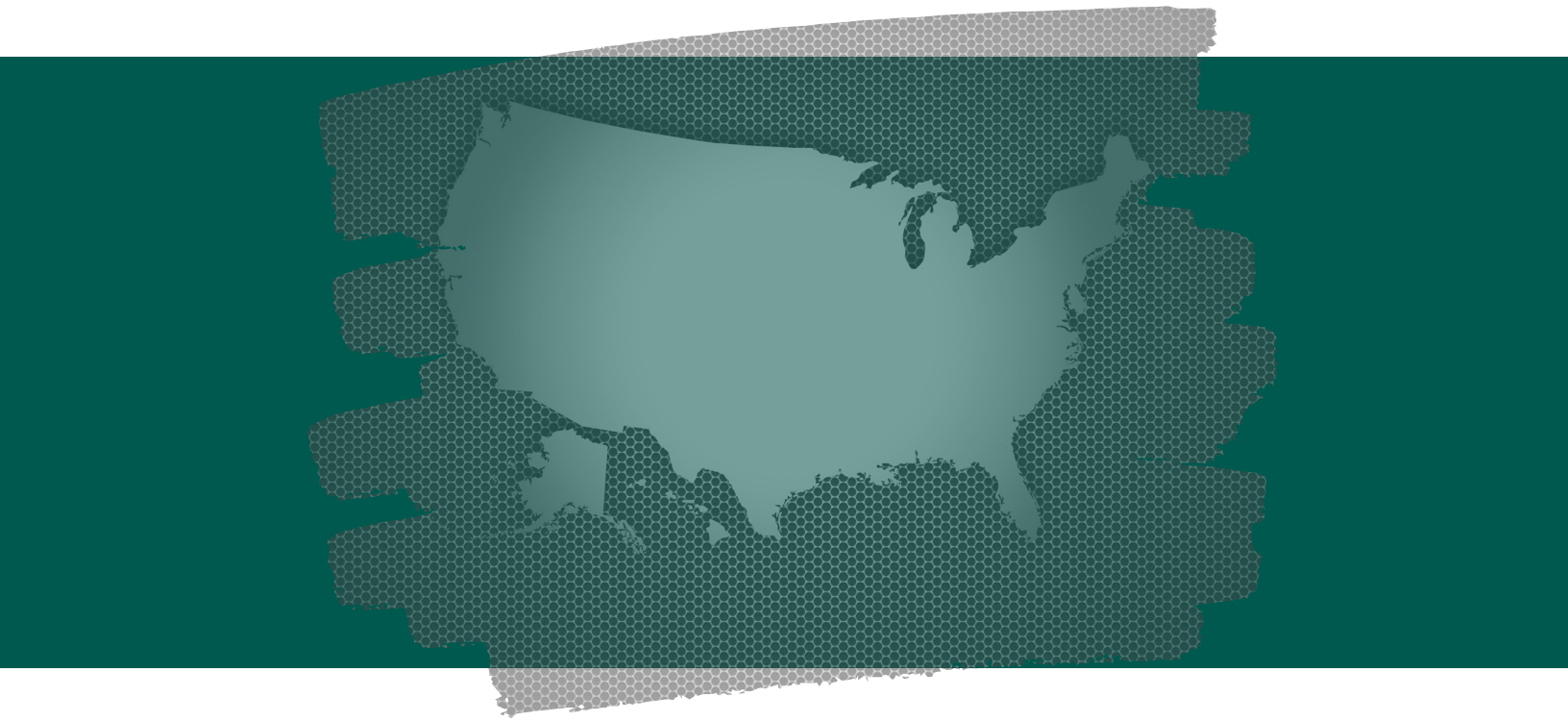

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A study by the Center for Urban Studies at Wayne State University sponsored by the Levin Center at Wayne Law

Executive Summary

This study of legislative oversight across the 50 states demonstrates that nearly all states have some **capacity** to conduct oversight, although they vary widely in the institutional resources and legal prerogatives to oversee the work of the executive branch. We find no states with minimal capacity (the lowest of our four categories). We find that only nine states have limited oversight capacity, while 29 have moderate capacity, and 12 have high oversight capacity.

State legislatures vary even more in the extent to which they **use** the oversight resources available to them. We find that one state makes minimal use of its overall oversight capacity, 12 make limited use of their capacity, 27 make moderate use, and 10 make high use of their oversight capacity. Therefore, ample room exists for improvement in state legislative oversight, while there are also model states. Equally important, as we discuss below and in the report, there are many best practices across the states that states could choose to emulate.

The more deeply we look into differences in state legislative oversight, the more complex the picture becomes, however. Moreover, as we assessed the extent of states' capacity for oversight and their use of this capacity, we were attentive to the quality of oversight. This means that, although our quantitative measures assess the amount of oversight, the 50 state summaries describe the quality rather than merely extent of the oversight. In our judgment, high quality oversight includes bipartisan, evidence-based, solution-driven efforts to improve the effectiveness of state government and enhance the public welfare. Here we seek to identify factors that move states toward this ideal.

Despite the nearly ubiquitous ability of states to conduct some oversight, the states' specific oversight powers are not evenly distributed. For example, some states have extraordinary powers for administrative rule review, and others have none. Even so, we make several observations about legislative oversight of the executive branch and recommendations to improve the quality and quantity of oversight conducted. In general, we find that state legislatures rely less on administrative rule review and on their advice and consent prerogatives over gubernatorial action to oversee the work of the executive branch than they do on what we call traditional mechanisms of oversight—use of audit reports, committee hearings, and the appropriations and budget process. Most states do little or nothing to monitor state contracts, often because they lack the power to do so. This is a problem; given the increasing number and widening array of state governmental services delivered by non-profit and for profit corporations, counties, and local governments, the lack of monitoring is a worrisome lacuna in the arsenal of legislative tools for oversight.

What tends to increase or decrease the extent of legislative oversight? We find two important factors: 1) the relationship between audit agencies and their legislatures, and; 2) divided government. As we discuss later, legislative professionalism itself does not tell us much at all about differences in oversight across the states.

The Role of Audit Agencies:

We find that the relationship between legislatures and their audit agencies influences oversight through a two-step process—having closer ties leads to more use of the reports, which leads to more oversight through various legislative processes. We assumed that state legislatures would make greater use of audit reports when their analytic bureaucracy produced more audits. We only find a weak but statistically significant association to support this (Kendall's tau-b = 0.28). Interestingly, we discovered that this relationship is non-linear. As the number of reports increases, oversight increases up to a point. However, as the number of reports nears 30 per year, use of the reports appears to decline. We speculate that this could be an issue of information overload or a problem with limited attention and time constraints.

We find that the next step is that state legislatures that make greater use of audit reports conduct more oversight. We observed the use of audit reports for oversight through the appropriations process, through standing, oversight, and interim committees, through advice and consent over gubernatorial appointments, and through monitoring of state contracts. At one level, this is common sense – using evidence is part of effective oversight through committee hearings, including budget hearings. Monitoring of state contracts, when it does occur, typically arises from audit report findings. Indeed, use of evidence is part of our definition of quality oversight. But to produce high impact, it demands a pair of linked interventions—increase the ties between legislatures and their audit agencies and mandate hearings for audit reports, strategies that some states have already adopted in part or in full.

Given this linkage between the use of audit reports and the conduct of oversight, it is important to note that five state legislatures make only minimal use of audits, six state legislatures make limited use of audits, 27 states legislatures make moderate use of audits, and only 12 state legislatures make high use of audits. It appears that mechanisms to increase the number of audit reports produced are likely to increase the use of audit reports during other legislative processes (budgeting and the working of committees). This path offers a real opportunity to improve legislative oversight.

Divided Government:

Second, we find that the most consistent predictor of oversight is divided government. If a state has divided government it tends to conduct more legislative oversight of the executive branch. Party competition appears to drive legislators to oversee the executive branch, while single party control appears to undermine oversight. The impact of divided government hardly seems surprising, but what is more revealing is to see where divided government does not increase the amount of oversight: in some oversight committees, in interim committees, and in the rule review process. First, we consider reasons that we see fewer effects of divided government on oversight in committee hearings. We found that several states balance party membership on committees with extensive oversight responsibilities. We speculate that this alters the partisan dynamic that permeates much of the rest of the oversight process (use of audit reports, budgeting, and advice and consent). Appointing equal numbers of members of both political parties could increase bipartisan oversight—another criteria of our definition of quality oversight.

With equal party membership, our results suggest that minority party legislators in a state with one party control still have enough clout on a committee to raise issues that need oversight, slightly increasing the oversight conducted under one-party control. On the other hand, in a state

with divided government, the presence of equal numbers of legislators from both parties could reduce the tendency for oversight to devolve into partisan posturing—"gotcha politics." In either political context, giving the minority party in the legislature a role in oversight appears to offer opportunities for bipartisan oversight. Several states have adopted this approach, and we judged some of their committee hearings as being among the best we listened to. Indeed, in Montana we could not tell which committee members belonged to the majority or the minority party in the hearing we listened to.

This reasoning, however, does not produce any tendency for divided government to increase administrative rule review. Administrative rule review is one of the most complex and most contested arenas for legislative oversight. The process in many states is fraught with complex conditional pathways–if this, then one process applies; if that, then take another branch, and so on. Moreover, state supreme courts have rejected various stronger forms of legislative review of administrative rules. Thus, we find that much of the power states have in this arena is underutilized. We speculate that this is due to the volume of information required to assess the costs of the rules and the number of rules promulgated annually. It is plausible that complexity may swamp the tendency of partisans to pursue administrative rule oversight under divided government.

Legislatures typically have some power of advice and consent over gubernatorial appointments, executive orders, and reorganization powers. We find that divided government is associated with more oversight of appointees, but not in the other areas. One of the reasons we find so little oversight through legislative advice and consent powers, even with partisan incentives to motivate it, is that many states do not have the power to oversee gubernatorial executive orders and reorganization powers. Some legislatures even lack the power to confirm or reject gubernatorial appointees. Therefore, the balance of power between the legislature and the governor are relevant here. We find that a legislature that is substantially stronger than the state's governor (based on ratings for governors by Ferguson 2015 and Squire 2017) tends to make more use of its advice and consent powers to oversee gubernatorial appointments. Thus, as we noted initially, the processes that drive state legislatures to conduct oversight are complex, and state context matters.

Legislative Professionalism:

Although we assumed that a state's level of legislative professionalism (Squire 2017) would explain much of the difference in its legislative oversight, we find only very limited support for this hypothesis. We find only five associations between legislative professionalism out of 15 possible associations, and all of them are weak. The association between legislative professionalism and legislative advice and consent over gubernatorial appointments is the strongest relationship that we find (Kendall's tau-b – 0.24).

We also find a weak association between a state's institutional capacity for oversight (not the use of that capacity) and its level of legislative professionalism. This is not surprising given that staff resources are a component for both the measure of institutional capacity for oversight and the measure of legislative professionalism. Consistent with this, states that have professional legislatures have analytic bureaucracies that produce more audit reports. Here again the association is weak, albeit statistically significant. We glean nothing from the knowledge that staff resources, which partially measure professionalism, are associated with legislative

professionalism. Based on this small number of very weak associations, we reject our hypothesis and conclude that legislative professionalism explains very little about legislative oversight.

Recommendations:

Despite the complexity of these various oversight arenas, we were able to identify several states that have adopted best practices that other states may want to emulate after adapting them to comport with their own constitutional and statutory landscape.

First, state legislatures desperately need to monitor state contracts with respect to the quality of service delivery. Given the gravity of the scandals we read about that involved contracts with private entities to deliver government services, it is alarming that most state legislatures lack the tools to oversee the performance of these entities (both non-profit and for profit). Some of these scandals involved the deaths of children and juveniles. In this domain of oversight and others, performance audits rather than financial audits (which are often conducted by the state's inspector general or other executive branch actor) are a critical tool to stop the recurring scandals and tragedies.

Second, legislatures that do not yet have their own audit unit should consider adopting this innovation. States that have legislative audit units should make sure that they are well-funded and staffed. Moreover, state legislatures and/or their citizens should pass requirements that performance audits produced by these audit units receive a legislative hearing.

Third, almost all states have requirements to consider the costs of administrative rules during the rule review process. Almost none have requirements to consider the benefits of a rule. The benefits of rules that are blocked or rejected by either the legislature or the executive branch should be publicly accessible and available to the media.

Fourth, legislatures need to find ways to provide a voice to the minority party in the chambers during oversight processes. This could involve partisan balance on one or two committees (as some states do); it could involve having two explicitly partisan auditors general (one from each major political party) as Connecticut does. But, legislative oversight is too important to risk letting it become a partisan cudgel. Instead, legislative oversight should be a bipartisan, evidence-based, solution-driven process to protect the public welfare—regardless of partisanship.

Our report includes an appendix with additional best practices that we commend to legislators and their constituents for consideration. We were impressed by the creative approaches adopted in many states.

Preface

The investigation described here examines the practices and processes of legislative oversight across the 50 states, endeavoring to understand both the institutional oversight resources available to state legislators and the extent to which legislators actually use these resources to oversee the workings of the executive branch. This is a fundamental question of American government, for while the founders sought to implement Montesquieu's notion of checks and balances, many state governments adopted different institutional structures. For example, in 2004 Rhode Island added checks and balances between the legislative and executive branches to its constitution through a ballot initiative, replacing a system described by its state supreme court as "parliamentary supremacy" (Bogus 2004). At the opposite end of the spectrum, Kentucky's legislature was described as a "rubber stamp for the governor" until 1979, when the public amended its state constitution.[1]

As a team, we spent more than 18 months investigating states' checks and balances from the perspective of legislative oversight of the executive branch. We focused initially on prerogatives embodied in official policies and then moved on to examine the extent to which these powers are exercised in practice. To do this, we gathered data on state legislative oversight by burrowing through documents and websites, listening to committee hearings, reading committee minutes, searching news media accounts, reading audit reports, and conducting interviews with knowledgeable sources in the states. We rated various facets of states' oversight using four categories: *high, moderate, limited,* and *minimal*. These categories reflect scores on a 10-point scale that we used to assess various facets of legislative oversight, with 10 being the highest or most extensive level of oversight. High oversight corresponds to the highest quarter of

[1] https://www.youtube.com/watch?v=Iil8R_TIWPo, accessed 8/20/18.

the scale (7.51 to 10), moderate oversight corresponds to the upper middle quarter (5.1 to 7.5), limited oversight reflects the scores on the lower middle quarter of the scale (2.51 to 5), and minimal oversight is the lowest quarter of the scale (0 to 2.5).

We find that the evidence of oversight in some states is far more available and clear than in others. We also find that the more deeply we look, the more complex the picture becomes. Nevertheless, we provide a snapshot of oversight in each state based on our state-level case studies and summaries. These images for some states are clearer and more detailed than others.

For ten states, chosen from those we initially judged to have more extensive oversight resources, we completed a more substantial case study of their processes and practices to determine how they use the tools they have. That investigation revealed that eight of these ten not only have above average institutional resources (rated as *high*), but we also rated their use of whatever mixture of oversight resources they have to be *high*, (California, Colorado, Connecticut, Hawaii, Maryland, Nevada, New Jersey, Minnesota), while two—Michigan and Wisconsin—are rated as *moderate* users. Wisconsin just barely fails to make the cutoff for *high* usage. (It received a score of 7.5 rather than 7.51, the minimum for very high usage.) Michigan, on the other hand, received a score of 6 for its overall use of its oversight resources, which is below the midpoint for scores within the *moderate* category. Several of these ten states provided recommended best practices that we summarize in Appendix A.

For the remaining 40 states, we have completed a basic summary of legislative oversight, emphasizing their resources and capacities. Although we sought to provide a picture of their use of oversight, in the time available to us, we could not study the 40 in sufficient depth to be confident of their processes and practices. Therefore, we consider these 40 summaries to be a more preliminary assessment of oversight in these states. We learned, however, that some states with limited institutional resources to support oversight make excellent use of the limited tools at

their disposal and have developed innovative ways to conduct oversight. Moreover, these forty state summaries, despite their limitations, helped us identify some recommended best-practices that could be adopted by other states and Congress.

We note, however, that it is easier to be confident of our findings when we identify instances in which resources are used rather than cases where they are not. This is because something could be occurring informally or not documented in publicly available information. In such cases we risk missing some oversight activities. To reduce the risk of misrepresenting states' oversight efforts, we contacted people involved in legislative oversight in the states. Willingness to respond to our queries varied despite our persistent efforts. In three states we were able to talk to 12 people, asking them questions about the oversight process in their state; in one state, despite contacting eight people, we were not able to talk to anyone.

Although we rated the states based on the extent of their legislative oversight, we do not equate quantity with quality. Many state governments pair a full-time, well-paid governor with a part-time, poorly paid legislature. For these states, it is common for the balance of power to tilt toward the executive branch. In these states, we sometimes commend small increments of legislative power that help level the playing field. Although the existence and use of oversight prerogatives is a necessary, albeit insufficient, condition for high quality oversight, we are mindful of the temptation to conflate more extensive legislative oversight with a ***better*** system of checks and balances—high quality oversight.

Indeed, our research includes several examples in which legislative oversight is used to thwart executive branch efforts that we argue would have enhanced the public welfare. For example, Minnesota's legislature used its oversight powers to pass a resolution opposing an administrative rule to reduce nitrates in drinking water. The legislature took this action, which delayed implementation of the rule for roughly 12 months, to retaliate against a gubernatorial veto

of an agriculture bill. It is hard to argue normatively that holding cleaner drinking water hostage in a partisan battle between the governor and the legislature over an agriculture bill is high quality oversight. Yet, this is an example of a legislature using its power to oversee the work of the executive branch, and accordingly, we rated Minnesota as making *high* use of administrative rule review to oversee the executive branch. The numerical ratings do not account for our personal normative qualms about specific uses of an oversight power. Therefore, we encourage readers to read the summaries of the states to interpret the numerical rankings.

We try to address this dilemma between quality and quantity in our discussion of the best practices of oversight. The best practices tend to stress the balance of power between branches of government and between political parties. In identifying best practices, we defined high quality oversight as evidence-based, bipartisan, and solution-driven, rather than simply the quantity—extent—of legislative oversight. The argument for this approach is that evidence-based oversight is seeking the most accurate assessment of situations that are often messy, ethically or legally challenged, or controversial. We have become convinced that bipartisan participation in oversight is crucial because it gives the opposition an opportunity to inject balance in the process, though this is not always going to be successful. We discovered a lot of highly partisan oversight during this investigation. Thus, our third criteria is that the process is likely to be better (though still imperfect) if it is driven by a search for solutions, instead of a focus on history and blame-fixing. We do not assume that these processes will be conflict free. There is a tradition within American thought that adversarial processes often pave the pathway to resolutions, and legislative conflict is certainly part of that tradition, as is conflict between the branches of government.

From our review of the 50 states, we have identified a series of oversight resources, structures, and activities that we believe facilitate solution-driven, evidence-based, and bipartisan legislative oversight. As noted above, we call these “best practices” and summarize them in

Appendix A. We argue that if state legislatures adopt some or all of these best oversight practices, they are likely to improve the quality of their governance and contribute to the public welfare. Our discussion of "best practices" of oversight stresses ways that some states structure their oversight processes so that the legislature's minority party has a voice in the process. Moreover, we seek to clearly identify the role of nonpartisan analytic bureaucracies and other nonpartisan support agencies in gathering useful information needed for legislators to conduct evidence-based oversight.

I. Introduction

Legislative oversight done well—that is, with a commitment to finding the facts and conducting careful, unbiased investigations—is a fundamental component of the American system of checks and balances (Boerner 2005). Through oversight, legislators ensure that the executive and judicial branches of government comply with legislative intent and that public funds are used legally, effectively, and efficiently. It is clear from academic literature that oversight can provide an important check on potential misfeasance and malfeasance by other government actors (Hamm and Robertson 1981). Therefore, it is likely that good oversight also yields more responsive and effective public policy.

State legislative oversight is increasingly important because the role of state governments in delivering public goods and services has expanded over time, raising the importance of monitoring the implementation of those programs (Erikson 2016). In the wake of the Great Society and its surge in government programs, the 1960s and 70s heralded efforts to determine whether state as well as federal government programs worked. These reform efforts stressed oversight by state governments because pass-through dollars and matching funds meant that state governments were delivering more and more services that were paid for, at least partially, with federal funds. Increasingly, these services were delivered through private for-profit or non-profit

entities that contracted with state or local governments—an area in which we found state legislatures to have very limited oversight.

One early oversight reform involved collaboration between the Eagleton Institute at Rutgers University and the Connecticut Legislature to create analytic support staff to help legislators assess the performance of government programs (Brown 1979). Although most states had audit agencies, many of them concentrated exclusively on fiscal or financial audits of state contracts. These reports tended to be one to a few pages and to merely tally revenues and expenditures, carefully accounting for the use of government funds.[2]

Brown (1979) reports that legislators, confronted with a plethora of public programs, requested help in determining the effectiveness of government programs in achieving public goals, such as the quality of care for veterans or the preservation of a habitat for wildlife. This launched a major national reform effort to provide performance audit agencies linked to state legislatures. These agencies conduct audits that resemble program evaluations (Risley 2008) in assessing effectiveness, rather than concentrating solely on financial accounting. Although subsequent reforms (e.g., zero-based budgeting and performance-based budgeting) have had little staying power, the innovations in legislative audit support staff persisted and are well established across many states. We found only eight states as having weak or non-existent ties between an audit agency and the legislature. Even during periods when state budget staff was shrinking, many state legislatures fought to preserve legislative audit staff (Barrett and Greene 2005). These entities are a major focus of our investigation into legislative oversight primarily because they provide valuable information that legislators can use to conduct evidence-based oversight.

[2] In some states, Alabama for example, that is still the case.

II. Definition of Oversight

Academic research often reflects competing definitions of oversight, which produces a fragmented understanding of the process (Ogul and Rockman 1990). For example, Elling (1979) viewed constituent casework as oversight, while Javitz and Klein (1977) focused on the "legislative veto," and Gerber et al. (2005) examined the ex-ante review of administrative rules. The oversight actions of legislators have been described as either a *fire department,* responding to a crisis or complaints, or a *police department,* regularly patrolling the neighborhood to ensure compliance and orderly behavior (McCubbins and Schwartz 1984). In a similar vein, Brown (1979) describes legislators as *watchdogs,* preventing problems, or *birddogs,* flushing out problems. Regardless of whether they react to crises, look for problems, or conduct routine observations aimed primarily at preventing problems, one would expect to see legislative hearings, committee discussions of performance reports, investigations and testimony, and other forms of information and evidence gathering. However, there are other ways to exercise oversight, such as building sunset provisions into statutes, ex ante and ex post review of administrative rulemaking, insuring that gubernatorial appointees are well qualified, and by initiating audits of state contractors to determine how effective they are in delivering public services.

Given this range of activities and foci, we begin by defining the facets of oversight we address in this work. *By oversight, we mean any monitoring or review of the work of state government. We limit our focus here to state legislative oversight of the executive branch. Therefore, we examine any state legislative monitoring or review of the governor, state agencies, and other state entities, such as contractors that carry out work for the executive branch. Our analysis focuses on monitoring and review of the executive branch and its activities conducted by legislatures through committee hearings and testimony, the budget and appropriations processes,*

the approval of gubernatorial appointments, executive orders, government reorganization, monitoring contracts, and by reviewing or helping to formulate administrative rules. We are interested in who is involved in oversight (e.g., legislative staffs, auditors and so on), what activities are involved in oversight (e.g., hearings and testimony, probing questions asked by legislators, review of administrative rules, audits), what the oversight process produces (e.g., sanctions, reports, budget changes, legislation), and what difference this makes in the state's government (e.g., transparency, efficient use of taxpayer dollars, equitable service delivery). Our definition excludes casework done by individual legislators in response to citizen complaints or requests. Although casework is obviously an important part of a legislator's job that can trigger broader legislative scrutiny of other government entities, it is beyond the scope of this research project.

Despite the importance of oversight, existing research tells us little about the details of state legislative oversight. Almost all of the 50 states have some staff investigatory resources, such as an auditor general or a program evaluation division (National Conference of State Legislatures 2015). However, some state legislatures lack basic powers that would facilitate their ability to use the information in the reports created by staff to sanction or restrain executive branch actors (Gerber, Maestas, and Nelson 2005). For example, a national survey indicates that only 35 state legislatures have the power to subpoena witnesses (NASACT 2015).

Some states have substantial institutional resources and formal powers to conduct oversight, but make little use of them. In our prior work, we found that Michigan's legislators reported spending very little time and effort on oversight (Sarbaugh-Thompson et al. 2010). In our investigation here, we learned that Michigan has an award-winning auditor general's office that produces around 30 performance audits per year. Yet, the House Oversight Committee held

hearings on only three of these reports during our study period (Fall 2017-Spring 2018). The corresponding senate committee held no oversight hearings during this time period.

As we noted earlier, having the power to oversee the executive branch and using that power still does not insure that "quality oversight" is occurring. Legislative oversight can be conducted for partisan gain (Fox and Van Weelden 2010; Lyons and Thomas 1981) rather than to improve government transparency and enhance the public welfare, a complaint we repeatedly heard in our prior research on Michigan legislators (Sarbaugh-Thompson and Thompson 2017). Moreover, legislative oversight, especially rules rejected during administrative rule review, can undermine the health and welfare of citizens if interest groups are able to exert political pressure on legislators to reject any rules these interests dislike. We found examples of administrative rules rejected by legislators and replaced by rules written by special interests. This is legislative oversight, but it may not be high quality oversight because the legislature's actions undermined public health and safety.

To summarize, our research identifies many resources and legal prerogatives that each state's legislature **can** use to oversee the work of its executive branch in all 50 states. Additionally, to the extent we could, we pursued information about how legislators make use of these resources. From this information, we created case studies of each the 50 states.

III. Methods

Our research proceeded in three stages:

Stage One: Initial review of Oversight Capabilities and Activities

Beginning in June of 2017, with funding from the Levin Center at Wayne Law, we undertook a thorough document search for information about legislative oversight in all 50 states. We first concentrated heavily on the type and quality of the institutional resources available to the state legislatures, but, where possible, we examined committee minutes and other documents to

indicate whether and to what extent the available institutional resources were being used by legislators.

Based on these initial investigations, we wrote a short summary (approximately five pages, double-spaced) about legislative oversight resources and capabilities in each state. The author of each state summary then rated the extent of oversight resources in the state across a series of dimensions linked to the state summary report headings listed below.

- Role of the Analytic Bureaucracy (i.e., units that support legislative oversight)
- Oversight through the Appropriations Process,
- Oversight through Committees,
- Oversight through Administrative Rules Review,
- Oversight through Advice & Consent on Gubernatorial Actions (i.e., nominations or agency reorganization),
- Oversight through State Contract Monitoring, and
- Oversight through Automatic Mechanisms (such as Sunset Reviews).

Based upon these initial summaries and the ratings, we ranked the states with respect to the extent of their legislative oversight. For example, some states have exceptionally well-funded analytic support agencies, but are legally prohibited from administrative rule review or have no role in approving executive orders. A state like this would receive a high rating on questions about audit reports and the other facets of oversight that the analytic bureaucracies provide, but would receive a low score for administrative rule review and for advice and consent over executive orders. Based on these ratings, we identified states with extensive oversight resources and chose ten of them for more intensive cases studies. States we gave high overall initial scores were: California, Colorado, Connecticut, Hawaii, Maryland, Michigan, Nevada, New Jersey, Minnesota, and Wisconsin. Several states were tied for top ratings, so we chose states with the same ranking that

are geographically distributed across the country and wrote their original constitutions during different historical eras. In other words, we sought diversity among the states selected for deeper investigation.

Stage Two: Intensive Case Studies and Revisiting of Short Summaries

For these ten states, we broadened our search of records. We listened to some recordings of committee hearings when available, read minutes and agendas of committee hearings when available, and emailed and called multiple key actors (experts) in each state. We completed interviews in each of these states. We did this to get a sense of whether these states' institutional resources for oversight are actually used and whether there are important informal methods of oversight. Our contacts in these states include legislators, staff in the analytic bureaucracies (typically an Office of the Auditor General), committee staff, journalists, and any other actors who seem well placed in the state to provide well-informed perceptions about the oversight process. From this information, we wrote a case study for each of these states, including stories or vignettes about particular episodes of oversight. The full case description for each of these states varies from 20 to 40 pages, single-spaced. Each of these was reviewed by the principal investigators and research assistants, challenged and improved with more phone calls and by listening to additional committee hearings.

A similar, but less intensive process was undertaken for each of the 40 states not selected to be the subject of an intensive case study. We examined minutes or records of hearings when available, and sought interviews of actors in the state. These summaries were reviewed, deepened, and re-written by the principal investigators and research assistants. They average around 10 to 20 pages, single-spaced.

Stage Three: Ratings and Indicators for Each State

After careful reworking of all the summaries, the two principal investigators answered a number of questions to assess the extent of legislative oversight in each state. Answers to these questions document whether the state engaged in certain specific oversight activities. State resources we recorded include the size of audit support staff, the number of audits published, who determines what agencies to audit, and similar information. The investigators also made a judgment about the extent to which the state engaged in six categories of oversight using a scale from 0 (none) to 10 (extensive use). These categories are: use of audit reports by legislators, oversight through the appropriations process, oversight through various types of committees (including interim committees), oversight through administrative rule review, oversight through advice and consent given to the governor, and finally, monitoring of state contracts. In addition, we assessed each state's overall institutional resources (capacity) for oversight and, separately, its use of that capacity.

It is important to understand that our access to information varied across the states from broad, deep, and detailed to sparse. One state provided almost no public information about committee work and other facets of oversight, even asserting on its webpage that the legislature is not a public body and therefore not subject to open meetings requirements.[3] Certainly, this is the prerogative of that legislature, but it does make it difficult to assess the quality of oversight during legislative hearings. Hence, we sought interviews, but few staff or legislators would agree to an interview, citing rules that they should not provide interviews. Perhaps by living in the state of interest and intensively pursuing interviews on a daily face-to-face basis this could be overcome, but we had neither the time nor resources to do this.

[3] Massachusetts G.L. c. 66, 1O (c), Retrieved from https://www.scribd.com/document/375529391/Letter-to-Public-Records-Commission-4-3-18#from_embed, accessed 2/21/19.

Given this variability in resources available, we provide at the end of each state case study a synopsis of the state's informational environment, which includes online access to committee hearings, minutes, or meeting agendas, as well as the number of interviews we conducted. This is intended to provide our readers with an understanding of the resources and limitations we encountered.

IV. Variation in State Legislative Oversight

Below we present findings from our investigation of state legislative oversight of the executive branch across the 50 states. Our foundational hypothesis is that the 50 states vary widely in the institutional resources and legal prerogatives they have to oversee the work of the executive branch. Moreover, we hypothesized that legislatures would vary in the extent to which they use the resources available to them. We find that the state-level differences are widespread rather than simply a few idiosyncratic outliers. To discuss differences in oversight across the 50 states, we group oversight activities into three categories: 1) ***traditional mechanisms*** of oversight, which includes use of audits produced by analytic bureaucracies and committee processes including the legislative power of the purse; 2) ***rules review***, which includes the promulgation of new rules and any regular review or sunset provisions affecting existing rules; and 3) ***advice and consent*** concerning gubernatorial actions such as executive orders, government reorganization, and gubernatorial appointments. We demonstrate below the extent to which the states vary widely in their institutional capacity concerning each of these three categories of oversight.

We begin by exploring how states produce evidence that provides the foundation for evidence-based oversight. This information is produced by offices of auditors general or their equivalent, fiscal or budget agency staff, legislative research staff, and various other entities that we call analytic bureaucracies.

Traditional Dimensions of State Legislative Oversight

Oversight through Analytic Bureaucracies

More than half a century after the Eagleton Institute launched its reform initiative, nearly all states have an auditor general or equivalent position. In our investigation into each state, we found only a few states that, in our judgment, lacked an auditor general or equivalent (e.g., Arkansas[4]). This represents a major ongoing method of reducing corruption and improving government performance across the states, and it is a historic success for oversight. At the same time, these auditors general are very different. In some states, the auditor is a separately-elected executive branch office that may or may not work with the legislature. In some states, the audit division is a subunit within a much larger unit headed by an elected official (e.g., the Office of the Secretary of State in Oregon or the Office of the Comptroller in New York).

In 31 states, the legislature selects a legislative auditor, the state's auditor general, or similar position. Typically, these auditors work closely with the legislature, often reporting directly to a legislative audit committee. These analytic bureaucracies often produce numerous high-quality performance audits.

In 28 states, voters elect a state auditor, but in some cases, this position is similar to that of a comptroller managing the state's payroll rather than conducting performance audits. In a few states, the office does not even do financial audits, let alone performance audits of agencies (e.g., Indiana, Montana, South Dakota). In two states, auditors general are appointed by the governor or a unit within the executive branch, in a hybrid legislative-executive collaboration (e.g., California, Oregon).

[4] Arkansas elects a State Auditor--described as the state's accountant who deals with state government payroll and with unclaimed property. https://auditor.ar.gov/about-our-office, accessed 8/21/18.

There are 10 states that both elect a state auditor and have a legislative auditor. Examples of these states include Minnesota, New Jersey, South Carolina, and West Virginia. Sometimes these separate audit units collaborate, but sometimes the relationship between the legislative auditor and the elected auditor is contentious. For example, in Minnesota we found that the legislative auditor, at the request of the legislature, audited the state's elected auditor's office over the fees charged to local governments for state audits.

Differences between the states are not limited to the method of selecting the auditors. For example, the resources and funding of audit units varies widely ranging from a low of $945,000 in Iowa to a high of $43.6 million in New York (NASACT 2015). The staff size of these audit units is similarly varied, ranging from 15 in Vermont to several hundred in New York, Ohio, and Pennsylvania. Obvious sources of these differences are the population and revenue of the state.

Another source of these differences is the tasks that states assign to their auditors. Some states expect their auditor general or equivalent to audit local governments, school districts, and other public entities. Others prohibit the auditor from auditing local governments. Some states assigned their auditor responsibility for the state's single audit (a federally-mandated financial accounting of entities that receive more than $750,000 in federal funds). Others have the unit perform state financial audits, as well as performance audits, IT audits, and fraud investigations. Some states empower their auditor general's office to contract with private CPAs to provide these services, while others perform some or all of these audits with their own staff. Some state auditors charge local governments for auditing them (e.g., Minnesota), while others appropriate state funds to cover these costs. In some of these states, we found audit units that also participate actively in administrative rule review. In short, the states are very different, and the distribution of resources and combinations of their responsibilities defy simple classifications.

This variety is the reason we decided to create the broader category, analytic bureaucracy, which includes, but is not limited to, the state's official auditor general's office or its equivalent. An "analytic bureaucracy," as we use it here, refers to any state government entity that helps legislators assess agency program performance as well as financial performance. This means that in several states, we are assessing the support that several specialized analytic bureaucracies, such as a chamber specific fiscal service bureau, provide to a legislature; in other states, all these services are combined into one unit.

Using this definition of analytic bureaucracies, we find that only eight states limit themselves to one analytic bureaucracy, and in one of these, New York, voters elect the leader of the state's sole analytic bureaucracy. Thus in New York, the legislature does not have direct authority over the sole agency that it must rely upon to conduct financial and performance audits. At the other end of the continuum, 28 states have three or more analytic bureaucracies. Fourteen states have two analytic bureaucracies. When there are more of these support units, typically one of them will be specifically tasked with providing budget and fiscal support for the legislature, and another will conduct performance audits. As we discuss shortly, the budget and appropriations processes provide a major opportunity for state legislatures to oversee state agencies. Therefore, almost all state legislatures have either committee staff or some analytic bureaucracy, or both to provide it with fiscal information.

One might assume that having more analytic bureaucracies would improve oversight, but four of our states chosen for deep investigation—based on their abundant institutional resources for oversight—had only one analytic bureaucracy. These were large organizations with several subunits (e.g., an audit division, a fiscal division, and so on). In other states, these might be separate organizations. Therefore, the number of agencies is not always a useful way to predict oversight.

In order for legislators to use evidence to oversee the work of state agencies, the analytic bureaucracies have to produce audit reports or other documents. Some states have extensive procedures for state agencies to report their performance to legislators. For example, in Michigan state agencies and other state entities provide more than 600 reports annually to the legislature, and each chamber's fiscal agency is part of the budget process. In California hundreds of staff in the state's single analytic bureaucracy produced 35 performance audits in 2017, but also 125 financial performance documents. Vermont, with its 15-person audit unit, produced only 3 reports in 2017. Other states produce only financial audits tallying revenue and expenditures. Five states (Alabama, Arkansas, Delaware, Rhode Island, and South Dakota) produce no performance audits that we could find, although some of these states produced financial audits or, occasionally, a special investigation of a state agency. In Indiana, the governor's office contracted with a private non-profit organization to produce an extensive performance audit, but the legislature itself appears to have very limited, if any, capacity to commission performance audits.

Our estimate of the annual number of performance audits conducted by each state ranges from 0 in the five states listed above to 42 for Florida, 35 for New York, 31 for California, 30 for Michigan, and 25 for West Virginia (the five states in which we could identify the highest number of performance audits).

Even when states' analytic bureaucracies produce lots of reports and information, access to and use of these reports by legislatures varies. In some states, all legislators receive audit reports, while in others, the reports are distributed to a much narrower set of elected officials. In some states, legislators can request that the audit agency conduct a specific audit, in other states, they set the work plan for the audit agency, and in some states, the audit agency decides on its own what audits it will conduct. This is sometimes true even in states where the auditor general is appointed by the legislature, but it tends to occur more frequently in states with an elected auditor.

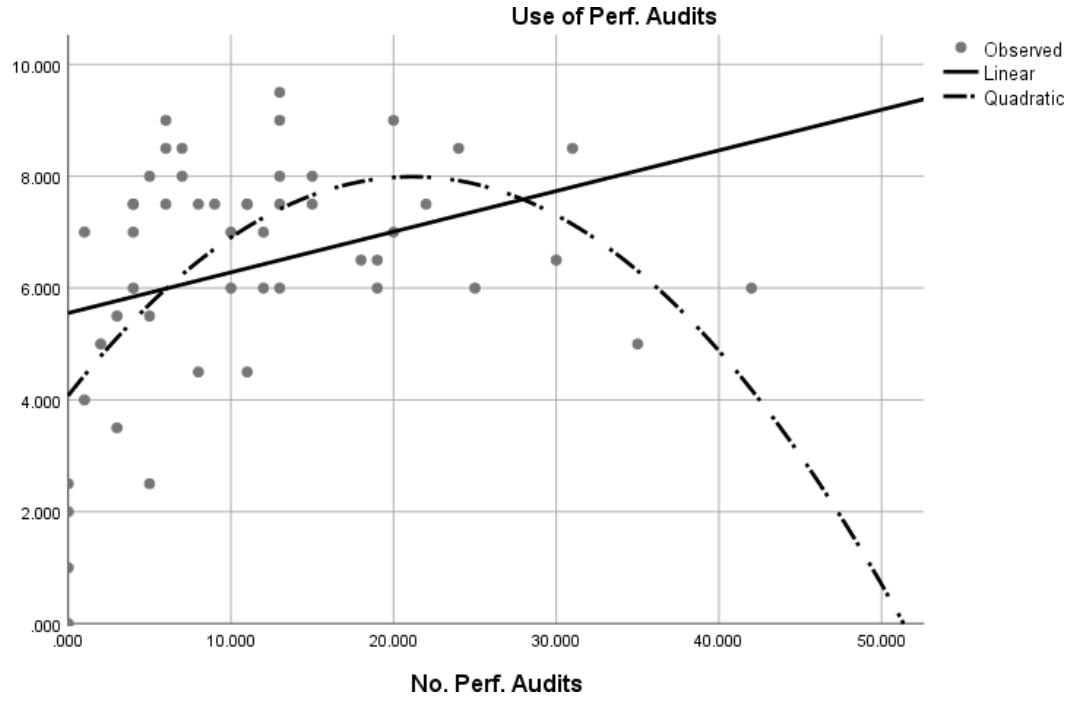
Some states circulate notices of audit report releases to media; others do not issue press releases, although the reports may be publicly available.

Producing audit reports and the evidence they contain is a necessary, but not sufficient condition to produce evidence-based oversight in state legislatures; the reports need to be used. Not surprisingly, given this catalogue of differences in the reports produced and access to the reports, we find that states vary in the extent to which their legislators use audit reports. Our judgment places five states (10%) in the minimal category and 6 states (12%) in the limited category for the extent to which the audit reports have been used by legislators to conduct oversight. It also places 12 states (24%) at the upper end of the scales, between 7.51 and 10 (high use of performance audit reports for oversight). The remaining 27 states (54%) fall into the category moderate use of audit reports. The mean for use of the audit reports was 6.4 on our ten-point scale (s.d. 2.1). No state earned a perfect score of ten, but one received a zero.

We assumed that having well-funded analytic bureaucracies would explain some of these differences in the use of audit reports, though we were wrong. There is no statistically significant correlation between either the funding for these agencies or the size of their staff and the extent to which audit reports are used. Part of the explanation for this is that several states with exceptionally well-funded analytic bureaucracies spend a lot of time and effort on local government audits or the state's single audit. They have a large budget and many staff to support this. Relative to these other responsibilities, they produce only a modest number of state agency performance audits.

The relationship between use of performance audits and the number of performance audits is not well represented by a straight line. Rather, the data shows that the use of performance audits rises rapidly as the audit agencies produce between one and ten, then the curve levels off above that and finally begins to decline after more than 30 are produced.

Figure 1



This could be an issue of attention span. We imagine that it would take an exceedingly well-organized legislature to actually use more than 30 performance audits a year. It is conceivable that there are just too many other demands for legislators' attention.

We assumed that the level of professionalism in the state legislature would be associated with the extent audit reports are used. But we found that the state's level of legislative professionalism (Squire 2017) did not explain the extent to which audits were used for oversight (Kendall's tau-b = 0.13, and not statistically significant with p = 0.09 using a one-tailed test of significance). This contradicts our assumption and those of other scholars who commented on this project. We did, as we expected, find that states that have professional legislatures have analytic bureaucracies that produce more audit reports. This association is moderate (r = 0.42[5] and statistically significant, $p < 0.01$, using a one-tailed test of significance). So it appears that states

[5] The number of reports is an interval variable and Squire's index is typically treated as an interval scale.

with professional legislatures have very productive analytic bureaucracies, although it is not necessarily true that professional legislatures use those performance audits extensively to oversee the work of the executive branch.

In addition to the potential for information overload mentioned above, political ambition offers another plausible explanation for the finding that legislators in highly professional state legislatures do not necessarily make more use of audit reports. Professional legislatures are populated by full-time or nearly full-time lawmakers. Woods and Baranowski (2006) find that politically-ambitious legislators are not motivated to monitor state agencies—a task their research indicates is seen by many legislators as time consuming and lacking electoral payoff. Legislators' incentives depend to some extent on the political opportunities available in their states. Many state legislatures have been described as a "springboard" to higher political office (Squire 1992). Several highly professional state legislatures do not appear to pay much attention to oversight, while in some part-time legislatures oversight seems to be quite important. The level of professionalism does not explain which states do and do not excel in oversight.

As we described earlier, the Eagleton Institute championed legislative audit reform in the mid-1900s, advocating that legislatures create their own audit agencies to help with them oversee the performance of state agencies. To assess the success of the Eagleton reform, we examined the association between use of audit reports and two measures of the relationship between the legislature and audit agency. First, we considered whether the legislature appointed the auditor or at least played a role in appointing him or her, and second, whether (according the NASACT survey of these agencies from 2015) the legislature was able to request specific audits. The resulting measure ranges from 0 to 2. We found that stronger ties between the legislature and the audit agency were at least somewhat important in coaxing legislators to use audit reports. The association between the legislature using audit reports and having appointed the auditor and/or

having the ability to request audits is modest (Kendall's tau-b = .28), but it is statistically significant ($p < 0.01$ using a one-tailed test of significance). This would indicate some value in this earlier reform. Although clearly there are other factors that encourage or discourage legislative use of audit reports, this relationship suggests that the efforts of the Eagleton Institute continue to enhance legislative oversight. Moreover, our findings suggest that legislatures that do not yet have their own audit unit should consider adopting this innovation.

More importantly for our investigation here, our case studies reveal that several states have adopted processes and procedures designed to overcome the tendency of some legislators to minimize their attention to oversight. For example, some states mandate publication of agency compliance with auditor recommendations as well as legislative responses to audit recommendations (e.g., bills introduced and bills passed). Colorado's budget process is preceded by an annual report from its audit agency detailing agency compliance with its audit requests. Additionally, Colorado passed a State Measurement for Accountable, Responsive, and Transparent Government Act (SMART) that requires that all substantive committees hold hearings with agencies under their jurisdiction. Use of audits by these committees has increased, according to sources within the state, following the passage of SMART. Hawaii's audit agency takes a different approach, producing and publishing one-page summaries of its audits for the citizens of the state. Public pressure then leads legislators to pay more attention to audit reports. Citizens in the state of Washington used public pressure to pass a ballot initiative that funds additional audits of state agencies and requires that the legislature hold hearings on all audit reports. We return to these procedures for facilitating use of audit reports when we discuss the best practices for evidence-based bipartisan oversight. But we find that legislatures that work more closely with their audit agencies are more likely to use evidence from audit reports to oversee the work of state agencies.

Oversight through Committee Hearings

Most legislatures hold committee hearings to gather testimony from state agencies about their delivery of programs, their use of state money, and other similar activities. Legislative committees (sometimes called commissions or other similar terms) are typically the loci of these information gathering and investigative activities. We considered oversight in four different types of committees: the committees involved in budgeting and appropriations, the substantive standing committees, committees with the word *oversight* in their name or an explicit focus on oversight and audits, and special committees such as interim committees in part-time legislatures and special investigation committees. We find wide variation in the vigor with which state legislatures use their power to call witnesses and the depth to which they dig into the work of an agency.

We examined legislators' activities in these areas through interviews, examining transcripts and minutes, and watching videos of their meetings. To judge whether legislators exercised oversight during these hearings, we not only considered whether they called on state agency officials to testify, but we considered the types of questions they asked. We considered *why* questions to be more probing ways to drill down into the performance of the agency in contrast to *what* or *how* questions that merely describe the work that the agency does. Other more dramatic indications of oversight include resignation of a program director or agency head in the aftermath of a hearing. Another indication of oversight is a change in an agency's budget. This could be either more money to resolve shortages of resources or less in retaliation for non-compliance with audit recommendations, for example. Another indication of oversight is a follow-up hearing on a particular program, situation, or event. And finally, we considered outcomes of such hearings, for example, legislation introduced to resolve a problem identified in an audit or a hearing.

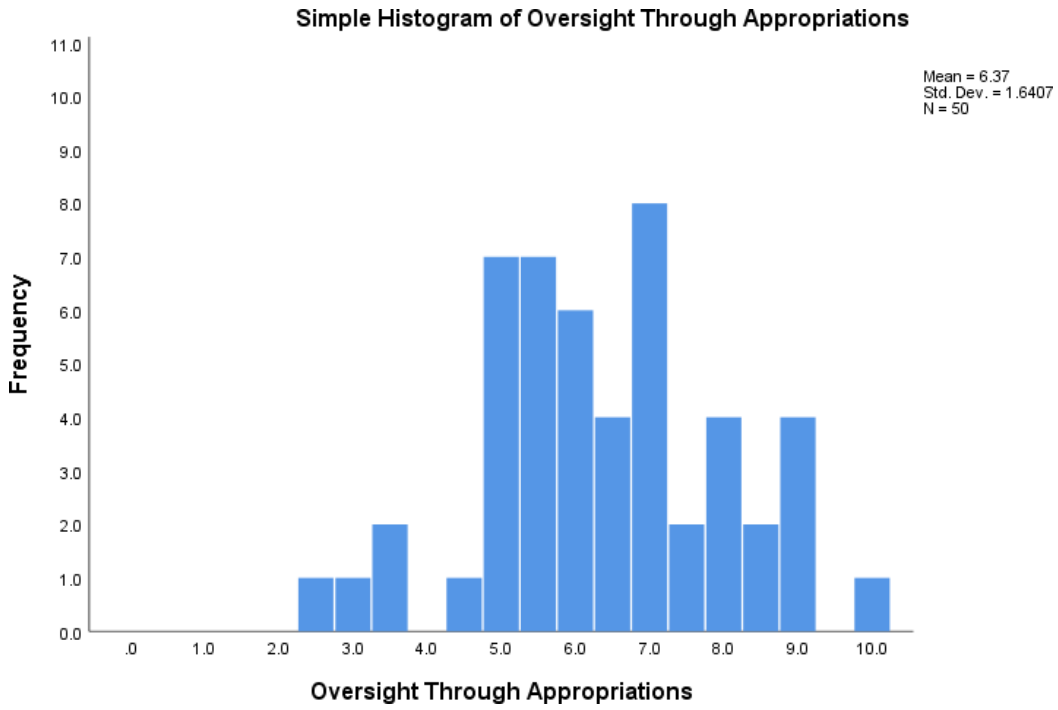
To summarize, we consider any of the following to indicate that oversight is occurring in a committee: agency officials testify, audit reports receive a hearing, legislators ask probing questions about agency performance, specifically targeted increases or decreases are made to agency budgets based on agency performance or audit compliance, legislation to resolve problems identified in audits or hearings is introduced, agency personnel changes occur (e.g., new positions, resignations, and so on), or investigations are initiated. Moreover, legislative veto overrides of budget line-items or of the budget bill as a whole demonstrate that some oversight is occurring in the budget and appropriations process. (Unlike the federal government, budgeting and appropriations are usually combined into the same bill or series of bills in many states.)

To rate each state's oversight through the committee process we rated each state's legislative committees on four questions: one for appropriations committees, one for other standing committees, one for committees charged with performing *oversight*, and one for interim or special investigative committees. (Only 37 of the 50 states had interim or special investigations committees.) Specifically, the questions on which the principal investigators provided ratings were: 1) To what extent do you believe that Appropriations Committees or sub-committees actually oversee the executive branch, including state agencies and other governmental entities (such as commissions, boards, etc. that carry out public activities)? 2) To what extent do you believe that other standing committees actually oversee the work of the executive branch? 3) To what extent do you believe committees with oversight specified in their name actually oversee the executive branch? 4) To what extent do you believe interim or similar committees actually oversee the work of the executive branch? Again, responses to each of these four questions were reported on a Likert scale of 0, not at all, to 10, a very great extent.

The scores for oversight exercised in appropriations committees range from 2.5 to 10, with a mean of 6.4 (s.d. 1.6). In the case of appropriations, only one state is at the low end of the

distribution (minimal oversight). Eleven states (22%) exhibit limited oversight through the appropriations process. More than half the states (27 or 54%) conduct a moderate level of oversight through the appropriations process. Finally, 11 states (22%) conduct a high level of oversight through the appropriations process. We find that legislators make more use of their appropriations powers to conduct oversight than they do for many of the other resources they possess. We attribute this to the necessity for states to pass budgets, which means that differences between the legislature and the executive branch must be resolved to avoid a government shutdown. With only a few exceptions, there is no provision for deficit spending at the state level, but achieving a balanced budget is often very difficult, leading to conflicts, negotiation, a search for efficiency, and questions about the value of programs being funded.

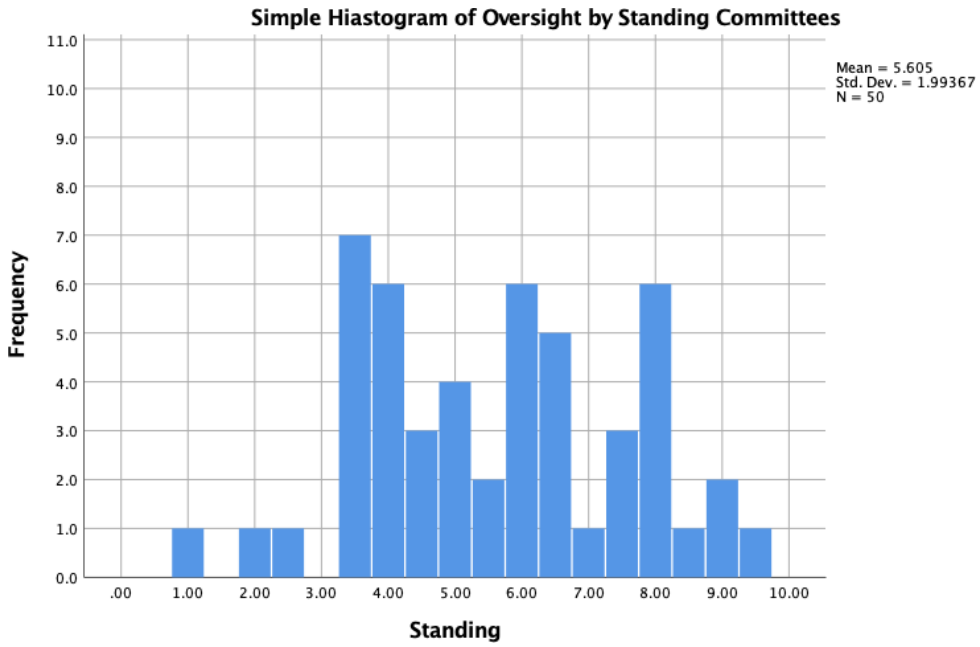
Figure 2



We assumed that the power of the governor might thwart the ability of state legislatures to flex their oversight muscles through the appropriations process, but we found no association between the power of the governor and the use of the appropriations process for oversight. We did, however, find a small but statistically significant association between legislative professionalism and oversight through the appropriations process (Kendall's tau-b = 0.2, $p < 0.05$ using a one-tailed test of significance). This is one of the few associations we find between legislative professionalism and oversight.

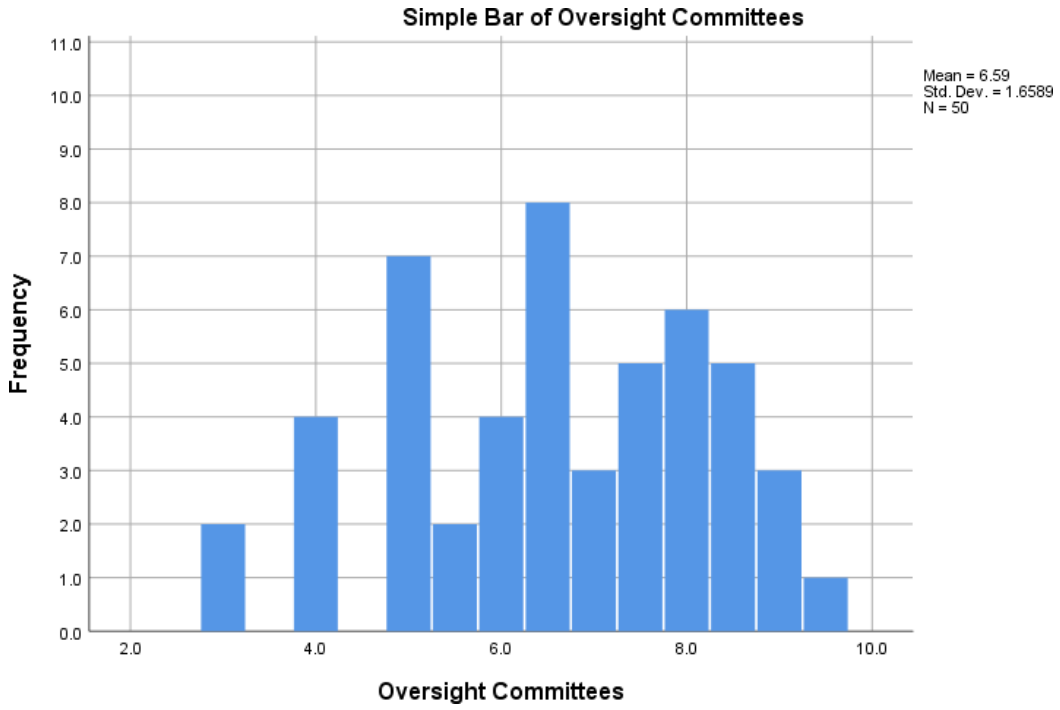
Our ratings for oversight exercised through substantive standing committees range from 1 to 9.5, with a mean of 5.6 (s.d. 2.0). The mean is lower than it is for oversight through the budget and appropriations process, and the range of ratings and the variance are both wider. There are more states in the lower end of the distribution: 3 (6%) with minimal oversight and 20 (40%) with limited oversight. The upper end has fewer states, having 17 (34%) with moderate oversight and only 10 (20%) exhibiting high levels of oversight through standing committees.

Figure 3



For committees specifically tasked with legislative oversight or with coordinating the work of the audit agency or similar oversight related tasks, our assessment of the extent to which they conducted oversight ranged from 3 to 9.5, with a mean of 6.6 (s.d. 1.7). This is another tool that state legislators appear to wield effectively to oversee the executive branch. Indeed, we found evidence that state legislatures use these oversight committees even more than they use the appropriations process to oversee the executive branch. We did not rate any states in the minimal category for this form of oversight. There were 13 (26%) states that we judged to make limited use of this tool, 22 (44%) that we judged to make moderate use of this tool, and 15 (30%) states that we considered to make high use of their oversight committee.

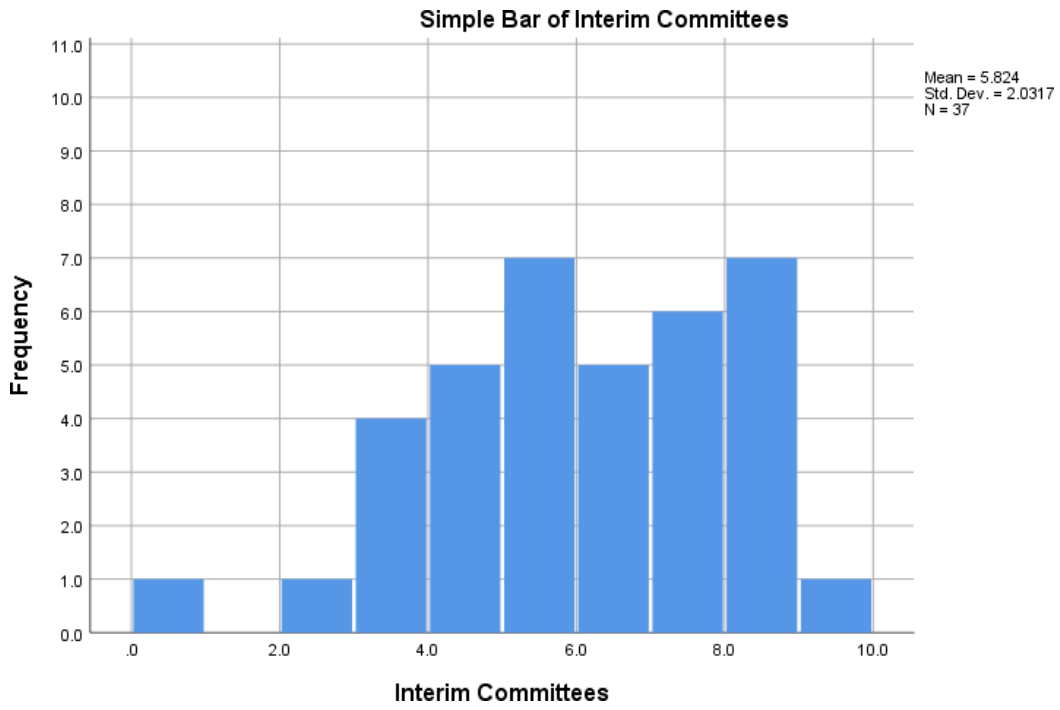
Figure 4



Finally, many states have special investigation committees, task forces, or, especially in part-time legislatures, there are interim committees that focus specifically on oversight. We found committees of this sort conducting oversight in 37 states. Our assessment of their conduct of oversight ranges from 0.5 to 9.5, with a mean of 5.8 (s.d. 2.0). We found that two states that have

these committees made minimal use of this opportunity to exercise oversight. We found 14 states that made limited use of this type of committee, while 13 made moderate use of these special committees for oversight. There were eight states that we considered to make high use of interim or special committees to exercise oversight. These interim committees meet when the legislature is not in session—sometimes they meet for several full-day sessions at a location outside the state capitol. In the states that use these committees heavily, the committee members go on "field trips" to pre-schools, prisons, or other facilities in which state services are delivered. They call in experts in various fields both from state agencies and from outside groups. They spend the night in hotels in the towns where they have scheduled site visits, and they often appear to eat meals together. Legislators serving on these committees are typically paid per diem for attending these sessions, and their mission is explicitly to conduct oversight of the delivery of state services. We consider this approach to oversight to be a "best-practice" due in part to the focused attention oversight receives from these committees. Moreover, paying people explicitly to conduct oversight establishes it as a valued responsibility of the legislature.

Figure 5



We averaged the three preceding committee scores (standing, oversight, and interim committees) to provide an overall assessment of oversight through the legislative committee process outside of the appropriations process. The resulting values for non-appropriations committee mechanisms of oversight are somewhat normally distributed around a mean of 6.1 (s.d. 1.5) with a range of 1.8 to 9.2. The scores for all the measures of committee oversight are shown in Table 1. We also include the scores for use of audit reports, which we discussed earlier. Finally, we added all four committee oversight scores (including appropriations), plus the score for use of audit reports, and then divided by 5 to calculate an average as an estimate for the extent of oversight exercised through all the traditional forms of oversight.

Table 1
Distribution of Measures of Traditional Oversight

Type of Oversight	Mean (Standard Dev.)	Range Min.	Range Max.	Percentage in Categories Minimal	Limited	Moderate	High
Use of Audit Reports	6.4 (2.1)	0	9.5	10%	12%	54%	24%
Appropriations or Budget Process	6.4 (1.6)	2.5	10.0	2%	22%	54%	22%
Standing Committees	5.6 (2.0)	1.0	9.5	6%	40%	34%	20%
Oversight or Audit Committee	6.6 (1.7)	3.0	9.5	0	26%	44%	30%
*Interim or Special Committee	5.8 (2.0)	0.5	9.5	4%	37.8%	35.1%	21.6%
** Committee Average	6.1 (1.5)	1.8	9.2	2%	24%	54%	20%
***Average for Traditional Oversight	6.2 (1.4)	2.5	9.3	2%	14%	56%	18%

* percentages based on the 37 valid cases--fulltime legislatures tend not to have these committees
**includes standing, oversight, and interim committees (when they exist)
***include all three types of committees, plus appropriations process, and use of audit reports

Looking at Table 1, we see that there is only one state that is rated as exercising minimal oversight when we average all the traditional mechanisms of oversight. It appears that states that do less oversight through one type of committee (e.g., oversight through substantive committees), compensate by doing more oversight through some other committee, for instance, an interim committee or a committee specifically tasked with oversight that supervises the legislative audit unit. Although states might want to expand their repertoire of traditional oversight activities so that they move into a higher utilization category, almost all states give traditional forms of oversight at least limited attention.

To determine the role evidence plays in traditional mechanisms of oversight, we examined the association between a state legislature's use of audit reports and its oversight through the appropriations process and its oversight through standing, oversight, and interim committees. We find statistically significant ($p < 0.01$) and moderately strong associations (based on Kendall's

tau-b) between use of audit reports and these four forums for oversight. The association with the appropriations process is 0.44, with standing committees 0.38, with oversight committees 0.36, and with interim committees 0.31. Combined with the insights we gained in the previous section about the use of audit reports, it appears that legislatures that have closer relationships with their audit agencies make greater use of audit reports, which is associated with conducting more oversight through a variety of committee processes, including the appropriations process.

Finally, given our interest in bipartisan oversight, we compared means for each of these traditional oversight mechanisms for states with single-party government with states with divided government (either split control of the legislative chambers or a governor from the party not in control of both legislative chambers). To classify states as trifectas (under single-party control), we relied on data from the National Conference of State Legislature, March 1 of 2017, because it matches most of the times during which the hearings we listened to occurred. This assessment produces 31 trifectas and 18 divided governments with Nebraska excluded based on its self-labeling as a "bipartisan" unicameral legislature.

Table 2

Type of Oversight	Mean* for Trifectas (n=31)	Mean* for Divided Govt. (n=18)	F	Sig.
Use of Audit Reports	5.7 (2.2)	7.7 (1.1)	7.6	0.001
Appropriations or Budget Process	5.9 (1.5)	7.3 (1.6)	9.6	0.003
Substantive Committees	5.3 (1.8)	6.3 (1.6)	3.3	0.078
Specific Oversight Committee	6.4 (1.7)	6.8 (1.7)	0.2	0.417
Interim or Special Committees**	5.5 (2.0)	6.4 (2.1)	1.8	0.188
Overall Traditional Oversight	5.8 (1.4)	6.9 (1.2)	4.5	0.006

*Standard deviations appear in parentheses below the mean.

**Of the 36 states with interim committees analyzed here, 12 have divided government and 24 are trifectas.

We used a one-way analysis of variance to investigate the differences between these two groups of states - those with a trifecta or those with divided government. For three of these six types of oversight, we can be confident that states with divided government conduct more oversight than states with a trifecta. The means for oversight conducted in states with divided government are one to two points higher on our scale than it is for states with a trifecta. These differences are statistically significant at $p < 0.05$ in all but three cases: in substantive standing committees, in interim committees, and in committees specifically tasked with oversight responsibilities. Divided government increases oversight through the appropriations process by 1.5 points, and it increases use of audit reports by two points. This provides fairly strong evidence that divided government is an important driver of oversight. With divided government, there is more oversight exercised through the appropriations process, and legislators are more likely to use information from audit reports to conduct oversight. We can be confident that these differences are real because there is a high level of statistical significance. (We can be more than 99% confident that the difference is real). Moreover, there is more oversight conducted through traditional mechanisms of oversight overall (based on the average for all forms of traditional oversight) in states with divided government. Even though the difference is only about one-point on our ten-point scale, it is also a highly statistically significant difference.

The effect of divided government on oversight conducted in various legislative committees is less clear. Although trifectas average one point lower on our ten-point scale for oversight conducted in standing committees, the level of statistical significance is not as high. Therefore, we can only be 90% confident that this difference is real.

The difference in the means for oversight conducted through specific oversight committees for divided government states versus states with trifectas is less than one-half point on our ten-point scale. One reason for this similarity is that several states have laws that require

balanced party representation (bipartisanship) on the oversight committee, and typically this stipulation applies only to the oversight committee. This means that both political parties have a voice in oversight in these states, which might restrain tendencies toward partisan oversight. Bipartisanship on oversight committees is one of the best practices that we enumerate at the end of our discussion. We return to the issue of bipartisan oversight in the conclusions.

The effect of divided government on oversight through interim committees is not statistically significant, but the difference in the mean is one point on our 10-point scale. There are only 36 states (excluding non-partisan Nebraska) that use interim committees. Therefore, we have fewer cases to analyze, and in a few states, party membership on interim committees is balanced. We can only be about 90% confident that this difference is real. Although we cannot be highly confident of this result, the pattern is consistent. It appears that divided government increases legislative oversight of the executive branch, demonstrating that there may be partisan undercurrents to the exercise of legislative power through the traditional channels of budgeting, committee hearings, and use of audit reports.

Administrative Rule Review

Administrative rule review is a subject that elicits strong normative arguments about the prerogatives of neutral, competent civil servants to promulgate rules versus the value of legislative oversight to ensure that rules faithfully adhere to the intent of laws (Woods 2015, Berry 2017). As a result, in many states, the powers legislators possess to influence administrative rules involve a complex dance negotiated between state agency officials, legislators, and the governor. In some states, this process includes a role for administrative law judges, individual citizens who complain about the impact of rules, or even private sector panels. Often gubernatorial involvement curtails legislative action (Gerber, Maestas, and Dometrius 2005, Woods 2015).

The rule review process appears to be more varied than the traditional mechanisms of oversight. In many states, legislative oversight is limited to recommending changes or delaying the adoption of rules until the agency "voluntarily" makes changes. Typically, if a legislature does not take action to reject or oppose a rule, it takes effect. Only three states grant their legislature an affirmative veto over administrative rules (Connecticut, Nevada, and West Virginia). This means that the legislature in these states must approve all rules for them to be adopted— a legislative veto (Berry 2017).[6] Several states, such as Idaho, adopt rules and then let the legislature veto them—effectively, a delayed legislative veto. At the opposite end of the continuum are states that do not provide any role for their legislators. For example, in Nebraska and California, the executive branch reviews rules, excluding legislative oversight completely, and in New Mexico, the rule review process is entirely in the hands of the agencies promulgating the rules (Schwartz 2010).

Moreover, states appear to regularly renegotiate the role of the legislature in administrative rules, often through the courts. Tennessee's attorney general issued two opinions, one in 1982 and another 2001, arguing that its legislature's actions of rejecting rules is an unconstitutional violation of separation of powers. In the early 1990s in Michigan, Governor John Engler (Republican) sued to prevent the state legislature from overturning administrative rules. As a result, the Michigan Supreme Court restricted the ability of Michigan's legislature to overturn administrative rules once the rule is promulgated.[7] Both Republicans and Democrats in the legislature decried this during interviews we conducted with them for our term limits research project (interview notes 1998). More recently, Public Act 513 of 2016 grants the Michigan

[6] Although Berry does not include Tennessee among the states with an affirmative veto, it is in our opinion close to having this power.
[7] https://caselaw.findlaw.com/mi-supreme-court/1053939.html, site visited 7-2-18.

Legislature more options when it objects to an agency rule.[8] These new options include a way for the legislature to propose an alternative rule and pass the alternative rule as a bill or to delay proposed rules. These changes illustrate the turbulence in this area of checks and balances between the executive and legislative branches of government.

In some states (e.g., Oklahoma, Indiana, Maine, and Michigan), legislators have delegated some or all of their rule review powers to private sector panels. [9] In Michigan, this means that any administrative rule proposed by the Department of Environmental Quality (and only that department) will be reviewed by a panel consisting of 6 industry and 6 non-industry members. Each of the six industry members represents one of the six following industries: solid waste management, manufacturing, small business, public utilities, gas and oil, and agriculture. The six non-industry members include one individual each representing environmental groups, local government, land conservancy, a public health professional, and the general public (2 representatives). No more than six members of the panel may be affiliated with one political party. There is no restriction on conflicts of interest on this panel. Therefore, a pipeline company could sit on the panel to oversee rules about pipeline safety.[10] Michigan's newly elected governor recently issued an executive order eliminating this review panel, which elicited oversight hearings in the state legislature and ultimately, a rejection of her executive order. This further illustrates the unsettled nature of the power of administrative rule review between the legislative and executive branches.

We found that, not only do the procedures for administrative rule review diverge widely, some states have adopted **extremely** complicated rule review procedures. There tend to be

[8] http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0513.pdf, Site visited 2/16/2018.
[9] http://www.crainsdetroit.com/article/20160301/NEWS/160309985/casperson-bill-to-create-environmental-rules-committee-has-united, Site visited 2/16/2018.
[10] http://michiganradio.org/post/bills-create-mdeq-oversight-panels-their-way-snyders-desk, site accessed 6/22/18.

multiple "if, then" conditions and loops from agencies back to other actors. Moreover, Schwartz (2010) finds that many state legislatures rarely, if ever, use the powers they have, partly, he argues, because the process is so complex.

To measure legislative oversight of administrative rules, we examined and rated the extent to which the legislature reviews newly promulgated rules and the extent to which the legislature reviews existing rules. Each variable was rated on a Likert scale of 0, not at all, to 10, a very great extent. We also averaged these two forms of rule review to create an average rule review score. As we see in Table 3, legislatures are often more actively involved in reviewing new rules, but in some states, especially states with sunset provisions that require periodic review of administrative rules, the legislature is more actively involved in "sunsetting" existing rules. The mean for the legislative review of newly promulgated rules is 4.7—slightly below the mid-point on our 10-point scale. The mean for the review of existing rules is even lower—3.4. As we see clearly from Table 3, state legislatures rely less on administrative rule review to oversee the work of the executive branch than they do on traditional mechanisms of oversight. About one quarter of the states fall into the minimal categories with respect to reviewing new rules, and slightly more than half of the states fall into that area for the review of existing rules.

Table 3
Distribution of Measures of Administrative Rules Review

	Mean	Range		Percentage in Categories			
Type of Oversight	(Standard Dev.)	Min.	Max.	Minimal	Limited	Moderate	High
New Rule Review	4.5 (2.8)	0	9.5	28%	24%	34%	14%
Existing Rules Review	3.4 (2.4)	0	9	52%	24%	20%	4%
Overall Rule Review	4.1 (2.4)	0	9	34%	28%	30%	8%

The visual images of the data on rule review clarify how many states do little or minimal administrative rule review. Therefore, we provide histograms in Figures 6, 7, and 8 (below) that illustrate these bi-modal distributions. Tharp (2001) found that 35 states provide some form of rule review by legislative committees, which means that many states have no rule review or minimal review. This is easily seen in Figure 6. This pattern is even more pronounced when we turn to review of existing rules. Figure 7 shows that, with respect to the review of existing rules, many states are at the lower end of our scale.

Our overall assessment of each state's administrative rule review is an average of their review of newly promulgated rules and their review of existing rules. This average suggests that states that are stronger in reviewing new rules are often weaker in reviewing existing rules and vice versa. The overall mean is 4.1, just a little lower than the mean for reviewing new rules, but the standard deviation is also smaller—2.4 compared to 2.8 for the review of new rules only.

Figure 6

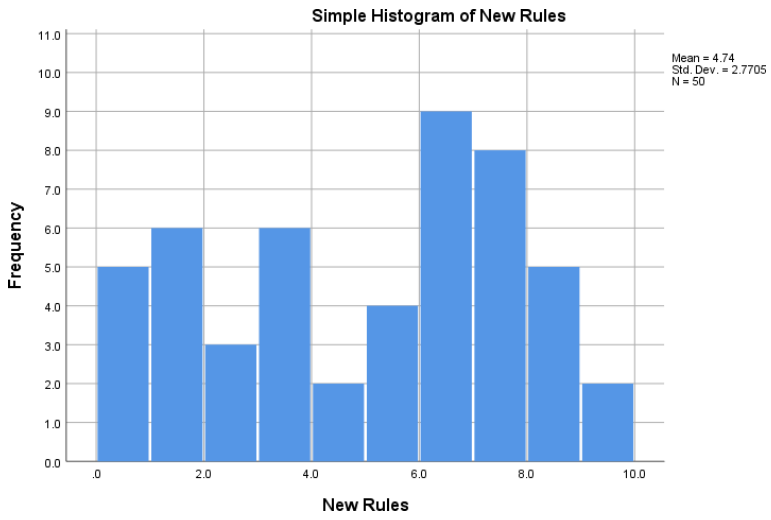


Figure 7

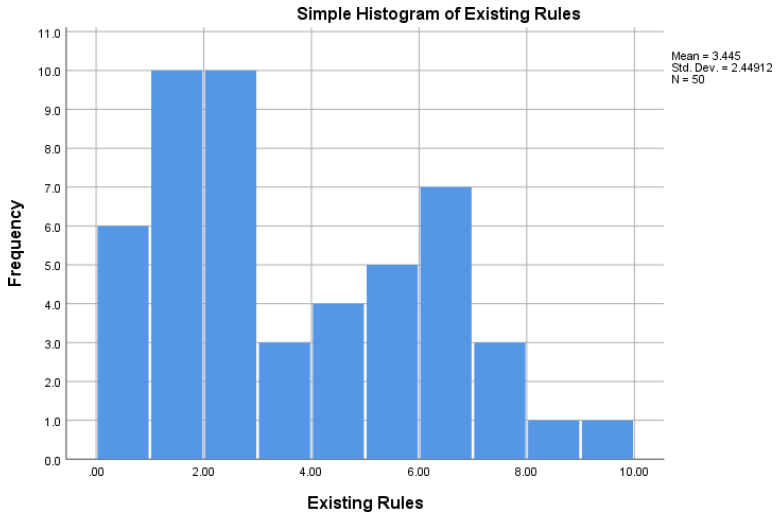
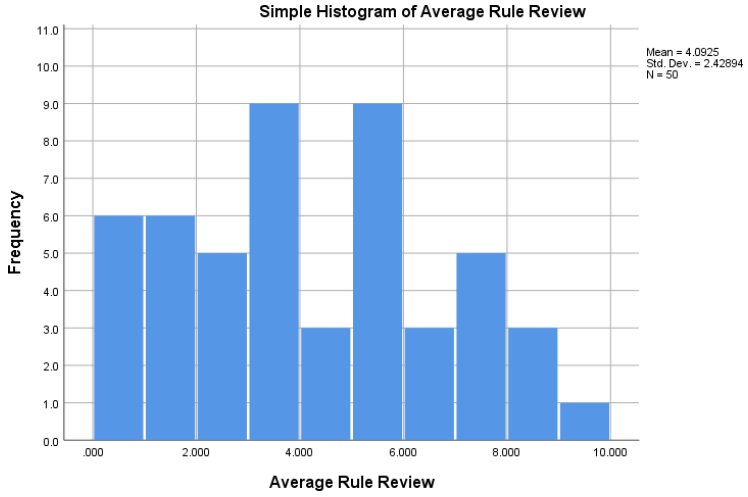


Figure 8



Interestingly, the extent to which administrative rule review is used for oversight is not statistically significantly different for states with one-party government and states with some form of divided government. The mean for the 31 states with a trifecta for the average measure of administrative rule review is 3.8 compared to a mean of 4.2 for the 18 other states (excluding Nebraska). We speculate that this could reflect the complexity of the process and the wide variation in legislative powers. These factors appear to overwhelm the trifecta effect we found

for oversight through traditional mechanisms like budgeting, audit reports, and, to a lesser extent, some types of committee hearings.

We find that there is no statistically significant effect of legislative professionalism on state legislatures' use of administrative rule review to oversee the executive branch. This is further evidence that the level of professionalism of a state's legislature does not explain how vigorously it oversees the executive branch.

One of the perplexing features of administrative rule review is that it appears to be a "Goldilocks problem;" too much power in the hands of legislators creates problems, but so does a lack of power to review rules. State legislatures with too little power have no input into the rule review process, leaving unelected appointees as well as civil servants in a position to alter legislation through the rule writing process. Examples of these states are New Mexico, Rhode Island, and Mississippi.

On the other hand, states that require that the legislature affirmatively approve rules before they take effect may have too much power, in our judgment. Connecticut, Nevada, and West Virginia fall into this category. For example, Schwartz (2010) reports that West Virginia legislators, under pressure from regulated interest groups, refused to approve a rule that protected public health (clean water standards), leading to the demise of the rule. They replaced it by adopting a rule written by the regulated special interests, the coal industry.

We suggest that there might be a balance between too much and too little rule review power that is more likely to produce some negotiation and revision of rules without making them vulnerable to being rewritten by special interests. Therefore, we are inclined to think that *moderate* rule review power might be the level for this form of oversight that is "just right," an emphasis on the balance part of checks and balances. As we noted earlier, even states that we

consider to be among the best performers of oversight, such as Minnesota, have used administrative rule review to block rules meant to protect public health (lower levels of nitrites in water) in a partisan battle with the governor. We did not assess this normative position on rule review in our numerical ratings of the states, but we consider it an important problem that needs to be considered.

Advice and Consent for Gubernatorial Actions

States vary widely in the prerogatives they grant to the legislature to oversee the direct actions of the governor, such as appointments and executive orders. For example, many states provide the option for the upper legislative chamber to confirm or reject gubernatorial appointees, but in many states, very few, if any, appointees are rejected. In some states, an affirmative vote is required for confirmation, while in others, an appointee is automatically confirmed if the legislature takes no action within a set time period. In some states, both legislative chambers participate in the confirmation process. In addition, many legislatures do not use their prerogatives in this area with any frequency.

Many governors are able to issue executive orders without any oversight from the legislative branch. In some states, this means that, de facto, the governor can make policy without involving the legislature. In Ohio, for instance, substantive policy decisions are made using executive orders, and the legislature has no input other than passing a law to overturn the order. Among the 19 executive orders issued by Ohio's Governor Kasich in 2012, two illustrate the policymaking aspect of executive orders: "Expenditure of TANF Funds for Certain Initiatives of the Governor's Office of Faith-Based and Community Initiatives" and prohibiting "Drilling for Oil and Gas From and Under the Bed of Lake Erie."[11] These are clearly issues that might

[11] http://governor.ohio.gov/Media-Room/Executive-Orders#9124-2012, accessed 8/14/18.

generate some intense debate in the legislature, but by using executive orders, the governor sidestepped legislative involvement for the duration of his administration. Even though the state's Republican legislature might agree with his positions on these issues, by using executive orders, legislators are not forced to take tough votes on issues that might antagonize some or many of their constituents or energize major interest groups. Only ten states require legislative approval of gubernatorial executive orders, although three others subject these orders to compliance with their state's administrative procedures act, and several states restrict these orders to certain subjects or events (Council of State Governments 2014 Table 4.5). For example, some states permit governors to issue emergency orders without review. This is clearly valuable when a crisis is imminent, and the governor issues an executive order for something like a mandatory hurricane evacuation. The same state may, however, require legislative approval for other types of executive orders, such as those reorganizing state government.

One of the major differences among states is that governors possess different prerogatives to issue executive orders. In some states, the governor lacks the power to reorganize government through an executive order. In some states, the governor can issue executive orders in some types of disasters or emergencies, though not others. For example, in Missouri, the governor cannot issue executive orders about energy or conservation emergencies. In some states, governors can respond to federal programs and requirements through executive orders; in others they cannot. So, not only does the power of state legislatures vary in this area, but governors' executive order prerogatives can be expansive or limited.

We investigated two categories of power legislatures in each state could use to restrain gubernatorial actions: advice and consent with respect to appointments and advice and consent with respect to executive orders, including orders to reorganize government. Each variable was

rated on a Likert scale of 0, none, to 10, extensive. In creating the variable for advice and consent on executive orders, we examined orders to reorganize government separately from other executive orders. We averaged the two measures, reorganization orders and all other types of orders, to produce a measure of advice and consent with respect to executive orders. Then we created an overall index for legislative oversight through advice and consent by averaging the two variables, advice and consent on appointments and advice and consent on executive orders.

Table 4
Distribution of Measures of Advice and Consent on Gubernatorial Acts

	Mean	Range		Percentage in Categories			
Type of Oversight	(Standard Dev.)	Min.	Max.	Minimal	Limited	Moderate	High
Gubernatorial Appointments	4.1 (2.3)	0	9	30%	38%	24%	8%
State Government Reorganization	3.5 (2.3)	0	8	40%	36%	22%	2%
Executive Orders (not Reorganization)	1.4 (1.9)	0	7	78%	16%	6%	0%
Average All Executive Orders	2.5 (1.6)	0	5.8	52%	44%	4%	0%
Average Advice and Consent Oversight	3.3 (1.6)	0.5	6.6	36%	52%	12%	0%

As we see in Table 4, these data are not normally distributed; they are skewed toward the lower end of the scale. The mean for the average advice and consent is low (3.3) compared to other categories of oversight, just a little over half of the score for traditional mechanisms of oversight (audits and committees). The mean for advice and consent on gubernatorial confirmations is higher (4.1), but we rated 30% of the states as exercising minimal oversight over gubernatorial appointments and 38% as exercising limited oversight. So, 2/3rds of the states appear to give their governors free rein in choosing department heads and other appointees. This is primarily a result of the limited use of this power. Most state legislatures can reject

gubernatorial appointees, but many do this very, very rarely. Given the number of media accounts of scandals and corruption among agency heads appointed by governors that we read while gathering data about the states, we suspect that closer scrutiny of these appointees would be in the public interest.

The four legislatures that made *high* use their power to reject gubernatorial appointments are Missouri, North Carolina, Florida, and Maryland. The scrutiny of a Democratic legislature led Republican Gov. Hogan in Maryland to rely on recess appointments in an effort to circumvent the legislature. We found several other governors who relied on recess appointments when they were unable to fill positions with their desired appointee. Sometimes, as in Maryland, this led to a protracted battle between the legislature and the governor. But divided government is not the only factor associated with higher scrutiny of gubernatorial appointments; the institutional powers of the legislature and the governor also contribute. Some states, such as Indiana and Georgia, do not grant the legislature the power to confirm or reject gubernatorial appointments to lead state agencies. In Massachusetts and New Hampshire, a separate Executive Council (elected by voters) conducts the advice and consent functions that in most states are performed by the legislature. In a few states (e.g., South Dakota and Alabama), the governor makes very few executive branch appointments. Therefore, the power of the executive and legislative branches with respect to executive branch appointments both vary, and this affects the oversight exercised.

The mean for executive orders reorganizing state government is 3.5—limited oversight. In many states, government reorganization is something that is the prerogative of the governor, but in other states, the legislature passes bills to reorganize state government. Here again, the power of the governor and the prerogatives of the legislature to participate in the reorganization

of government vary widely. The more interesting approaches to government reorganization involve joint task forces that facilitate legislative and executive branch collaboration on reorganization. The Little Hoover Commission in California is one example of this approach. This sort of arrangement resulted in a rating of 4.5 (some oversight) for California's legislature with respect to government reorganization. This is another area in which we would argue that there could be too much as well as too little oversight across the states. The middle ground appears to be more likely to balance the power of the two branches of government.

The mean for other types of executive orders is 1.4. Thirty percent of states were given a rating of 1 or lower on our ten-point scale. This means that many states do not have any power to oversee gubernatorial executive orders. This makes sense because many states already restrict the governor's executive order authority to disasters and crises that require immediate action to protect citizens from imminent danger. For example, governors in western states often issue executive orders during forest fires to direct state resources in the emergency. Deliberating about such an order could cost lives. On the other hand, state legislatures can and do object when governors issue orders that contradict legislation, as we observed in February 2019 in Michigan. As we described earlier, Michigan's governor issued an executive order to reorganize government that eliminated a controversial panel of industry and environmental groups created the preceding June that transferred rule review from the Department of Environmental Quality to said panel. The order triggered an outcry in the legislature, which overturned the order (Greene 2019).[12] This was the first time in 42 years that Michigan legislators had rejected a gubernatorial

[12] https://www.crainsdetroit.com/voices-jay-greene/former-state-environmental-director-surprises-support-whitmer-deq-fight, accessed 2/10/19

order (Egan 2019).[13] Ultimately, after negotiations with legislative leaders, the governor reissued a partial version of the order that left the outside rule review panel intact.

Finally, we consider the combination of advice and consent powers across the states—the average of confirmation and executive order and reorganization powers. More than one-third of the distribution for this variable falls into the minimal category, and another 52% of the distribution falls into the limited oversight category. The highest score for any state with respect to oversight through advice and consent is Florida, with a rating of 7.5 on a 10-point scale. Washington State, New York, and Illinois all received a score of 7.0. No state received a high rating for its use of advice and consent powers. In future analysis, we intend to examine the relationship between use of the confirmation process and the level of scandal and corruption in state politics. The high scores for Washington State, Illinois, New York, and Florida suggest that a state's experience with special interest activity and political scandals could play a role in the extent to which legislators scrutinize gubernatorial actions.

Given that so many states simply lack the authority to exercise oversight through advice and consent, it is more interesting to explore why so few states reject gubernatorial appointments, even when they might have the power to do so. We find that here again, states with a trifecta exercise much less oversight through confirmation of appointees.

[13] https://www.freep.com/story/news/local/michigan/2019/02/20/whitmer-new-environmental-executive-order/2913254002/, accessed 2/23/19

Table 5

Type of Oversight	Mean* for Trifectas (n=31)	Mean* for Divided Govt. (n=18)	F	Sig.
Gubernatorial Appointments	3.5 (2.3)	4.9 (2.2)	3.9	0.05
State Government Reorganization	3.5 (2.3)	3.9 (2.3)	0.6	0.42
All Other Executive Orders	1.1 (1.5)	2.0 (2.3)	2.9	0.10
Average Advice and Consent Oversight	2.9 (1.5)	3.9 (1.5)	5.3	0.03

The mean for the extent to which the legislature uses its confirmation power in trifecta states is 3.5 compared to a mean of 4.9 in states with divided government. This difference is statistically significant at p=0.05. So once again, having divided government appears to encourage state legislatures to exercise another form of legislative oversight. But we note that neither category of states perform much advice and consent oversight. Trifecta states just do even less oversight in this arena.

On the other hand, trifecta states do not differ from divided government states with respect to oversight of government reorganization. But this is likely to reflect the fact that there are so many different configurations of power between legislative and executive branches of government with respect to government reorganization. The limited amount of oversight with respect to other executive orders is not quite statistically significant, but in the direction we would expect—more oversight of executive orders with divided government.

Overall, we find that under both one-party government and divided government, state legislatures exercise very little advice and consent over gubernatorial actions. But there is a statistically significant tendency for state legislatures to increase their oversight of gubernatorial appointments under divided government. Additionally, the average for all forms of advice and

consent shows a difference between trifectas and divided government. But it is a difference between limited levels of oversight under divided government (mean 3.9) compared to an almost minimal level in states with a trifecta (mean 2.9—the cut off for minimal oversight is 2.5).

We also note that states with more professional legislatures do not tend to conduct more oversight through the confirmation of gubernatorial appointments or through any of the other forms of advice and consent that we examined. The states vary widely in the power they possess to scrutinize gubernatorial appointees. More professional legislatures often possess more power, as well as resources, to conduct hearings on nominees, but this does not appear to overcome other disincentives to engage in advice and consent.

Oversight of State Contracts

In recent decades, states have substantially increased the number and kinds of services that they provide through contracts with private—for profit and non-profit—entities. For example, in Louisiana under Governor Jindal, the number of state contracts rose to 14,125 in July of 2016 (Crisp 2018). This complicates the task of overseeing effective delivery of public goods and services by state agencies.

We found several states in which legislators and other government officials expressed concern about the limited checks and balances over these contracts. In New Mexico, the Legislative Finance Committee found that only a small fraction of the billions spent through state contracts was being monitored by the executive branch agencies responsible for this. The California State Auditor recently published a report complaining about lax oversight of no-bid contracts by state agencies. California's state agencies oversee their own contracts, but apparently they do not do so vigorously.[14] The advice in that report was for the legislature to

[14] http://www.govtech.com/policy/Following-Audit-California-State-Agencies-Update-Policies-Around-Noncompetitive-Bidding.html, accessed 6/28/18.

become involved in contract oversight. Similarly in South Carolina, during a hearing[15] triggered by the death of two juveniles in the custody of the South Carolina Department of Juvenile Justice but housed in a facility run by a contractor, one legislator commented about the need for the oversight subcommittee to find a way to examine the performance of the private contractor, AIMKids.[16] Maryland's legislature tried to get a handle on oversight of contracts by auditing the state's procurement process. Although the Maryland Legislature still has to rely on legislative audits to insert itself into contract monitoring, the state did adopt a series of procurement reforms. An informed observer in the state claimed that interest in oversight through contract monitoring is increasing as newer legislators with significant public finance and procurement oversight experience, gained on Capitol Hill, migrate to state government (interview notes, 2018). In general, we focused on this approach to oversight, not because we expected to find major efforts, but rather because it does or should represent a frontier for legislative oversight, given the expansion of contracting by the executive branch in the states.

We investigated two aspects of contract monitoring. First, does the state legislature have tools available to do this? For example, in Tennessee, the Joint Fiscal Review Committee comments on and reviews all contracts that exceed $250,000 and extend beyond a year. Also, Idaho recently passed legislation that requires agencies to report contract information to the legislature on the first day of each legislative session.

Despite these efforts in some states, the means for having the tools to monitor state contracts is low—2.9 (s.d. 2.1)—just barely in the *limited* category. Six states' legislatures (Pennsylvania, New Hampshire, West Virginia, Oklahoma, Oregon, and Nebraska) do not appear

[15] https://www.scstatehouse.gov/video/archives.php,, meeting on January 31st of the House Oversight Subcommittee, accessed 7/15/18.
[16] https://www.cbsnews.com/news/south-carolina-juvenile-justice-ami-kids-wilderness-camp-death-violence/, accessed 8/24/18.

to have any tools to do this at all. More than half (54%) fall into the lowest category—*minimal* tools that they could use to monitor state contracts. Another 32% of the states have *limited* tools to monitor state contracts, while 14% have *moderate* tools to undertake this task. No state received a *high* rating.

Second, does the state use available tools to monitor contracts? Even more states (60%) fall into the lowest category—*minimal* contract monitoring. This is hardly surprising given that almost as many states have minimal tools for the job. Fourteen states (28%) conduct *limited* contract monitoring. Only six states (12%) conduct *moderate* contract monitoring, and once again, no state received *high* marks. The mean value for using these tools is almost the same as the mean for having the tools—2.6 (s.d. 2.0)—again, just barely reaching the *limited* category.

The ratings we gave the states for having tools and using tools are highly correlated (Kendall's tau-b = 0.8, $p < 0.01$). In other words, states that have tools allowing them to do this typically appear to use those tools, but the tools available tend to be limited or minimal. Therefore, it is hard to perform the oversight function without adequate powers and prerogatives to monitor these contracts.

The pattern we found is that a state legislature might discover a problem with the performance of a contractor as part of a state agency performance audit. Then chair and committee members might probe more deeply into the bid process and the details of any state agency efforts to ensure that the contractor is performing well. We found a handful of states that use performance audits in this way. Texas, Hawaii, and Nevada are among these states.

We found no difference between states with divided government or one-party government for either availability of the tools to oversee state contracts or the use of those tools. Additionally,

we found no association between whether a state's legislature is more professional and either the availability of tools needed for monitoring state contracts or the use of those tools.

Some of the most alarming excesses in state government that we encountered during this research involved contracts with private entities that eventually resulted in scandalous situations that led to performance audits, committee hearings, and occasionally, action on the part of legislatures, even in states that do not normally have mechanisms that support legislative oversight of contracts. These scandals included private prisons (with dead inmates), prison food service (with maggots in the meat), juvenile detention facilities (with dead teenagers), and private supervision of foster care systems (in which children died while in foster homes). It is therefore alarming that most state legislatures lack the tools to oversee contracts with private (both for-profit and non-profit) entities. Some of these contractors perform work or services that have in the past been provided by government agencies. Sometimes these contracts outsource state services and responsibilities to other levels of government—counties for example. After reading about several problems with contract *performance* rather than the financial accounting, we are convinced that state legislatures desperately need added capacity for contract oversight to determine whether these services are being delivered effectively and appropriately.

Overall Assessment of the Quality of State Legislative Oversight

In addition to rating individual forms of legislative oversight, we also gave each state an overall score for all of their legislative oversight. This overall judgment provides a gestalt assessment rather than an average of the categories in our survey. We tried to incorporate factors like the manipulation of oversight by special interests, the overall climate of accountability and transparency, as well as some of the different activities that some states use, but many do not. For example, some states have sunrise processes in which the legislature can block the creation

of new boards and commissions; other states have various forms of sunset processes that require legislators to terminate or continue professional licensing regulations (for example) or to eliminate boards or commissions. In a handful of states, the legislature determines every few years whether various state agencies should be eliminated or continued.

We rated the states on two overall measures. The first considers the institutional tools and prerogatives a state's legislature has. This includes the state's constitutional and statutory prerogatives for oversight as well as the funding and staffing of its audit agency and other support resources. The second assesses the extent to which the state's legislature uses these tools. Both these final judgments range from 0 to 10 on the same Likert scale used for the other questions in our assessment. These scores are slightly skewed toward the upper end of our scale with a range of 3.5 to 9 and a mean of 6.7 (s.d. 1.4). The fact that the mean for this assessment is higher than the mean of the specific forms of oversight suggests to us that states that lack capacity in one form of oversight tend to compensate by having more of another kind of oversight. So in the end, most states have a substantial capacity to conduct oversight. It's just that these specific powers are not evenly distributed. Due to this counterbalancing tendency for states to be strong on some oversight dimensions while weak on others, we did not give any state an overall assessment of minimal with respect to their institutional capacity (tools available) for oversight. We rated nine states as having limited, 29 states as having moderate, and 12 states as having high institutional capacity for oversight. In other words, not quite one-quarter (24% exactly) of the states receive high marks for their institutional capacity on all the forms of oversight: traditional, rule review, and advice and consent. We excluded contract monitoring form this assessment because we consider it to be an area in which nearly all states need to improve.

It is more difficult for us to assess the use legislators make of the oversight tools they possess. This was especially true for states in which practitioners did not respond to our phone calls. Our efforts to listen to a few committee hearings or to find information about how many administrative rules were altered after legislative review could easily miss some of the action with any particular state. Some states simply do not make much information available about what they do. Here again, the scores are skewed toward the upper end of our scale with a mean of 6.4 (s.d. 1.6) for use of oversight capacity. The range extends from 2.5 to a perfect 10. We rated one state as making minimal use, 12 states as making limited use, and 27 states as moderate users of their state's available oversight tools. Only 10 states were judged to be high users of their oversight tools.

In some cases, states have fairly limited tools, but make extensive use of their limited capacity. In other states, there is ample power to conduct oversight, but we were unable to find evidence that legislators made much, if any, use of some of these tools. All in all, we found that legislators who have more capacity for oversight tend to use their capacity. The institutional capacity for oversight and the use of that capacity are correlated—and the association is strong and highly statistically significant (Kendall's tau-b of 0.59, $p < 0.0001$).

To illustrate the discrepancies between having institutional capacity for oversight and using it, we ranked states using our ratings for "tools" and "use of tools." These rankings are provided in Appendix B. Some specific examples are illustrative. We rated Wyoming as having among the lowest institutional capacity for oversight (fourth from the bottom among the 50 states). Yet we judged it to rank near the middle of the states in terms of its use of its limited capacity (rank 21st from the bottom). Similarly, Indiana is ranked 9th lowest in terms of institutional capacity, but it is near the middle of the states in terms of its use of these limited

resources (ranked 22nd from the bottom). Mississippi and New Hampshire also exhibit this pattern of "overachieving" in the conduct of oversight.

We find the opposite pattern in several other states—there is ample institutional capacity for oversight, but the state legislature does not appear to use it (at least we could not find evidence of use). For example, Georgia is ranked 19th in terms of capacity (only 18 states have more capacity), but it is 48th --third from the bottom--in our judgment of its use of oversight capacity. Florida and Tennessee are similarly underutilizing the tools that they have for oversight. Both are ranked in roughly the top third of states with respect to the tools they have for oversight, but both were rated in roughly the bottom quarter of the states with respect to their use of these tools.

We did find that legislative professionalism is associated with having more institutional capacity for oversight. Although the association is small (Kendall's tau-b = 0.22), this effect is statistically significant at $p < 0.03$. This makes sense logically because professional legislatures by definition have more staff, more time (longer sessions), and more resources, this is to say, more institutional capacity to perform any legislative tasks, including oversight. Yet capacity and characteristics of a professional legislature have only a small association. The institutional capacity for oversight rests on constitutional and statutory prerogatives, such as input into government reorganization, confirmation of gubernatorial appointees, an opportunity for input on administrative rules, or the partisan composition of specific committees. These other institutional resources explain the small size of the association between legislative professionalism and institutional capacity for oversight.

What is more interesting is that there is no statistically significant association between legislative professionalism and legislators' *use* of their institutional capacity for oversight. So,

legislative professionalism explains very little about legislators' oversight actions, although it is slightly associated with having the power and prerogative available if legislators chose to use them.

As we found repeatedly throughout our investigation, if a state has divided government, it tends to conduct more legislative oversight of the executive branch. We see in Table 6 that this difference is more pronounced for the use of oversight capacity than it is for the state's institutional capacity. This reinforces the impression that context (such as party control of state government) is a stronger predictor of legislators' behaviors with respect to oversight than is the capacity for oversight. In most states, the constitutional and statutory prerogatives that legislators use to oversee the executive branch are likely to be more enduring than party control of government.

Table 5

Type of Oversight	Mean* for Trifectas (n=31)	Mean* for Divided Govt. (n=18)	F	Sig.
Institutional Capacity for Oversight	6.4 (1.3)	7.2 (1.3)	4.1	0.05
Use of Oversight Capacity	6.0 (1.4)	7.1 (1.6)	7.0	0.01

*standard deviation in parenthesis below the mean

V. Discussion

Because professional legislatures resemble the U.S. Congress in many respects, we assumed that they would do more oversight. They are in session year-round, their elected officials are among the most highly paid state legislators in the nation, they have ample partisan and bipartisan staff, and legislators are considered full-time public servants. Citizen legislatures, on the other hand, are constitutionally limited to a small number of session days—some meet for only a few months every other year. Most members have other full-time job duties and sources of income. Moreover, the ten states we selected for more intensive case studies are ranked at least 30th (Nevada) or higher by Squire (2017) in terms of their legislative professionalism, hinting that professionalism and high-quality oversight might be correlated.

Nevertheless, we found only four statistically significant correlations between all our assessments of the extent of a state's legislative oversight and its level of professionalism: oversight through the appropriations process, oversight in standing committees, advice and consent on gubernatorial appointments, and institutional capacity for oversight. Although all four of these associations were weak, 0.19, 0.18, 0.24, and 0.22 respectively, they are statistically significant at $p < 0.05$ using a one-tailed test of significance. Although other scholars find that professional legislatures are less likely to conduct oversight (Woods and Baranowski 2006), we do not find those negative associations. We just find that professionalism does not have much influence at all on legislative oversight of the executive. There is no effect on the use of audit reports, on oversight through interim committees or special committees, or through specific audit or oversight committees. There is no effect on review of new administrative rules or of existing administrative rules, no effect on government reorganization, no effect on legislative action on gubernatorial executive orders, no effect on contract monitoring, and no effect on legislators' use

of their institutional capacity to conduct oversight. Overwhelmingly, professionalism does not explain much about legislative oversight.

The resources to support analytic bureaucracies (i.e., funding and staffing) is another factor we assumed would affect state legislative oversight based on the importance of information to this process. Chamber staff resources vary widely as does funding for analytic bureaucracies. These differences have been shown to profoundly impact the monitoring capacity of state legislators (Boehmke and Shipan 2015). We attempted to find associations between our assessment of state oversight activities and the funds for the state's audit agency reported by each state to the National Association of State Auditors, Comptrollers, and Treasurers (NASACT 2015). We also explored associations between the size of the staff reported to this same source and any form of state legislative oversight. We found no relationship between any of our measures of oversight and the amount of money provided to analytic bureaucracies or the number of staff positions. State budgets vary widely, so we divided the amount spent on the state's analytic bureaucracy by the size of the state's budget to create a ratio to see if that would reveal a relationship, though it did not. We also divided the data by whether the analytic bureaucracy audits local governments (a major task that increases the budget and staff needed). Considered separately (states that do and do not audit local governments), we still find no relationships between staff size of the analytic bureaucracy or the funds provided to these bureaucracies for oversight and their other activities.

We are especially interested in understanding how monitoring occurs when legislative actors are much less powerful than executive branch actors. Therefore, we describe each state's political context briefly at the beginning of each summary. In some states, the governor is especially strong (Ferguson 2015) and the legislature is judged to be part-time (Squire 2017) or

vice versa, or the two might both be strong or both weak. This means that we can consider whether different state political contexts are associated with different approaches to checks and balances between the legislative and executive branches. We find no association between the institutional power of the governor and any of our measures of state legislative oversight. However, when we subtract legislative professionalism from gubernatorial power, we find that a legislature that is substantially stronger than the governor tends to make more use of its advice and consent powers to oversee gubernatorial appointments. Although the size of this association is weak (Kendall's tau-b = 0.19), it is statistically significant at $p < 0.05$ using a one-tailed test.

The one thing that we found that most consistently increases the extent of legislative oversight conducted is divided government. Party competition appears to drive legislators to oversee the executive branch. On the other hand, single party control undermines oversight. This is somewhat troubling given that we defined bipartisan oversight as one ingredient of high-quality oversight. The area in which we found the least effect of divided government was oversight conducted through administrative rule review. The rule review processes in the states are exceptionally complicated. Furthermore, the rule review process changes fairly often, sometimes through court challenges. We return to the issue of partisanship in oversight below.

In our search for high quality oversight, we also looked for evidence-based oversight. We find that many states have resources that facilitate the use of evidence in their oversight processes. We find that when audit agencies work closely with the legislature, the legislators are more likely to use audit reports in their efforts to oversee the work of the executive branch. So we conclude that the reforms of the 1960s and 70s appear to have improved the use of evidence in conducting oversight. But many states still make limited use of the audit reports provided by their analytic bureaucracies. We think there are ways to improve this by motivating or mandating

the legislative committees to hold hearings on audit reports. In some states, such as Washington, voters have taken matters into their own hands by passing ballot initiatives to require that legislators hold hearings on audit reports. More states might consider doing this. Colorado passed the SMART Act, which we described earlier, that requires that all audit reports receive a legislative hearing. More state legislatures could pass laws like this. Regardless of the mechanism, we recommend that states hold more hearings on audit reports and increase their reporting about what they do with audit findings to the press and to the public.

Although we find that a lot of states at least occasionally use audit reports and other information to hold the executive branch accountable, we do not find much evidence that most states do this in a bipartisan way. As we noted above and demonstrated throughout this discussion, a lot of oversight appears to be motivated by partisan competition. Conversely, in states with a trifecta, oversight is diminished. In either situation, solution-driven, evidence-based oversight performed to protect the public interest may receive too little attention.

Therefore, we argue that ongoing reform efforts are needed to encourage bipartisanship. A small handful of states (11 that we were able to identify—see list in Appendix A) have adopted institutional rules that require bipartisan participation in various facets of oversight. For example, Connecticut has two auditors—one from each major political party—selected by the legislature. Montana requires balanced party membership on all its interim committees, and these are the loci of most of the traditional oversight conducted in the state. Illinois balances party membership on its audit committee and its administrative rule review committee, while Indiana balances partisan membership on its budget committee.

These various approaches to ensuring a role for both political parties enhances the likelihood that legislative chambers' minority party members have a voice in oversight. Given

that we find that oversight is less likely to occur when a state is controlled by one political party, providing a role for the minority political party in states with a trifecta could increase oversight. If the state is a trifecta, having a role for the minority party on the oversight committees has the potential to raise issues of executive branch misfeasance and malfeasance before scandals erupt or before the public or specific populations within the state are harmed. Moreover, if the chamber's minority party is also the governor's party (divided government), the presence of equal party membership on oversight committees has the potential to channel at least some of the chamber's oversight energy away from political posturing in which citizens can easily become pawns. In other words, partisan balance offers an opportunity to improve the quality of oversight both in states with trifectas and those with divided government.

Administrative rule review tilts the balance of power toward the executive branch in some states and toward the legislature in others. Legislatures in a few states have even abdicated their responsibility in favor of private interests, which is a source of concern to us. The major reform that we recommend for administrative rule review is to include the costs of not adopting a rule rather than simply addressing the cost of having a rule. In other words, some rules are beneficial to the citizens of the state – for example, rules about clean drinking water. The cost of not having the rule (or conversely, its benefits) are borne by the citizens whose health may be compromised by drinking water with high levels of pollutants. Almost all states have requirements to consider the costs of administrative rules during the rule review process. Almost none have requirements to consider the benefits of a rule. The benefits of rules that are blocked or rejected by either the legislature or the executive branch should be publicly accessible and available to the media.

Conclusions

Overall, we conclude that some combination of the core dimensions of oversight—careful inquiry by appropriations and standing committees backed by performance audits by analytic bureaucracies, rule review, and advice and consent—are being performed in many states. Within these overall patterns, there is great variation. We find that different legislatures use different tools to a greater and lesser extent. States that use one form of oversight extensively may not excel in the use of the other forms of oversight. About one quarter of the states do all or most of these functions and they do them well, probably producing more honest, effective, and efficient governance. Yet, some states do not exercise oversight well at all.

In general, we find that many states emphasize oversight through the appropriations process and through committee hearings—what we call traditional oversight. On the other hand, we find that states are less consistently performing oversight through the rule review and advice and consent processes. Moreover, we have some reservations normatively about the uses for which these two forms of oversight are employed—partisan battles compromising citizens' welfare or a forum where interest groups game the system. As to the frontier area of monitoring state contracting, this is really reaching too far for most state legislatures right now, no matter how desperately it is needed. Because of the huge shift toward privatization, this is a source of risk for all manners of governmental failures. Both auditors general and legislative committees should be seeking ways control these risks.

We do see great opportunities for bipartisan, evidence-based, solution driven oversight embodied in a number of best practices across the states. These practices and the institutional structures that enable them are listed in Appendix A—Best Practices. Many of these are basic good government efforts that legislatures and groups interested in improving government

performance can disseminate. If not the legislatures, then voters, as in the state of Washington, could pass ballot initiatives mandating a bipartisan oversight committee that would hold audit report hearings and publish reports about their oversight efforts.

Appendix A - Best Practices

Although the states we chose for intensive case studies demonstrate many of what we consider to be the best practices of oversight—those that are likely to produce bipartisan, solution-driven, evidence-based oversight—some of the states with less extensive oversight overall have strength in specific areas. Therefore, we include several of these states among those exhibiting best practices. The list of states following each best practice is intended to be illustrative of the range of different types of states (i.e., region, size, professional legislature), rather than an exhaustive list of all states that have adopted a practice. The practices:

- Some states create oversight committees with a balance of party membership, giving the minority party members a voice in bringing evidence to the table. States that have a version of this or similar practices include:
    - Colorado
    - Connecticut – two auditors: one from each political party
    - Idaho
    - Illinois – audit committee and administrative rules committee
    - Indiana - Budget Committee and subcommittee of the Legislative Council monitoring the State Board of Accounts and Administrative Rule Review Committee
    - Maine
    - Minnesota
    - Montana – audit committee and all interim committees
    - Nevada
    - South Carolina
    - Washington
- Some states require legislators to hold committee hearings on auditor's reports and recommendations. Washington's legislature is even required to review auditor's reports as part of its appropriation process.
    - Colorado
    - Washington
- Some states publish reports describing whether legislators took action to introduce or pass bills that auditors say are needed to correct problems with programs. Generally, audit agencies publish these reports, but sometimes committees do this, too.
    - California
    - Nevada
    - Hawaii
    - North Carolina
    - South Carolina – the oversight committee publishes this

- Joint oversight committees across chambers may increase efficiency. Otherwise, auditors and others must present the same material separately to each chamber. If the two chambers are controlled by different political parties, this also encourages bipartisan oversight.
    - Connecticut
    - Florida
    - Maine
    - Minnesota
    - Pennsylvania
    - Washington
    - Wisconsin
- Compliance with recommendations from oversight or audits is achieved by withholding or threatening to withhold a portion of an agency's appropriation or to cut an agency's budget.
    - Colorado
    - Maryland
    - Nevada
    - Washington
    - North Carolina – continuation review (CR) process
- Auditors that work closely with the legislature appear to increase oversight.
    - California
    - Colorado
    - Hawaii
    - Nevada
    - New Jersey
    - New Mexico
    - Oklahoma
    - Pennsylvania
    - Wisconsin
    - West Virginia
- Strong state news coverage motivates legislatures to conduct oversight and to pay attention to audit reports.
    - Colorado
    - Maryland
    - Michigan
    - New Jersey
- Special oversight committees can create more follow through on oversight, assuming they meet regularly.
    - Colorado
    - Illinois
    - Maryland
    - Nebraska
    - New Mexico
    - New Hampshire
    - North Carolina
    - Ohio

    - Pennsylvania
- Some part-time or citizen legislatures with interim oversight committees appear to more consistently follow through on oversight, possibly because they are paid separately for attending committee hearings between sessions or because other demands are not competing for their time and attention during the interim.
    - Colorado
    - Montana
    - Nevada
    - New Mexico
    - Oregon
    - Florida
- The involvement of analytic bureaucracies in sunset reviews appears to increase the completion of these reviews.
    - Hawaii
    - Ohio
    - Tennessee
- Administrative rule review ideally assesses the benefits of new and existing rules, as well as examining the cost of rules, legislative intent, and statutory authority. Many states consider only the costs of rules. There are public benefits that accrue from many rules, so it is important to consider the benefits of the rule or the costs if the rule is not adopted.
    - Kansas
    - Minnesota
    - North Carolina
- A handful of states are experimenting with ways to examine the performance of contractors delivering state services. This area of legislative oversight needs a major reform effort given the huge growth in state contracts over the last few decades.
    - Idaho
    - Tennessee
    - Alabama
- We found that some states excel in providing the public with detailed information about their hearings, including oversight hearings. In the best cases, video is readily available, is well indexed, and is accompanied by a rolling transcript keyed to the hearing or by an agenda with detailed timestamps. Some states also provide links to other documents relevant to the hearing, including who attended, the agenda, and supporting material.
    - Montana
    - Nevada
    - Washington

Appendix B

Rank by Oversight Capacity and Use

Best = 1

State	Rank by Capacity	Rank by Use
NV	1	2
CO	2	1
MD	3	4
MN	4	5
NJ	5	7
OH	6	12
ID	7	15
CA	8	3
HI	9	6
IL	10	9
AK	11	16
SC	12	18
CT	13	8
WI	14	11
NC	15	13
OR	16	21
WA	17	23
TN	18	38
FL	19	41
GA	20	48
PA	21	14
MT	22	20
MI	23	26
ME	24	31
NE	25	37
TX	26	40
ND	27	10
KS	28	17
NM	29	19
WV	30	25
MO	31	24
DE	32	28
AL	33	32
KY	34	33
MA	35	34
LA	36	39
NY	37	42
NH	38	22
MS	39	27
AZ	40	35
OK	41	46
IN	42	29
UT	43	36
SD	44	43
VA	45	45
AR	46	49
WY	47	30
IA	48	44
VT	49	47
RI	50	50

Blue shading denotes under-users.
Yellow shading denotes overachievers.

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Legislative Oversight in Alabama

Capacity and Usage Assessment

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

Summary Assessment

At first glance, Alabama would seem to possess a reasonably useful set of tools for oversight, particularly with respect to financial oversight. However, these tools are not always used effectively. There are no performance audits and little performance measurement. More staff resources are needed for the legislature to effectively oversee the work of state agencies. And even the current powers of the legislature, such as administrative rule review, are hamstrung by the lack of staff.

Major Strengths

Alabama's legislature has a formal role in monitoring state contracts, which is more than most state legislatures have. These powers are somewhat limited and may be used only intermittently. But there is evidence of some oversight of the fiscal side of state contracts. Alabama's comprehensive sunset laws mean that agencies are at least routinely reviewed. The administrative rule review process also gives the legislature a fair degree of power over agency promulgation of rules. In both cases, however, limited staff resources increase the likelihood that reviews are cursory. The legislature is to be commended for creating a committee to review gubernatorial nominees, but here again the power does not appear to be used extensively.

Challenges

The oversight process in Alabama is beset by several issues. Ongoing efforts to defund or undermine the analytic bureaucracy, the lack of performance auditing, the power of special interests like sheriffs to prevent the adoption of necessary legislation, and the severe lack of discretion afforded to legislators vis-à-vis the budget and appropriations all hamper the exercise of effective oversight in Alabama. The need for more staff to aid with rule review is clear given the volume of rules being promulgated. In addition, the lack of minutes, audio tapes, or video increases the uncertainty surrounding oversight in Alabama legislative committees.

Relevant Institutional Characteristics

The National Conference of State Legislatures[17] classifies Alabama's legislature as a hybrid, meaning that the job of legislator takes more than two-thirds the time of a full time job but the pay typically requires secondary employment. Alabama legislators receive compensation equal to Alabama's median annual household income, which is currently $44,765. A 2012 law that ties legislators' pay to the state's median income resulted from a backlash in 2007 against the legislature's controversial decision to increase its own compensation by 61% and establish a system of automatic annual raises (Associated Press, 2014; Chandler, 2012). Previously, "the state reported a trivial per diem—US$10 per day—that was generously supplemented through various mechanisms and the resulting larger sum that members actually pocketed was not captured by the professionalization measure" (Squire, 2017). Legislators no longer receive a set per diem but are reimbursed "per diem in accordance with rates and procedures applicable to state employees"[18](NCSL, 2017). At least in part because of these changes, Squire now ranks Alabama's legislature as 34th in the country in terms of professionalism; previously it had been ranked at 45th (Squire, 2017). The legislature has 408 staff members, 349 of which are permanent.[19] There are no limits on the number of terms, consecutive or otherwise, a legislator may hold. Alabama's legislative session is defined by statute. There are 30 legislative days that must take place within a 105 calendar-day period.[20] (NCSL, 2010). The governor is empowered to call the legislature into special sessions (Haider-Markel, 2009), but these special sessions are limited to 12 days in a 30-day period. Moreover, only legislators germane to the topics specified by the governor in his (her) call for the special session may be passed with a simple majority vote. Other topics require a 2/3rd majority to pass.[21]

In many states, a weak legislature is paired with a strong governor. But Alabama's governor is not especially strong. Ferguson (2013) ranks Alabama's governor as 22nd in the nation with respect to gubernatorial powers. The governor has line-item veto power, but the legislature can overturn this veto with a simple majority vote in both houses. Moreover, the executive branch is not especially unified: the governor, the lieutenant governor, and eighteen other executive positions are all elected separately. According to Haider-Markel (2009), "[t]his system of multiple elected officials, all of whom have some claim to an electoral mandate, is seen as part of a system of essential checks and balances." Yet according to Ferguson (2013), Alabama's governor has substantial control over the political party. So the one-party tendency of southern state politics (Heard, 1949) appears to contribute to the governor's power in ways that institutions and legal prerogatives do not.

An above average percentage of Alabama's population, 13.2%, is employed in the state or local government, with a disproportionate share of that number, 6.7%, in the education sector. By contrast, the public safety, social services, and other sectors each account for less than 2%,

[17] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 7/20/18.
[18] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 7/20/18.
[19] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 7/20/18.
[20] http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx, accessed 7/20/18.
[21] http://www.legislature.state.al.us/aliswww/default.aspx, accessed 9/4/18.

while 2.6% are engaged in the welfare sector (Edwards, 2006).

Political Context

Despite having a political culture that is characterized by "a high concentration of conservative, evangelical Christians, who have played an increasing role in shaping public debates and policymaking" (Haider-Markel, 2009), over the past 50 years, Democrats in Alabama controlled both its house and senate until 2012, when Republicans took control of both chambers (NCSL, 2017). The two major parties alternated control of the governor's office until 2003. Republicans have dominated the governor's seat since that time (NGA, 2017).[22] Currently, the Alabama House is not especially polarized, ranked at 29th. According to Haider-Markel (2009), "[m]ost voters tend to 'vote the candidate' not the party, so clear lines between the parties are not always evident, particularly given the conservative bent of many of the state's Democrats and the roles that interest groups play." This is probably contributes to the low level of polarization in the Alabama House. The senate, on the other hand, is the 16th most polarized upper chamber in the nation (Shor & McCarty, 2015).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Alabama has multiple analytic bureaucracies, each of which is described below. These include the Department of Examiners of Public Accounts (created in 1947), the Legislative Services Agency (reorganized in 2017 to combine three other legislative support activities), and state auditor, who is directly elected and does not answer to either the legislature or the governor. All of these bureaucracies indicate that they do extensive fiscal auditing. There is no indication on any of these three state government websites of performance audits.

The Department of Examiners of Public Accounts (DEPA), created in 1947, is managed and directed by a chief examiner. It derives its authority from the Code of Alabama S. 41-5.[23] The Legislative Committee on Public Accounts[24] (LCPA) appoints the chief examiner to a seven-year term. The LCPA, a 12-member legislative committee comprised of five house members, five senators, the lieutenant governor, who serves as chair of the committee, and the speaker of the house, who serves as vice chair. The LCPA directs DEPA's activities.[25] The LCPA meets annually, for no more than 10 days, "for the purpose of receiving the report and recommendations of the chief examiner. The chief examiner shall attend such meetings and give such evidence, make such reports and perform such duties as the committee may direct" (Code

[22] https://classic.nga.org/cms/FormerGovBios, accessed 7/20/18.
[23] https://law.justia.com/codes/alabama/2015/title-41/chapter-5/, accessed 7/20/18.
[24] http://www.legislature.state.al.us/aliswww/ISD/JointIntCommResults.aspx?OID_COMM=2900&COMMITTEE=Legislative%20Committee%20On%20Public%20Accounts, accessed 7/20/18.
[25] http://www.examiners.state.al.us/about.aspx, accessed 7/20/18.

of Alabama S. 41-5-19).[26] According to an employee of the Alabama State House, transcripts and minutes from committee meetings, including those of the LCPA are not made publicly available online. Similarly, there are no publicly available archived recordings of committee hearings. This makes it difficult to assess how the chief examiner's reports and testimony are used.

DEPA's state appropriation was around $13 million in 2015 (NASACT, 2015),[27] and the Department consists of a number of different divisions, including a Legal Division and divisions tasked with operational, state, education, and county audits.[28] Although by some estimates DEPA employs approximately 170 people (Coker, 2015), that excludes 19 support staff, bringing the NASACT reported staff size to 189 positions in 2015 (NASACT, 2015).

DEPA is empowered to perform financial and legal compliance audits, not only of public agencies, but also of private entities that contract with the Alabama State Government.[29] Although the majority of its work appears to focus on financial reports, DEPA also conducts operational audits, which "are not normally comprehensive, but focus on particular aspects of operations." Additionally, DEPA conducts sunset reviews.

In 2017, DEPA produced approximately 480 audit reports on variety of state and local agencies.[30] Some of these audits "go beyond . . . traditional audits and address economy, efficiency and effectiveness of operations." According to a representative from DEPA, operational audits consist of legal review and sunset audits. However, DEPA does not conduct performance audits according to "yellow book" standards, and there is no other auditing agency in Alabama that conducts performance audits. Looking at the posted audits for 2018 reveals that in the first eight months of the year under the category of state audits, DEPA produced 54 audits. None of these state audits examine a state agency. With the exception of one—the state's single audit—all of these 54 state audits examine county entities, special districts, hospital associations, probate courts for a county, universities, and similar entities that are local, regional or specialized. We found no audits of state agencies in 2018.

A lack of comprehensive audits has generated frustration among private citizens in the state, as evidenced by an open letter from a large law firm about the need to create an oversight board. Referring to a DEPA audit of Alabama's Department of Revenue, the authors of the letter note that "[t]he report only consisted of five pages, three of which merely explained that the department has a commissioner appointed by the governor . . . " The letter goes on to point out that the audit did not discuss the department's capacity to adequately collect revenues.[31]

DEPA does provide a check on the financial accuracy of various state-funded entities and local entities, and its reports are publicized through local news outlets. For example the Montgomery Advertiser ran a story about a scathing DEPA report about Alabama State University. The report noted several problems at the institution, including contract and travel expense irregularities, and misuse of resources by the university's president (Moon, 2015).

Despite its ability to detect financial problems, DEPA has been described as "weak" and "subject to the whims of politicians, hamstrung by the threat of a bullying legislature" (Archibald, 2013). In recent years, DEPA has faced attacks on its autonomy. In 2013, SB122,

[26] https://codes.findlaw.com/al/title-41-state-government/al-code-sect-41-5-19.html, accessed 7/20/18.
[27] http://budget.alabama.gov/wp-content/uploads/sites/9/2018/01/BudDoc20192.pdf, accessed 7/20/18.
[28] http://www.archives.alabama.gov/officials/rdas/examinerpublicaccount-new.pdf, accessed 7/20/18.
[29] http://www.examiners.state.al.us/about.aspx, accessed 7/20/18.
[30] https://examiners.alabama.gov/audit_reports.aspx, accessed 7/20/18.
[31] http://www.gtandslaw.com/wp-content/uploads/2014/05/Who-Is-Auditing-the-Department-of-Revenue.pdf, accessed 7/20/18.

2013 proposed making three changes to DEPA's governance:[32] 1) placing DEPAs under two legislators rather than 12 representatives, 2) removing state auditors from the merit system, and 3) abolishing the LCPA (Archibald, 2013; Britt, 2013). While that bill failed, attempts to undermine DEPA continued. In 2015, Alabama State Auditor Jim Zeigler advocated defunding DEPA in order to cut expenditures (Coker, 2015).

The comptroller, who is appointed by the director of the Department of Finance, produces the Comprehensive Annual Financial Review (CAFR). DEPA reviews the CAFR. DEPA has sometimes identified issues with these comptroller-produced reports. For example, in 2016, Chief Examiner Ronald Jones sent a letter to the governor, Alabama's acting finance director, the state comptroller, and the comptroller's director of financial reporting indicating that ongoing problems with the State of Alabama Accounting and Resource System (STAARS) were delaying the implementation of the Statewide Single Audit (Britt, 2016b; Jones, 2016). As controversy over the system heated up, Alabama's Acting Finance Director Bill Newton was criticized for "order[ing] agency heads to threaten State personnel not to speak to the media, and report any contact with the media to him immediately, or else" (Britt, 2016b). Despite DEPA's warnings, "inadequacies" in the implementation of the STAARS system ultimately meant that the State of Alabama was not able to issue its CAFR by the March 31, 2016 deadline (Jones, 2017).[33] This failure demonstrates the limits of DEPA's oversight power—it lacks a mechanism to enforce compliance with its recommendations and findings.

Some legislators have also begun to question the degree to which DEPA reports are being effectively utilized. Requests for information about particular audits are made by committees, but this only happens occasionally (interview notes, 2018). Another source maintained that DEPA was "under-utilized," and noted that there has been recent legislation[34] intended to "beef up" and "revamp" the organization (interview notes, 2018). This proposed restructuring would give the chief examiner new powers to conduct investigations and an "expanded reach" to audit any entity that takes state money. Another source claimed that the proposed changes increase penalties for failing to provide information to DEPA when requested, but do nothing to substantially enhance the agency's powers (interview notes, 2018).

Alabama also has a Legislative Services Agency (LSA), created in October 2017.[35] The LSA replaced and combined the Legislative Reference Service, the Legislative Fiscal Office, and the Alabama Law Institute. The latter worked "to clarify and simplify the laws of Alabama, to revise laws that are out-of-date and to fill in gaps in the law where there exists legal confusion."[36] The LSA inherited all the powers of these former entities. Currently, the LSA consists of the Fiscal Division, the Law Revision Division, and the Legal Division. Together, they provide non-partisan professional advice to the Alabama Legislature. The director of the LSA is appointed by the Legislative Council, and the heads of each division are appointed by the Director (Act 2017-214 SB4).

The Fiscal Division analyzes budget, tax, and revenue proposals issued by the executive branch, provides fiscal information to various legislative committees regarding revenues, expenditures, financial forecasts, and estimates on the costs of particular bills. Additionally the Fiscal Division produces annual reports on state tax expenditures and publishes the *Legislator's*

[32] https://legiscan.com/AL/text/SB122/2013, accessed 7/20/18.
[33] http://www.alreporter.com/media/2016/05/Ron-Johnson-letter-5.4.16.png, accessed 7/20/18.
[34] http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0012400.PDF, accessed 7/20/18.
[35] http://lsa.state.al.us/, accessed 7/20/18.
[36] http://lsa.alabama.gov/ALI/Purpose.aspx, accessed 7/20/18.

Guide to Alabama Taxes, which explains "the most basic information about Alabama's taxes and revenues."[37] The Fiscal Division has the authority "to request and receive from the Department of Revenue or any other state or local agency or official any information necessary" to complete its annual report, which is presented to the legislature.[38] Furthermore, recently passed legislation mandates performance-based budgeting for several state agencies, under the direction of the Fiscal Division of the LSA.[39]

Finally, Alabama also has a state auditor, which is an elected position that does not answer directly to the legislature or to the governor. The state auditor's duties include producing an annual report for the governor "showing the audited receipts and disbursements of the government for the last fiscal year as shown by the records and documents in the office of the Department of Finance. These duties are mandated by the constitution. As part of this mandate, the state auditor audits the Department of Finance. The state auditor's report shall also include the results of his audit of all taxes and revenues collected and paid into the Treasury and shall give the results of all other audits"[40](Code of Alabama S 36-16-1). The emphasis for the state auditor's reports is financial compliance.

Even though none of Alabama's analytic bureaucracies produce performance audits, financial audits contribute to legislative efforts to oversee state government entities. For example DEPA provided the legislature with information about a policy allowing sheriffs to keep unspent state funds appropriated for feeding prisoners in county jails. The sheriffs were making money by consistently spending less than was budgeted and pocketing the remainder (Reeves, 2008). The legislature failed to end this practice despite trying to in 2009. During the debate on the bill (HB559) "[t]he state's sheriffs' 'flooded' committee rooms" and the bill was indefinitely postponed. The bill's sponsor described this experience as getting "run over" by the opposition (Clines, 2017). Recently, the issue returned to the spotlight after revelations that one sheriff invested tens of thousands of dollars he had "saved" on prisoners' food into a used car lot (Clines, 2017). A judge ordered that the prisoners' food improve (Elliott, 2017). Responding to public controversy over the "Depression-era practice" (Opelika-Auburn News, 2018), Alabama's governor issued a directive to the comptroller "that payments of certain funds related to jail food 'no longer be made to the sheriffs personally.' Instead . . . the money must be paid to county general funds or official accounts" (Blinder, 2018). Even though the legislature failed to eliminate this use of state funds, its efforts contributed to public outcry over this policy, and DEPA's information triggered legislative interest and other efforts. Rather than an adversarial relationship between the legislative and executive branches, the governor aided legislative efforts to restrict the sheriffs' behavior.

Oversight Through the Appropriations Process

Alabama has a large permanent joint committee that holds budget hearings and assesses Alabama's fiscal health.[41] Called the Finances and Budget Committee, its membership consists of the lieutenant governor, all members of Senate Committee on Finance and Taxation, all

[37] http://lsa.alabama.gov/PDF/LFO/TaxGuide/2016_Tax_Guide.pdf, accessed 7/20/18.
[38] https://codes.findlaw.com/al/title-29-legislature/al-code-sect-29-5a-46.html, accessed 7/20/18.
[39] https://legiscan.com/AL/bill/SJR77/2018, accessed 7/20/18.
[40] https://codes.findlaw.com/al/title-36-public-officers-and-employees/al-code-sect-36-16-1.html, accessed 7/23/18.
[41] https://codes.findlaw.com/al/title-29-legislature/al-code-sect-29-2-80.html, accessed 7/24/18.

members of the House Ways and Means Committees, plus other senators chosen by the lieutenant governor and other representatives chosen by the house speaker. The only limit on the size of this committee is that it cannot include more than 36 house members (Alabama code sections 29-2-80 and 29-2-81).

One of the ways legislators try to exert control over the budget process is to pass the budget as late as possible in the legislative session. This is a strategy to avoid gubernatorial vetoes. While Alabama's governor can veto line items in the budget, this power can only be used when there are more than five days left in the legislative session (Haider-Markel, 2009).

Despite this maneuver the legislature has a very small role in allocating state money because so much of the state's budget is earmarked. In 2017 93% of Alabama's tax revenue was earmarked for specific purposes, as opposed to an average of about 25% in other states (Alabama Policy Institute, 2017).[42] Ultimately, the "rigidity" built into the system "means that much of the state's spending is done by default or 'autopilot,' and in some cases, without a high degree of scrutiny or performance indicators for the offices or agencies receiving the funds" (Robertson, 2014).[43] Lawmakers are, therefore, often "largely unfamiliar with—except in a very broad sense—how most tax dollars are being spent."[44]

Earmarking does not appear to have been part of a deliberate attempt to hamstring lawmakers. Rather, according to one lawmaker, "whenever a new tax was approved, its proceeds were earmarked for one specific purpose or another. Some of these earmarks are constitutional, which means the voters . . . dedicated the taxes to an agency, initiative, or spotlighted need during referendum elections" (Ainsworth, 2015). Despite the constraints of these earmarks, legislators are responsible for "ensur[ing] that funds are properly spent" (interview notes, 2018).

It is unclear how rigorously legislators pursue misuse of funds even though hearings are held and testimony taken. For example, state media reports that "[e]very year, a joint legislative conference grills agency heads about their budget, but it's mostly for show. During the last joint budget oversight committee hearing, Acting Finance Director Bill Newton was aggressively questioned about the failed STAARS system. However, he was allowed to dance around the subject by offering a vague mea culpa" (Britt, 2016a). The outcome of these hearings was negligible: "Gov. Robert Bentley looked the other way while lawmakers appeared satisfied by his promises that, all will be well" (Britt, 2016a).

In an effort to improve its capacity to monitor the use of state funds, the Alabama House in 2017 created the Fiscal Responsibility Committee[45] that "will focus on combating waste and abuse of taxpayer dollars." According to an interviewee, the creation of this committee represents a step towards a more "performance-based" budget process in Alabama, which the state otherwise lacks. The interviewee noted, however, that the committee is still fairly new and has not yet gotten "up to speed" in its activities (interview notes, 2018). The creation of this new committee does, however, suggest that legislators are serious about their responsibility to oversee appropriate use of state funds.

[42] https://www.alabamapolicy.org/wp-content/uploads/2017/11/GTI-EARMARKS.pdf, accessed 7/13/18.
[43] https://www.alabamapolicy.org/2014/09/20/budget-basics-legislatures-limitations-need-reform/, accessed 7/23/18.
[44] https://www.alabamapolicy.org/wp-content/uploads/2017/11/GTI-EARMARKS.pdf, accessed 7/23/18.
[45] http://www.legislature.state.al.us/aliswww/ISD/HseCommittee.aspx?OID_ORGANIZATION=3215&COMMITTEE=Fiscal%20Responsibility, accessed 7/31/18.

Oversight Through Committees

Since no performance audits are conducted in Alabama, interested committee members rely on the LSA, in particular its Fiscal Division, to investigate financial issues arising in executive branch agencies. If and when issues are uncovered, they are raised with the agencies, but the legislature has no real recourse to address such problems apart from attempting to pass legislation, which can be difficult to do.

The structure of Alabama's committee system places the Legislative Council, which is composed of members from both legislative chambers, in a gatekeeper role. This is the same Legislative Council that appoints the director of the Legislative Services Agency (LSA). The Legislative Council approves budget requests, provides accounting services, and deals with purchasing, among other things.[46] (Code of Alabama S. 29-6). It also reviews administrative rules and develops policy proposals for consideration by the full legislature. Importantly for oversight, the Legislative Council is responsible for determining whether state and local governments are operating effectively.

In addition to its other duties, the Legislative Council also oversees the legislature's joint interim committees. Currently there are 41 interim committees listed on the legislature's webpage. These range from the Alabama Oil and Gas Study Committee to the Joint Interim Committee on County Government to the New National Veterans Cemetery Joint Legislative Committee. In other words, the range of topics covered by these committees varies from specific industries to general government to highly specific government activities. Descriptions for each committee refer to specific statutes, the Alabama Code, or other sources of authority authorizing these committees. Some committees include legislators and non-legislators. In the case of the Alabama Oil and Gas Study Committee, for example, non-legislative members are chosen by legislative leaders from the Alabama-Mississippi Division of the Mid Continent Oil and Gas Association, "resident[s] of an oil and gas producing county knowledgeable in the oil and gas field," and the Alabama Petroleum Council.[47]

In addition to these joint interim committees, Alabama's legislature has numerous permanent standing committees—34 in the house and 21 in senate. Standing committees, except those dealing with local legislation, are designated as interim committees when the legislature is not in session. This permits them to meet to consider matters requiring attention between sessions.

There are two committees specifically tasked with oversight responsibilities: 1) the permanent Joint Legislative Committee on Finances and Budget, discussed in the section on oversight through the appropriations process and 2) a Contract Review Oversight Committee discussed in more detail below in the section on Oversight through Monitoring State Contracts. The degree of effective oversight exercised by other committees is difficult to ascertain. Committee webpages merely list the committee members without links to meeting minutes or any information about the committee's jurisdiction. An interviewee confirmed that neither minutes nor transcripts are published online (interview notes, 2018).

According to an interviewee, some mechanisms exist to conduct oversight, but "the strength to analyze problems is equal to the strength of the chair," and many committees are largely ineffective (interview notes, 2018). If and when issues are uncovered, they are raised with the agencies, but the legislature has no power to alter agency behaviors or practices apart

[46] https://law.justia.com/codes/alabama/2017/title-29/chapter-6/, accessed 7/23/18.
[47] http://www.legislature.state.al.us/alisWWW/ACTS/1986-753.pdf, accessed 7/23/18.

from attempting to pass legislation. As described before, attempts to pass legislation are often stymied, even in the face of revelations that one sheriff was "essentially starving prisoners while keeping something like $750,000 for himself" (interview notes, 2018). With such a small percentage of the budget (7%) that is discretionary, the power of the purse to motivate agency compliance is diluted in Alabama. The only other recourse available to legislators when malfeasance is uncovered is to refer the matter to the attorney general for possible prosecution.

Oversight through the Administrative Rules Process

Alabama's Joint Committee on Administration Regulation Review (JCARR) can review proposed rules. The membership of JCARR is the Legislative Council—yet another way in which this committee dominates legislative processes in the state. Within 45 days of the promulgation of a rule, JCARR must notify the agency proposing the rule whether the rule has been approved or not. If no notice is given within 45 days, the rule is automatically approved[48] (Code of Alabama S. 41-22-23). The committee may also propose amendments to any rule and return it to the agency for reconsideration. If JCARR objects to a rule, an agency may appeal that decision to the lieutenant governor, who has 15 days to either sustain the objection or to approve the rule. If the lieutenant governor overrides JCARR and approves the rule, the legislature, if it still wants to block the rule, must adopt a joint resolution overruling the lieutenant governor. If the legislature fails to pass this joint resolution, the rule will take effect after the adjournment of the next regular legislative session.

JCARR has broad discretion in the rule review process (Schwartz, 2010), but it can only delay the rule. The full legislature must pass a resolution to reject a rule. JCARR's assessment of administrative rules must be based on both the costs and benefits of having the rule compared to the costs and benefits of not having the rule. Specifically, the effect of the rule on public health, safety, and welfare, as well as the direct and indirect costs of the rule are factors that JCARR is legally required to consider. JCARR also determines whether less restrictive rules would be acceptable and whether the rule protects the public. Moreover, JCARR can choose any other criteria it considers to be appropriate.

JCARR recommends to the legislature whether the rule should be approved or rejected. But de facto, JCARR makes the determination because the legislature overwhelmingly defers to JCARR's recommendation (Schwartz, 2010). In practice, JCARR lacks the time and resources to carefully review administrative rules. In the first three monthly meetings during 2018 (January, February, and March), there were a total of approximately 210 rules that were certified for adoption. This means that JCARR would need to review roughly 70 rules per month.[49] Given the long list of criteria and mandated reports and analyses, it would be difficult for JCARR to process this volume of material even if it did not have other responsibilities. But, as we noted above, JCARR's members are also the Legislative Council membership, and that committee is the crucial gatekeeper for all other legislative committees. Schwartz (2010) reports that JCARR responds to public outcry about rules. Rules that trigger a strong public reaction are carefully considered and analyzed in public meetings. But for other rules, the review is cursory at best. Although fiscal notes are prepared, they are not publicly available. Most rules are adopted after the 45 day waiting period without public information about their analysis, and JCARR does not

[48] https://codes.findlaw.com/al/title-41-state-government/al-code-sect-41-22-23.html, accessed 7/24/18.
[49] http://www.alabamaadministrativecode.state.al.us/monthly.html, accessed 9/4/18.

document its reasons for rejecting a rule.

Oversight Through Advice and Consent

The Alabama Senate has the power to accept or reject gubernatorial appointments. All nominations and appointments must be "referred to, and be reported from the Committee on Confirmations before consideration by the entire senate. A rejection by the Committee on Confirmations of any nomination or appointment shall be considered a rejection by the entire senate" (Senate General Rule of Order and Procedure).[50] Alabama voters directly elect 18 cabinet-level positions that would be appointed by the governor in many other states. So, gubernatorial appointment powers are "checked" by the electorate rather than the legislature for most state agency directors. Furthermore, while the senate does have the power to reject gubernatorial nominees, in practice this almost never happens (interview notes, 2018).

Historically, Alabama's governor has used the power to issue executive orders with some frequency. Since coming to office in 2017, current Governor Kate Ivey has issued 13 such orders[51] (Office of the Governor, 2018). Her predecessor, Robert Bentley, issued 79 executive orders between 2011 and 2017[52] (Alabama Department of Archives & History, 2018). The legislature has no ability to block executive orders (interview notes, 2018). Many of these orders are not controversial and are time sensitive. For example, Gov. Ivey issued an order in September 2018 about the imminent landfall of Tropical Storm Gordon.

One area where the legislature can exercise oversight is in agency reorganization. While executive orders have typically provided the impetus for such initiatives, the legislature must act to create or reorganize agencies[53] (Alabama Department of Archives and History, 2018). For example, Gov. Ivey's third executive order, Executive Order No. 705 posted on July 12, 2017, dissolved all committees, commissions, councils, task forces, and other such entities that had been established through executive order by her predecessor. The legislature could, if it chose, pass legislation reconstituting some of these entities.

Oversight Through Monitoring State Contracts

One of Alabama's joint standing committees is the Contract Review Oversight Committee, which meets at least once a month. Its eight members include four legislators from each chamber. These members are the chair of the Senate Finance and Taxation General Fund Committee, the chair of the House Ways and Means General Fund Committee, the chairs of the House and Senate Judiciary Committees, both the speaker and the speaker pro tempore of the house (or their designees), the president pro tempore of the senate (or a designee), and the lieutenant governor (or a designee). According to Section 29-2-41 the Alabama State Code, this committee "shall have the responsibility of reviewing contracts for personal or professional

[50] http://www.legislature.state.al.us/aliswww/ISD/Senate/Rules_General.aspx, accessed 7/24/18.
[51] https://governor.alabama.gov/newsroom/executive-orders/, accessed 7/24/18.
[52] http://digital.archives.alabama.gov/cdm/search/collection/executive/field/creato/searchterm/Bentley,%20Robert%20J.,%201943-/mode/exact, accessed 7/24/18.
[53] http://www.archives.alabama.gov/reorganization/index.html, accessed 7/24/18.

services with private entities or individuals to be paid out of appropriated funds, federal or state, on a state warrant issued as recompense for those services. Each state department entering into a contract to be paid out of appropriated funds, federal or state, on a state warrant which is notified by the committee is required to submit to the committee any proposed contract for personal or professional services."[54] The committee "reviews and comments" upon proposals within 45 days, and "[a]ny contract made by the state or any of its agencies or departments in violation of this section and without prior review by the committee of either the contract or the letter of intent to contract shall be void ab initio. If the committee fails to review and comment upon any contract or letter of intent to contract within the aforementioned 45-day time period, such contract shall be deemed to have been reviewed in compliance with this section." The committee, however, only has the power to review and comment upon contracts. DEPA is also involved in the auditing of state contracts to ensure fiscal responsibility (interview notes, 2018).

The Alabama Legislature's website prominently features a contract review agenda, which appears to be quite detailed. However, the degree of actual oversight is unclear. The $41 million STAARS system, described earlier, was adopted in a no-bid process, and "not only caused a meltdown in the State's ability to pay its bills in a timely fashion, or properly process inter-agency payments, leaving hundreds of millions of dollars in a software limbo." However, the STAARS contract was never submitted to the Contract Review Oversight Committee before being implemented, calling into question how effective the committee's oversight actually is (Moon, 2017). Ultimately, the state auditor was forced to file suit against the governor, alleging "the massive no-bid contract violates Alabama's bid laws and the software does not work" (Moseley, 2016).

More recently, in March of 2018, the Contract Review Committee delayed a contract with Wexford Health Sources worth $130 million per year to provide medical and mental health services to 20,000 Alabama prison inmates. The committee chair expressed concerns about a scandal in Mississippi involving Wexford and also Wexford's use of a former Mississippi state legislator, Cecil McCrory, as a lobbyist. McCrory pled guilty to bribery charges in Mississippi. Although the committee cannot terminate the contract, it can delay it for 45 days, at which time Gov. Ivey will make the final decision (Lyman, 2018). This recent delay of the Wexford contract suggests that within the limits of it power, Alabama's legislature is exercising oversight over state contracts. Its formal powers in this area are stronger than those possessed by many other state legislatures.

Oversight Through Automatic Oversight Mechanisms

Alabama has comprehensive sunset laws. DEPA has a Sunset Committee, which consists of seven members, drawn from the house and the senate. The Sunset Committee reviews the operations of state agencies scheduled for review and recommends that the agency either continues (with or without modifications) or is terminated. The agencies that are reviewed are specified in the Code of Alabama (S. 41-20-3)[55] and are reviewed every four years. The sunset of licensing boards and other enumerated agencies are reviewed according to specific timetables. Once DEPA has conducted its evaluation, the matter is referred to the appropriate standing committee. If a program is slated for termination, it ceases operation as specified in the specific

[54] https://law.justia.com/codes/alabama/2017/title-29/chapter-2/article-3/, accessed 7/24/18.
[55] https://law.justia.com/codes/alabama/2017/title-41/chapter-20/section-41-20-3/, accessed 7/24/18.

sunset clause for no later than October 1 of the following year. Interviewees indicate that the October 1 deadline is usually adhered to, though legislators can introduce bills to sunset a program early if there are concerns that the deadline might not be met (interview notes, 2017). In practice, however, agency sunsetting happens very infrequently – only two or three times in the past ten years, and only when a specific program has become outdated.

Administrative rules are also subject to sunset review. JCARR is "authorized to review and approve or disapprove any rule adopted prior to October 1, 1982." Otherwise, existing rules must be reviewed by each agency within five years "to determine whether the rules should be continued without change, or should be amended or rescinded" (Code of Alabama S. 41-22-23).[56]

Methods and Limitations

We interviewed nine people about legislative oversight in Alabama. Alabama does not provide audio or video archives of legislative committee hearings. Moreover minutes are not available online. This makes it difficult to accurately assess the quality of oversight exercised in Alabama.

[56] https://codes.findlaw.com/al/title-41-state-government/al-code-sect-41-22-23.html, accessed 7/24/18.

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Legislative Oversight in Alaska

Capacity and Usage Assessment

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

Summary Assessment

Alaska has two analytic bureaucracies that actively collaborate with the legislature to conduct oversight. Appropriations subcommittees focus attention on the performance of the agencies within their jurisdiction. Standing committees often hold hearings to examine agency performance and utilize audit reports in doing so. The legislative responsibility to review administrative rules is increasingly handled by standing committees instead of the Administrative Regulative Review Committee (ARRC). This may increase the role played by standing committees in overseeing the executive branch. However, there has been minimal legislative oversight of administrative rules in the past. Sunset reviews are thorough and frequent. Overall Alaska excels in oversight through committees and through the appropriations process. It faces more challenges with respect to oversight through administrative rule review and through advice and consent.

Major Strengths

Alaska has various “best practices” that make it a state with good legislative oversight. First, the Division of Legislature Audit and its legislative auditor report directly to the Budget and Audit Committee (LBAC), which is also a joint committee. This makes it easier to communicate reports to both chambers. These reports include special audits conducted on state contracts, which are discussed during committee hearings. Audit reports are utilized by various standing committees throughout the legislature and can have a direct impact on legislation. The Legislative Finance Division (LFD) also assists the LBAC, but the LFD primarily serves the finance committees. LFD staff members appear to be very active in their service to these committees, from fiscal notes to presentations on the governor’s budget. During standing committee hearings, committee members question agency representatives and heads thoroughly. Appropriations subcommittees are instructed to examine agency performance before turning to budget requests.

Challenges

Despite Alaska's many strengths, there are some instances of limited oversight within the state. The administrative rule review process has not worked well in the past. To its credit, the legislature is trying to improve the process, but it remains to be seen whether it develops systematic reviews that stress benefits and costs of rules. Although Alaska's legislature examines financial problems with state contracts through its ethics rules, there is no evidence that the legislature reviews the performance of contractors delivering public services. Moreover, Alaska appears to have numerous quasi-public authorities that manage large sums of money and control valuable resources—similar in many ways to New Jersey's Port Authority. These entities tend to be very hard for legislatures to oversee. Alaska appears willing to try to rein in their authorities, but there appear to be hundreds of them according to media reports. So the problem could overwhelm the capacity of a part-time legislature, albeit a highly professional one.

Relevant Institutional Characteristics

Alaska's legislature is ranked the eighth most professional in the nation (Squire, 2017). Baugus and Bose classify it among the seven states that assign full-time responsibilities to their legislators, yet provide them with less than full-time pay (approximately $50,000 per year plus per diem of $275 per day in a state with the 8th highest cost of living in the country).[57] The Alaska legislature holds legislative sessions roughly 90 days of the year (NCSL, 2010). So, with the per diem payments, an Alaska state legislator would expect to make around $75,000. The Alaska legislature also may hold special sessions (sometimes known as extraordinary sessions), which may be called by the governor or the legislature. For the legislature to call a special session, two-thirds of the membership must respond in the affirmative to a poll conducted by the presiding officer of each house (NCSL, 2009). According to the legislature's schedule, four special sessions were held in 2017.[58]

The number of state legislators in Alaska is small—40 in the house and 20 in the senate. This small legislature has a relatively a sizeable support staff, with 341 permanent staff and 172 session-only staff (roughly 500 staff during session) as of 2015 (NCSL, 2017). These staff members include personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies such as the Legislative Finance Division. Alaska is not among the approximately 15 states that currently have term limits for legislators (NCSL, 2015).

Ferguson (2015) considers Alaska's governor's to be the most powerful in the country. Consistent with this, a reference guide on the Alaska Constitution reports that the governor is one of the most institutionally powerful in the nation[59] based on power granted in Article III of the Alaska Constitution.[60] For instance, the Constitution "allows the governor to appoint all executive officials and to set the agenda when calling special sessions of the legislature."[61] Alaska's governor can use the line-item veto for the state's budget. Legislative overrides of gubernatorial vetoes occur in joint sessions of the legislature in which two-thirds of the entire

[57] https://www.missourieconomy.org/indicators/cost_of_living/, accessed 11/7/18.
[58] http://akleg.gov, accessed 7/27/18.
[59] http://www.gvpt.umd.edu/lpbr/subpages/reviews/McBeath.htm, accessed 6/27/18.
[60] http://ltgov.alaska.gov/treadwell/services/alaska-constitution.html, accessed 7/27/18.
[61] http://www.gvpt.umd.edu/lpbr/subpages/reviews/McBeath.htm, accessed 6/27/18.

legislature must vote to override the veto, but to override a gubernatorial veto of revenue or appropriations bills or a line item in the budget requires a vote by three-fourths of the legislature—45 of the 60 members.[62] The governor can make adjustments to the budget when the legislature is not in session if necessary to maintain a balanced budget. Interim committees would have shared the authority "with the governor … to approve or disapprove revisions to the budget" under a 1978 ballot proposal, but citizens rejected this proposal.[63] Alaska is one of three states that have a unitary executive branch, meaning the governor has extensive influence over the bureaucracy (Schwartz, 2010). For example, Alaska's governor appoints its attorney general. Alaska has no secretary of state; the lieutenant governor performs many duties that a secretary of state would typically perform. The governor's appointment power is discussed further in the Oversight Through Advice and Consent section.

Data from 2004 reveals that Alaska had 16.6% of its entire workforce employed by state or local government. This share was larger than any other state. As of 2004, the state also had 8.3% of its entire workforce employed in K-12 education, which was also higher than the rest of the country (CATO, 2006).

Political Context

Over the last fifty years, Democrats have never controlled both chambers of Alaska's legislature. From 1978-1994, neither party controlled both legislative chambers. However, since 1994, the Republican Party has maintained legislative control of both chambers, except during the first four years of the Obama Administration when legislative control was again divided (NCSL, 2017). Even though there were more Republicans holding seats in the House in 2018, a coalition of three Republicans and two of the three Independents, plus all 17 Democrats effectively gave Democrats control of the lower legislative chamber in 2017-18.[64] Although legislative control tended to favor the Republican Party over the last fifty years, party control of the governorship has alternated between the Republican Party and the Democratic Party roughly every five to ten years since 1979. Interestingly, in 2018, the governor of Alaska identified with the Independent Party; he previously ran in 2010 as a Republican and lost.

Recent evidence suggests that neither of Alaska's legislative chambers is especially polarized along party lines (Shor and McCarty, 2015). These authors ranked Alaska's house as the 35th most polarized lower legislative chamber and its Senate as the 25th most polarized upper chamber based on differences between median roll call votes for each party in each chamber. This moderate approach to ideology and party is consistent with the success of an independent for governor and the successful write-in candidacy of Lisa Murkowski for U.S. Senate after she lost the 2010 Republican Party primary, the year of the Tea Party insurgency.

[62] https://ballotpedia.org/Alaska_State_Legislature, accessed 11/11/18.
[63] https://ballotpedia.org/Alaska_Budget_Powers_of_Legislative_Interim_Committees,_Proposition_2_(1978), accessed 7/27/18.
[64] https://ballotpedia.org/Alaska_State_Legislature, accessed 11/11/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The primary analytic bureaucracy that helps Alaska's legislature conduct oversight is the Division of Legislative Audit (DLA). This unit was created in 1955 and given authority to conduct performance audits in 1971.[65] Alaska's "sunset law" passed in 1977, requires DLA to consider public need for boards, commissions, and programs when it conducts performance reviews of programs that might be terminated. In 2013, HB 30 mandated some performance reviews; other performance reviews are requested by legislators. The Division of Legislative Audit receives all its authority from Alaska Constitution Article IX, Sec. 14 and Alaska Statute 24.20.241-311, which essentially grant the division the primary responsibility of holding government agencies accountable to the laws enacted by the legislature. In doing so, they have the authority to obtain information and issue subpoenas (NCSL, 2015).

The DLA is headed by the legislative auditor, a constitutional officer, who is appointed by the interim Legislative Budget & Audit Committee (LBAC), subject to the approval of the entire legislature. The LBAC consists of six representatives and six senators. In 2018, the committee was comprised of four Democrats, seven Republicans, and one member without a party affiliation.[66] The legislative auditor manages a team of 34, consisting mainly of certified public accountants (CPAs).[67] The legislative auditor must have been a CPA for at least five years prior to his or her appointment.[68] The DLA receives a total of $6,506,300 from state appropriations amongst other sources (NCSL, 2015). The DLA does not audit local governments; local governments hire independent CPA firms to audit themselves (interview notes, 2018).

Under the general direction of the LBAC, the DLA produces five types of audits: the statewide single audit, performance audits/reviews (which include sunset audits), special audits, IT audits, and financial audits.[69,70] Special audits are the only audits that legislators who do not serve on the LBAC can request. In these cases, legislators will discuss the potential audit with the legislative auditor. If, after this discussion, the legislator or the auditor decides that an audit is needed, the request will be submitted to the LBAC.[71] The LBAC reviews all preliminary reports and will make "a motion to release the preliminary report to the audited agency for their formal response" (interview notes, 2018). The legislative auditor will review the response and determine if there are any disagreements, and if so, add comments to the report to address them. The final report, including the preliminary report, the agency response, and any additional legislative auditor comments, goes back to the LBAC. A motion is then made to release the report to the public and, in the case of a special audit, a copy is additionally sent to the requestor (interview notes, 2018).

[65] http://lba.akleg.gov/download/annual_report/2017-Annual-Report.pdf, accessed 11/8/18.
[66] http://www.akleg.gov/basis/Member/Detail/30?code=ORT, accessed 7/27/18.
[67] http://legaudit.akleg.gov/employment/auditor-positions/, accessed 7/27/18.
[68] https://ballotpedia.org/Alaska_Legislative_Auditor, accessed 7/27/18.
[69] http://legaudit.akleg.gov/about/, accessed 7/27/18.
[70] http://legaudit.akleg.gov/employment/auditor-positions/, accessed 7/27/18.
[71] http://lba.akleg.gov/audit-request/, accessed 7/27/18.

During 2016, the DLA conducted a total of nine audits, of which five were special audits, three were sunset audits, and one was the state's single audit. During 2017, the division conducted ten audits, of which eight were sunset audits, one was a special audit, and one was the single audit. During 2018, twelve audits were conducted; three special audits and nine sunset audits.Sunset audits are dictated by AS 44.66. The DLA can conduct performance audits of any state agency, however, in 1977, the legislature passed a "Sunset Law" which "[requires] the division to conduct performance audits of boards, commissions, and agency programs subject to termination under 44.66."[72]

Vignette: The Special Audit of the Alaska Mental Health Trust Authority

The division, in June 2018, released a special audit on the Alaska Mental Health Trust Authority (AMHTA), revealing issues of transparency and indicating that various laws had been violated. These laws included the Alaska Executive Branch Ethics Act and the Open Meetings Act. It was alleged that the authority did not notify the public and other board members about meetings and other means of business, such as the demotion of an individual or issuing proposals. Furthermore, according to AS 37.14.031, principal funds must be managed by the Alaska Permanent Fund Corporation (APFC), but since 2008, the authority's board of trustees has kept funds in a separate account and used them to "invest in commercial real estate around the country." The authority believes that the law allows for these investments, since it doesn't "clearly identify alternative investment opportunities, other guiding authorities do." The audit clarifies that, although these investments are valid, a consultant hired in 2016 revealed the risks with this investment strategy, and the audit notes that this report had been disregarded by members of the authority and kept from the rest of the authority and the public (DLA, 2018).

The trust argued that it made about $3 million more by investing in the real estate than it would have made in the Alaska Permanent Fund. No one stole money, and the real estate has proved to be a good investment, but it was all illegal according to the audit. The audit judged the trust's investment strategy as too risky for the long-term.[73]

Recommendations included not investing in commercial real estate and consulting with the APFC before making investments. In response, the authority said that they would implement recommendations made (they have since implemented training on ethics, conflicts of interest, and the Open Meetings Act), rewrote their bylaws, and agreed that "the trust has not met the community's expectations regarding open meetings and public notifications in the past." Nonetheless, the authority said that they will also be seeking "legislative changes" to allow for more flexibility in investing (Hillman, 2018).

Meeting minutes from February 23, 2017, held by the LBAC, reveal that the Budget and Audit Committee chair asked the legislative auditor if the DLA could conduct the audit of the authority sooner than the projected timeline.[74] As one reporter opined, "Alaska entrusts billions in assets to various authorities and quasi-public corporations that are run by obscure boards that

[72] http://legaudit.akleg.gov/about/, accessed 7/27/18.

[73] https://www.alaskapublic.org/2018/06/05/special-audit-finds-alaska-mental-health-trust-authority-violated-multiple-state-laws/, accessed 11/11/18.

[74] http://www.akleg.gov/basis/Meeting/Detail?Meeting=HBUD%202017-02-23%2012:00:00#tab3_4, accessed 7/27/18.hardly anyone pays attention to. Combining huge amounts of money with no oversight is

a dangerous mix."[75] The LBAC appears to have recognized the risk at least in this instance.

In addition to the DLA, the LBAC has another professional support unit, the Legislative Finance Division (LFD). The LFD is a nonpartisan legislative agency that serves the LBAC and two standing finance committees. The primary responsibilities of the Legislative Finance Division are outlined in Alaska Statute 24.20.231. In brief, the division is a nonpartisan legislative agency that provides fiscal analyses on the budget, appropriations, and revenue. They collaborate with the Office of Management and Budget agency to ensure that state government finances are in order (AS 37.07). During 2017, the LFD has prepared seventeen operating budget reports, eight capital budget reports, one supplemental budget report, and more than a hundred fiscal notes. The division also conducts studies and prepares other miscellaneous documents, including yearly publications and informational papers.[76] According to an interviewee, appropriation bills are drafted by the LFD. Although the LFD does not produce financial audits, they may assist the DLA in conducting their financial audits by confirming the accuracy of the appropriation bills mentioned. The LFD possesses a staff of roughly 30, of which about 27 are fiscal analysts assigned to a specific area of responsibility (LFD, 2017).

In addition to its other responsibilities, the LFD is required, per AS 24.20.231(7), to examine performance audits to identify potential savings, producing reports called Legislative Finance Assessment of Performance Review Savings. During 2016, LFD produced two of these reports: one on the Department of Education and Early Development and one on Postsecondary Education. The LFD did not identify potential savings in either program, but in a letter to the LBAC, dated January 3, 2017, LFD Director David Teal said that the review helped these agencies prioritize their resources to cope with budget cuts previously imposed by the legislature.[77]

Interestingly, in 2010, the LFD conducted a Budget Clarification Project in response to Alaska's anticipated shortfall of $677 million for fiscal year 2011. In hopes to simplify state finances, the project reassigned approximately 60 minor funds to the General Operating Fund (Alaska Policy Forum, 2010), specifically allocating $750 million into the "other funds."[78] The project also aimed to increase transparency and decrease unnecessary spending. The project confirmed LFD findings that several state departments "had been routinely siphoning money from the Alaska State Permanent Fund to pay for departmental expenses."[79] This entity will be discussed further in the next section.

Oversight Through the Appropriations Process

Legislative oversight during the appropriations process is largely conducted by the House and Senate Finance Committees and their respective standing subcommittees. With the exception of a short statement in the Alaska State Legislature Uniform Rules that all bills involving appropriations, revenues, or bonding must be referred to the Finance Committee, there is no

[75] https://www.adn.com/opinions/2018/06/24/the-mental-health-trust-broke-the-law-but-that-matters-less-than-the-crisis-at-hand/, accessed 11/11/18.
[76] http://www.legfin.akleg.gov/AgencyInfo/AboutLFD.php, accessed 7/27/18.
[77] http://lba.akleg.gov/download/annual_report/2017-Annual-Report.pdf, accessed 11/8/18.
[78] https://ballotpedia.org/Alaska_State_Legislature, accessed 7/27/18.
[79] https://ballotpedia.org/Alaska_State_Legislature, accessed 7/27/18.

mention of the House and Senate Finance Committee's, and their respective subcommittees', oversight responsibilities in the Alaska Constitution, chamber rules, or statutes. However, the Alaska legislature does provide *Layman's Guide to the Budget Process*, which provides a description of the appropriations process.

The budget process begins with the preparation, review, and submission of agency budgets by the executive branch to the legislature. The House and Senate Rules Committees then introduce appropriation bills that are referred to the House and Senate Finance Committees. Then, these bills are referred to various subcommittees for examination. This examination process may involve public hearings. However, these public hearings usually only include testimony from departmental experts.

After the examination process, appropriations bills are sent back to the House and Senate Finance Committees along with recommendations. The House and Senate Finance Committees consider these recommendations and then develop a final version of the bill. Usually, there are discrepancies between the House and Senate final bills, in which case a conference committee reconciles differences between the bills (Alaska Legislature, 2017). The governor can item-veto appropriation bills (CSG, 2008). A two-thirds vote of the combined chambers may override the governor's veto, [80] but an override has not occurred for at least two years (interview notes, 2018).

Meeting minutes, audio, and video files document fifty or more committee hearings held by the House and Senate Finance Committees. During these hearings, the committees listen to the presentations of the governor's budget from the Alaska Office of Management & Budget (OMB). During the appropriations process, the LFD assists finance committees in various ways. LFD creates reports analyzing appropriations and the budget, such as capital and supplemental budget reports, as well as fiscal notes. They also provide an overview of the governor's budget proposal,[81] a compliance report that includes the responses of each agency (Intent Memo),[82] along with many other supplemental items throughout the year and during the budget process.[83] The director of the LFD presented that division's analysis of the governor's budget to legislators during the January 20 hearing. LFD staff answered questions throughout the meeting.[84] According to an interviewee, LFD fiscal staff often attends finance committee hearings—not just those on the governor's budget—but on other bills with a fiscal impact. LFD staff provides fiscal and other types of analysis (interview notes, 2018). When time came for the director of the OMB to present, he remarked that the LFD version would help legislators better understand the OMB presentation.

A video archive of a House Finance Committee meeting held on January 20, 2017,[85] reveals that members asked very specific questions of the OMB director. In one instance, a member asked if agencies were considering allowing employees who were eligible to retire early with three months' severance pay—an idea the Alaska Court System had pitched. In further elaboration, "high-step employees with high salaries would be replaced with younger workers at a great savings." The director responded that although many people were retiring, not many of them were being presently replaced. This was because "a retirement incentive program often involved an employee that would require hiring three people to replace them." Nonetheless, she

[80] https://ballotpedia.org/Veto_overrides_in_state_legislatures, accessed 7/27/18.
[81] http://legfin.akleg.gov/Overview/Overview2019.pdf, accessed 7/27/18.
[82] http://legfin.akleg.gov/Miscellaneous/FY18IntentMemo.pdf, accessed 7/27/18.
[83] http://legfin.akleg.gov/index.php, accessed 7/27/18.
[84] http://legfin.akleg.gov/Charts/Budget_History_Presentation_September_2017.pdf, accessed 7/27/18.
[85] https://www.360north.org/gavel/video/?clientID=2147483647&eventID=2017011036, accessed 11/8/18.

said it would be a consideration although implementation would have to be done in a "smart way." The legislator noted that replacing tenured employees would also mean more job opportunities.

The House Finance Committee also listened to the individual budget requests and justification from each executive department. For instance, on January 30, 2017, the committee met all morning and all afternoon. In the morning they heard from the Public School Trust Fund and took public testimony and also considered the appropriation for education and student transportation. They spent the afternoon listening to presentations about the mental health budget and the appropriation for the operating budget, loans, and funds, plus budgets for three state agencies, (corrections, public safety and natural resources). Details of these budgets were provided in the Fiscal Year 2019 Department Budget Overviews. The corrections commissioner described cuts to his department's budget totally $32 million dollars over several years. He said that the legislature had based these cuts on an assumption that prison populations would decline. That assumption has proved false, so he said that the department was asking for an increase in its budget. The director and his staff used PowerPoint slides to provide detailed information across time about the agency's budget and a detailed breakdown of the use of the those funds. Committee members asked questions that demonstrated knowledge of the program. With respect to a new program, a legislator asked about problems the department might be having recruiting staff for that program. Another legislator asked about funds that were supposed to be used for victim restitution based on a bill that he said was passed years ago. A legislator asked about the potential for video court hearings and other internet based processes to reduce the cost of transporting prisoners. The committee chair ended the discussion by encouraging committee members with more questions to attend the subcommittee hearing on corrections and to pass questions to members of that subcommittee.

During parts of his presentation, the commissioner of Corrections referred occasionally to discussing certain topics in more detail at the subcommittee hearing. These comments imply that legislators are even more actively engaged in monitoring the budget and the department's programs through the subcommittee.[86] This is consistent with video evidence of a hearing held by the House Finance Subcommittee on Corrections held on January 26, 2017.[87] At the outset of this first meeting of the subcommittee for the 2017 legislative session, the chair read the charge for the subcommittee as well as various procedures and other administrative requirements. He read from a document during the first minute of the hearing that stated that during the subcommittee a "high level program review will identify what's working well, what can be modified, eliminated, or enhanced to meet each department's mission. Subcommittees will also examine indirect expenditures to determine ways that departments can potentially increase revenue or decrease or reduce expenditures." The commissioner of corrections and his staff member provided a much more detailed description of the department in this setting. For example, he explained the difference between Alaska's centralized corrections system and most other states that use a system of county jails in addition to state prisons. Committee members asked questions throughout the presentation.

The subcommittee's discussion of Title 47 offenders demonstrates the high level of oversight capacity exhibited by Alaska's legislators. Title 47 prisoners are non-criminal bookings. These include alcohol and drug intoxication. The law requires that officers who pick these people up must take them to the hospital first, but the default last stop is the prisons if the officers cannot find anywhere else to put them. The commissioner described risks to staff from

[86] http://www.akleg.gov/basis/Meeting/Detail?Meeting=HFIN%202017-01-30%2013:30:00, accessed 7/27/18.

[87] https://www.360north.org/gavel/video/?clientID=2147483647&eventID=2017011074, accessed 11/10/18

managing this population and the strain this is putting on corrections resources. He also noted that there had been several deaths in the prisons among this population. He asserts that the problem is getting the hospitals and the prison system on the same page because people who cannot, for example, keep their airways clear on their own are ending up in jails rather than in the hospitals. The commissioner reported that the number of Title 47s in jails is decreasing, and he is working with local communities to identify other more appropriate places to put this population.

After the commissioner described costs associated with incarcerating intoxicated people under Title 47, subcommittee members asked several questions. One subcommittee members asked about the per prisoner costs, and another pointed out that during the 1990s, there were people under Title 47 who were not merely intoxicated. He wanted to know what had changed. The commissioner said that officers still bring people with mental health problems to the jails under Title 47, but the number is smaller than the intoxicated population, and they are not as medically fragile. Therefore, he is not as worried about dealing with that portion of the Title 47s. Another committee member wanted to know why the percentage of intoxicated Title 47s in the corrections system was dropping. The commissioner said that after they have one of these deaths or other problems he visits the communities and expresses his angst about the problem, and then the Title 47s from that area drop for a while. But, then the number of Title 47s rise again. So the commissioner said that there needs to be policy change to resolve this problem rather than just visits from him to hospitals to express his concerns. Another committee member asked how other states handle this population—people who have committed no crime, but are intoxicated from drugs or alcohol. The commissioner said that in most states this is a county problem, and that it is handled differently by different counties. Because Alaska has a unified corrections system, the state prisons are involved in ways that in most states they are not. Additionally, because Alaska is so cold, people freezing on the streets is a bigger problem than it is in most states. Therefore, according to him, it is understandable why the situation evolved and why Title 47 was created in the first place. Another committee member asked the commissioner to describe the specific steps involved with the police officer, the hospital and the corrections department that unfolds when a Title 47 person is brought into custody. The commissioner, in his description of the steps, said that there is not an established standard that hospitals use to evaluate the person when the officer brings them to the hospital and identifies that as part of the problem. There is a lot of variation. So, "medically cleared" means different things. Prison medical staff then looks at the person, and they may say, "Gee, this does not look safe." Then our medical staff is in a tense situation with the local hospital staff if they call the hospital back and challenge their assessment. Therefore, our staff tended to accept the person into the jail. The commission said, "Part of my approach has been to encourage our staff to push back on the hospitals." Another committee member wanted to know how many Title 47 offenders are repeat offenders and also asked how the 24% (mentioned by the commissioner) decrease fits in to overall trends in this population. The commissioner described one "frequent flyer" from Fairbanks who had been incarcerated 50 times in the past year under Title 47. So, he acknowledged that repeat offenders are a problem.

At this point in the meeting, the chair asked committee members to hold remaining questions unless they were about specific numbers on the slides to allow the commissioner to finish the formal presentation at this first meeting of the subcommittee. One subcommittee member in particular continued to ask questions about the numbers on the slides until the chair reiterated that there would be opportunities for more discussion later. This was a very lively

discussion in which legislators asked questions that indicated their knowledge of the department and their interest in understanding the challenges and problems involved.

Knowledgeable observers told us that while "[i]t is required by statute that agencies are to submit a performance-based budget, even though the legislature doesn't necessarily use them, [they] are utilized by agencies and are presented (to the legislature by agencies)." Yet, this emphasis on performance-based budgeting may have influenced the subcommittee charge, which was read at the outset of the corrections subcommittee meetings, to focus on agency performance in the context of the agency budget presentation. The subcommittee met four more times during the month of February. Agenda items for those meetings were inmate and behavioral health, community residential centers, pretrial services, electronic monitoring, budget amendment proposals, and budget closeouts. Corrections subcommittee members' questions during this initial hearing focused on agency performance more than is typical in many legislative hearings that we have listened to in other states. We consider this hearing to be a good example of solution-driven, evidence-based oversight.

Oversight Through Committees

Meeting minutes, as well as audio and video recordings of committee meetings, reveal that most standing committees met frequently. One committee, the Senate Resources Committee, held 32 meetings during 2017.[88] In 2018 this committee consisted of seven Republicans and one Democrat. This is an instance in which seats on a committee are apportioned so that the minority party holds fewer committee seats (1 of 7 or 14%) than one would expect based on its proportion in the legislature (six of 20 seats, or 30%). During their meetings, the Senate Resources Committee concentrated on passing legislation, hearing testimony from expert witnesses on environmental projects and on confirming gubernatorial appointments.

A video archive of a meeting held on February 6, 2017, examined Alaska's Primacy Program for Water and Air, which requires the Alaska Department of Environmental Conservation (DEC) to regulate air and water quality under the primacy authority of the Clean Air Act and the Clean Water Act. The commissioner of the DEC was at the meeting to provide an overview of those duties and to summarize a discussion the commissioner had with the federal agencies. Following, the overview legislators asked questions. One legislator asked, in order to protect the fishing industry, if they should "get involved in helping steer S. 168 so it doesn't impact fisheries" and "if the state is still faced with getting a waiver on [the issue]." Furthermore, that if the Incidental Discharge Act (VIDA) – S. 168 passes, many vessels that have deck discharge would be permanently exempted. However, if it did not pass, the fishing industry is at risk; for instance, the industry says that it is impossible for halibut boats to meet non-discharge standards. The commissioner responded that so far, "[they have not] heard any pushback on exempting fishing vessels." This exchange indicates that the legislature routinely works with state agencies to encourage them to advocate for the issues that legislators care about.

The Senate Resources Committee met on February 22, 2017[89] to discuss compensatory mitigation for wetlands destruction through the federal Clean Water Act. This represents an example of police patrol oversight with committee members seeking to understand complex

[88] http://www.akleg.gov/basis/Committee/Details/30?code=SRES#tab2_7, accessed 7/27/18.
[89] https://www.360north.org/gavel/video/?clientID=2147483647&eventID=2017021321, accessed 11/11/18.

regulations in order to judge the work of a bureaucracy. The director of the Office for Project Management Permitting (OPMP) and the Department of Natural Resources commissioner presented information about this issue. The Army Corp of Engineers implements the federal standards, but the EPA has oversight authority and worked with the Army Corp of Engineers to develop the regulations. Basically, developers buy wetlands mitigation credits. One committee member asked that the OPMP presenter to explain who is affected by this regulation—someone building a house or someone building several houses or . . . The answer: typically any large project, meaning something of 10 acres or more, there is subjectivity and discretion. Another legislator asked if this applied to creeks as well as marshes. The answer: any sort of water on the property. The OPMP director explained the difficulties that arise with applying a program designed for the contiguous 48 states to Alaska where the practice of remediating other wetlands to compensate for wetlands diminished in a development project is difficult. This is because most of the existing wetlands are pristine rather than abandoned after degradation and in need of mitigation. Therefore, the logic of mitigation credits, which works well in the contiguous United States, is very difficult to implement in Alaska. The Army Corps of Engineers has a lot of flexibility, and applicants can offer creative solutions to mitigate wetlands loss. One committee member asked what the state was doing to try to address this issue. The commissioner said that as is often the case, national programs do not fit well in Alaska. There just are not mitigation banks where developers can go to buy mitigation credits. One committee member asked whether Alaska could create a mitigation bank. Yes, and that's what they have come to discuss. One committee member in particular, complained about the burden the federal regulations placed on small developers and native populations living on reservations. One committee member asked where the money paid for project mitigation goes. They paid for a deed restriction for private land owners, so that money went to the private land owners. Most committee members were not well versed in these federal regulations, and most of the questions they asked were requests for information about how the regulations work. The hearing persuaded the committee to support a state managed mitigation bank as the best solution for Alaska to facilitate developers' ability to comply with the federal Clean Water Act. The presenters described the use of a GIS tool to identify the value of different pieces of land with respect to mitigation credits. The chair asked whether they needed any statutory changes to proceed. The answer: they were using existing statutes. This was an example of an agency reporting to the legislature to keep it informed of initiatives it was undertaking and gaining support for the proposed program. It indicates that this agency is responsive to the legislature and wants to make sure that it has the support of the legislature before proceeding with projects—an indication that institutional prerogatives for checks on executive authority are respected in Alaska. The legislative committee appears willing to be engaged and demonstrated interest in understanding the issue and associated problems and potential solutions.

Although standing committees appear to be engaged in some facets of legislative oversight, the audit committee does not appear to conduct specific substantive oversight itself; instead it appears to facilitate the production of evidence and information to be used by other committees. Detailed meeting minutes and audio and video files from past meetings held by the Legislative Budget & Audit Committee are available on the committee's website.[90] The audio and video archives that are available range from less than an hour to a few hours long. These videos show that during their meetings, the LBAC spends most of their time discussing the logistics of conducting auditing reports rather than holding hearings on the contents of the audit.

[90] http://www.akleg.gov/basis/Committee/Details/30?code=HBUD#tab2_7, accessed 7/27/18.

Unfortunately, much of this business is done during executive sessions, which is not available to the public. Because the LBAC determines whether to release the audit publicly, the committee can hear the audit report in a closed executive session. This means that there is no recorded archive available for that portion of the meeting. The hearing of the LBAC held on February 23, 2017, featured a presentation of the financial audit of the state legislature itself. It was a "clean" audit report, and there was almost no discussion of this audit. The next audit on the agenda was a discussion of whether the audit of the Mental Health Trust Authority could be prioritized and finished before some other audits that were in the pipeline. The audit staff discussed the tradeoffs involved in delaying other audits to pursue the Mental Health Trust Authority audit. As described in detail in the section on Oversight Through the Analytic Bureaucracy, it appears that the LBAC's decision to prioritize the special audit of the Mental Health Trust Authority was prudent. This recording of the LBAC clarifies the control that the committee has over the work of the DLA. Additionally, the committee discussed the work and the funds needed to pay various contractors that could help with the state's single audit. There was a discussion of an RFP for these contractors. Legislators were invited to work on the RFP to identify the scope and methods of upcoming audits.

As described in the Oversight Through the Analytic Bureaucracy section of this paper, the state's sunset audits are essentially performance audits of boards, commissions, and similar entities. These audits include recommendations for whether an entity should expire according to whether it still meets a public need. The sunset report will be forwarded to a committee of reference to determine whether it should be reestablished (DLA, 2017). For the year 2017, these audits made up 80% of all audits conducted by the Legislative Audit Division. All but one audit recommended extensions and all recommendations, except for the termination of the Alaska Health Care Commission, were passed into law by the legislature.[91] This is further evidence that standing committees are actively involved in oversight of the executive branch in Alaska and that legislators use audit reports in this process. We discuss details of this sunset review process in the section on Automatic Mechanisms of Oversight.

Oversight Through the Administrative Rules Process

Alaska's legislature recently repealed the statute that authorized its Administrative Regulative Review Committee (ARRC) (Chap. 7 SLA 2018, H.B. 168). It reassigned the legislature's administrative rule review powers to the standing committees of jurisdiction. It remains to be seen how this will affect the rule review process in Alaska. Although this bill became effective on August 1, 2018, rule review ended in 2016 because "the house and senate declined to appoint anyone to the committee during the 30th Legislature" (interview notes, 2018). In fact the ARRC has not introduced legislation to repeal rules since 2003 (interview notes, 2018), so the demise of the ARRC may not have altered the de facto checks and balances between the legislative and executive branches of Alaska's government. Here we explain workings of the ARRC to provide context for the likely process when the standing committees of jurisdiction assume this responsibility.

Alaska's legislature originally could veto proposed rules (the legislative veto) until a state Supreme Court ruling in 1980 (State v. A.L.I.V.E Voluntary, 606 P.2d 769) declared that the use

[91] http://legaudit.akleg.gov/audits/all/, accessed 7/27/18.

of concurrent resolutions to overturn rules to be unconstitutional.[92] Furthermore, a constitutional amendment that "would allow the legislature as a whole to annul rules by resolution . . ." failed to pass (Tharp, 2001). So, "when [agencies] promulgate rules . . . the legislature can only check those functions by enacting new statutes according to a standard constitutional procedure," which usually must be passed by both houses and signed by the governor (Schwartz, 2010). So after 1980, the ARRC could only review rules that were already in effect. In 2004, the legislature sought to participate earlier in the rule review process to reduce the cost of badly crafted regulations, to enhance the effect of ARRC's opinions, to facilitate public input, and to facilitate collaboration between the executive and legislative branches (Schwartz, 2010). The legislature delegated the power to participate during the public notice and comment period of a rule to the Legislative Affairs Agency (LAA). During this review, "the legislative counsel may consult with the … agency or the Department of Law and may make non-binding suggestions. . ." (Schwartz, 2010). The LAA is responsible for "carrying out . . . statutory and rule assignments made by the Legislature,"[93] but the LAA has only one attorney to deal with this responsibility. Therefore, legislative rule review in Alaska was inconsistent and sporadic at best even when the ARRC existed (Schwartz, 2010).

Currently, an agency develops the rule, notifies the public, and prepares a fiscal note. Then, after consulting with the agency attorney, the rule is forwarded to the Department of Law. The public can comment during the public hearing. When the public hearing is over, the agency will adopt the rule, and submit it to the Department of Law for review and approval. The governor's office will also conduct a review of the rule. The agency attorney will review the rule once more, then the regulations attorney reviews the rule and will either approve or disapprove of the rule, and finally, the approved rule(s) will be forwarded to the lieutenant governor's office (who also is responsible for duties usually performed by a Secretary of State) to be filed, unless it is returned to the agency by the governor.[94]

When a rule is filed with the lieutenant governor, the rules are published in the Alaska Administrative Code,[95] and are forwarded to standing committees of jurisdiction (previously the ARRC) for review, along with the relevant fiscal information (Administrative Procedure Act). Before it was repealed, the ARRC could hold hearings and collect "comments from other legislative committees, from the public, and from its legal counsel." The ARRC would determine the rule's legislative intent and whether it was under the agency's authority, and the ARRC could make strictly advisory comments to the governor and the agency (Council of State Governments, 2017). This could include the promotion of the revision or repeal of an existing rule or the agency could "introduce a bill that would enact a statute that would supersede or nullify the regulation."[96] During the meeting held on the repeal of the ARRC, a representative referenced two distinct times where regulations were reversed by agencies as recommended by the ARRC.[97] It seems plausible that the standing committees with jurisdiction will perform these same functions.

If a rule is promulgated while the legislature is not in session, the legislature can vote to temporarily suspend a rule until the next legislative session, although this is constitutionally

[92] http://www.akleg.gov/basis/get_documents.asp?session=30&docid=41024, accessed 7/27/18.
[93] http://akleg.gov/legaffairs.php, accessed 7/27/18.
[94] http://arr.legis.state.ak.us/, accessed 7/27/18.
[95] http://arr.legis.state.ak.us/, accessed 7/27/18.
[96] http://arr.legis.state.ak.us/, accessed 7/27/18.
[97] http://www.akleg.gov/basis/Meeting/Detail?Meeting=HSTA%202018-02-08%2015:00:00, accessed 7/27/18.

questionable (Council of State Governments, 2017; Schwartz, 2010). A two-thirds majority vote is required, and the legislature has no power to eliminate obsolete rules.

"No legislation to repeal or amend a statute in response to proposed regulations has been introduced by the AARC since 2003. Individual legislators often introduce bills [with] that impact, but it is not clear how many . . . are a result of reviewing regulations or with the . . . goal of changing a specific regulation" (interview notes, 2018). Recently, a proposed regulation "prohibited distilleries from serving mixed drinks in their tasting rooms" (interview notes, 2018). Legislation (SB 45 Chap. 59 SLA 2018) was introduced and passed with an amendment (HB 296) that allowed distilleries to serve mixed drinks. It is important to note that the legislature made recommendations to the agency, but no changes to the rule were made.

The governor can return a rule if it is seen as inconsistent with the law or if it does not adequately respond to comments made by the committee (now the committees of jurisdiction). Otherwise, the attorney general is responsible for approving rules (Schwartz, 2010). Rules become effective after "the Attorney General signs off on the legislative review." Furthermore, "the Attorney General returns about 25% of rules" (Tharp, 2001). If the rules are approved, the agency will post a summary on the Alaska Online Public Notice System. Consequently, it appears that the Alaska Legislature has a very limited role in the oversight of administrative rules.

Oversight Through Advice and Consent

The advice and consent power of the Alaska legislature is discussed in Article III, Sections 25 and 26 of the Alaska State Constitution, Rule 46 of the Alaska State Legislature Uniform Rules, and Alaska Statute 39.05.080-200. In brief, appointments are submitted by the governor and assigned to a standing committee by the presiding officer of each chamber for a hearing, report, and recommendation. Furthermore, "standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person" (Alaska Statute 39.05.080). Confirmation votes typically occur during a joint meeting of the legislature at the end of a session (interview notes, 2018). Lack of a vote to reject means that appointees are confirmed (interview notes, 2018).

Although it is not mandatory for committees to meet on appointments, when they do meet, a committee report is sent to the clerks noting that although they are meeting, the meeting is not an indicator they are approving nor disapproving the appointment. Appointees will be informed of a committee meeting beforehand, and they can choose to testify or to just listen in. Sometimes appointees will attend in person, but most often they "attend" via teleconference (interview notes 2018). Committee members "review . . . a candidate's experience and interest"[98] and ask appointees questions about their experience and interests (interview notes, 2018). This happens more often with a new appointment rather than reappointments or interview with appointees that the legislature already knows (interview notes, 2018). During the vote of the entire body, the interview information gathered from the committee meetings will be used by

[98] https://gov.alaska.gov/services/boards-and-commissions/appointment-process/, accessed 7/27/18.

legislators to testify for or against an appointment. If a legislator objects to an appointment, he or she is asked to provide reason for their objection.[99]

Most appointees are confirmed (interview notes, 2018). Both legislative chambers must confirm the attorney general, the adjunct general, heads of the following departments: civil rights, commerce, corrections, environmental protection, fish and wildlife, highways, labor, natural resources, revenue, social services, and transportation. Many other executive positions, such as the state's treasurer, comptroller, and elections administrator are filled by candidates appointed by an agency head subject to gubernatorial approval (Council of State Government, 2014). And there are also nominees for dozens of boards and commissions that require legislative confirmation.

The confirmation process in Alaska appears to be more contentious than it is in many states, perhaps because some of the high profile positions, such as attorney general, are appointed rather than elected in Alaska. Regardless of the reasons, tensions have run high enough in the past (during the 1980s) that the state police had to be called in to keep the peace. More recently Gov. Bill Walker called the legislature into special session in 2015 to vote on his appointees after the legislature delayed the vote as leverage in a standoff over the Medicaid Expansion and his threatened veto of a pipeline bill. The legislature and the governor jousted over confirmations again in 2017 when the legislature delayed voting, and the governor called them into session (Brooks, 2017). Ultimately they confirmed his nominees, but not until May 2017.[100] This evidence of oversight seems to have strong overtones of partisan politics.

The authority of the governor to issue an executive order is granted via Article III, Sec. 23, Constitution of the State of Alaska, although the Book of the States reports that there are no provisions to allow the governor to issue executive orders for emergencies, to respond to federal programs and requirements, nor to appoint state personnel administration or other administration (Council of State Governments, 2014). Alaska's governor issues numerous orders in these categories, however.[101] Some of these orders involved emergencies, establishing task forces or setting priorities. It appears that there is a distinction between executive orders and administrative orders that produces this confusion. As of November 11, 2018, Alaska's governor issued 301 administrative orders during his term in office, 2015-2018. Alaska's governor also makes policy through executive order. Gov. Walker infamously expanded Medicaid under the Affordable Care Act using an executive order saying that state law required to him to provide Medicaid to all eligible populations in the state. The legislature sued, but the courts agreed that he was responsible for extending care to anyone eligible.[102] Alaska's governor can issue executive orders to reorganize state government, but must forward these executive orders to the legislature within sixty days. [103] The legislature can block executive orders via concurrent resolution, although this has not happened recently (interview notes, 2018).

[99] https://gov.alaska.gov/services/boards-and-commissions/appointment-process/, accessed 7/27/18.
[100] https://gov.alaska.gov/newsroom/2017/05/walker-mallott-administration-boards-and-commissions-appointees-confirmed/, accessed 11/12/18
[101] https://gov.alaska.gov/admin-orders/index.php, accessed 11/12/18
[102] https://www.adn.com/politics/2017/06/26/senate-bill-would-undercut-alaska-governors-authority-over-medicaid-expansion/, accessed 11/11/18.
[103] https://gov.alaska.gov/admin-orders/001.html, accessed 7/27/18.

Oversight Through Monitoring of State Contracts

According to an interviewee, during certain audits, the DLA investigates compliance with contracts between agencies and state and federal government, and agencies and vendors. Furthermore, Section 39.52.150 of the Alaska Executive Branch Ethics Act covers "Improper influence in state grants, contracts, leases, and loans."[104] The legislature has their own oversight entity (the Select Committee on Legislative Ethics Act) to administer the Legislative Ethics Act. The executive branch enforces the Executive Branch Ethics Act through the LBA, the Designated Ethics Supervisor (DES), the attorney general, and the relevant board.

The special audit of the Alaska Mental Health Trust Authority (AMHTA) described earlier explicitly cites the Ethics Act; "a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interests." As discussed earlier, the AMHTA audit identified several ethics violations. But it also identified problems with the authority's contracting process, which violated the ethics act. For example, there was "a $1.375 million Request for Proposal (REP) for a multi-year project was issued without approval and knowledge by the entire board."

The analytic bureaucracy has authority via legislative audit over the executive branch contracts, which (as in the above special audit) can point out violations of the law. Additionally, it appears individual legislative committees can conduct oversight over state contracts. For example, there was a joint meeting held on July 11, 2018, between the House and Senate Resource Committees on the Alaska Gasline Development Corporation (AGDC). The AGDC works with the federal and state government, specifically Alaska's Department of Environmental Conservation, the Department of Natural Resources, and the Department of Transportation and Public Facilities.[105] Before the meeting, one of the Senators requested various details and lists pertaining to the corporation's contractors, services from state employees, executive sessions held by the Board of Directors, and so forth.[106] The meeting focused on the Alaska Liquid Natural Gas (LNG) Project, and the potential "influence of partisan politics on the project," as committee members remarked that some executive branch employees were working for the AGDC.[107] However, one of these legislators also remarked that although legislative oversight over the project is important, it is also "important not to micromanage what the state corporation is doing." The Department of Natural Resources and the Department of Revenue were there to present analyses of the project as well, and were asked questions as to how the state would pay for its part in the project.[108]

Alaska's legislature appears to use the tools it has to monitor state contracts, but most of this oversight addresses conflicts of interest and financial issues with contracts. As we know from examining other states, the issue of contractor performance in delivering public services can present serious challenges for state governments. We found no evidence that this sort of

[104] http://law.alaska.gov/doclibrary/ethics/EthicsAct.html, accessed 7/27/18.
[105] http://www.akleg.gov/basis/Meeting/Detail?Meeting=HRES%202018-07-11%2009:00:00#tab4_4, accessed 7/27/18.
[106] http://www.akleg.gov/basis/get_documents.asp?session=30&docid=56839, accessed 7/27/18.
[107] https://www.alaskapublic.org/2018/07/12/legislators-quiz-alaska-lng-project-managers-on-progress/, accessed 7/27/18.
[108] https://www.alaskapublic.org/2018/07/12/legislators-quiz-alaska-lng-project-managers-on-progress/, accessed 7/27/18.

contract monitoring was occurring on a systematic basis in Alaska—a condition that appears to be typical across the states.

Oversight Through Automatic Mechanisms

Alaska requires its legislature to conduct comprehensive reviews of all statutory agencies on a preset schedule (Baugus and Bose, 2015) based on a sunset law that passed in 1977. Alaska appears to not currently have sunrise provisions or to conduct sunrise reviews.[109] According to Alaska Statute 44.66, the Legislative Audit Division and Legislative Finance Division audit the activities of agencies, boards, and commissions under the general supervision of the Legislative Budget and Audit Committee are required to conduct sunset audits. Between 2001 and 2005, Alaska conducted the second highest number of "sunset reports" among the states (Risley, 2008). According to the LBAC, "the audit report, along with other reports and testimony, is considered when determining if there is a public need for a board, commission, or program."[110]

Even though the LBAC is responsible for seeing that sunset audits are conducted, it does not have the authority to determine whether an agency, board, or commission should be discontinued. According to Alaska Statute 44.66.050, "Before the termination, dissolution, continuation, or reestablishment of a board or commission, a committee of reference of each house, which shall be the standing committee of legislative jurisdiction as provided in the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public, the commissioner of the department having administrative responsibility for each named board or commission, and the members of the board or commission involved." Furthermore, "During a public hearing, the board or commission shall have the burden of demonstrating a public need for its continued existence or the continuation of the program and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest." Lastly, "The committee of reference may introduce a bill providing for the reorganization or continuation of the board or commission." Moreover, sunset reviews interact with the appropriations process because sometimes it is necessary to appropriate funds to continue the work of a board or commission (interview notes, 2018).

From 2012-2014, Alaska's legislature conducted 17 reviews, eliminating zero boards and laws, while renewing all 17 reviewed (Baugus and Bose, 2016). Therefore, it is possible that the legislature makes little of no use of its ability to terminate boards and commissions. Yet it appears that sunset review hearings are vigorous and that legislators take this responsibility seriously. Therefore, the reviews might have accurately determined that all these boards and laws were valuable.

Recently, the Senate Finance Committee, Senate Labor and Commerce Committee, House Finance Committee, and House Labor and Commerce Committee all separately held hearings on H.B. 275 and H.B. 273, which extended the termination of the Board of Massage Therapists and the Marijuana Control Board.[111] In the Labor and Commerce meeting, held on January 22, 2018, the legislative auditor presented the sunset audit, provided testimony, and answered questions. The director and board members were also present to answer questions. For

[109] https://www.clearhq.org/page-486181, accessed 7/27/18.
[110] http://legaudit.akleg.gov/about/, accessed 7/27/18.
[111] http://www.akleg.gov/basis/Bill/Detail/30?Root=HB0275#tab4_4, accessed 7/27/18.

instance, the director was asked about investigations, and the director responded that the Alcohol & Marijuana Control Office typically only investigates complaints and does not actively seek out problems. In response, the legislator asked if there were "sting" operations to "get people to break the rules." In response, the director said that there is the shoulder tap program, which is an attempt by an underage person to get people to purchase alcohol for them and a compliance check to see if underage people could directly purchase alcohol. Furthermore, the director said that they would like to expand these checks onto marijuana regulation, and that the checks overall help enforce the law. This evidence indicates that audits are presented to and utilized by standing committees, specifically during hearings with agencies present.[112]

Methods and Limitations

Alaska provides public and online access to video, agendas, and detailed meeting minutes (transcripts) of their committee hearings. All three allowed for thorough investigation of particular topics, such as the usage of audit reports. We also conducted interviews with five out of the eight people we reached out to in Alaska (these numbers do not include individuals who only forwarded us to other individuals). Overall, Alaska's legislature provided many staff and website resources that improved the accuracy of our assessment of the state's legislative oversight capacity.

[112] http://www.akleg.gov/basis/Meeting/Detail?Meeting=HL%26C%202018-01-22%2015:15:00, accessed 7/27/18.

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Legislative Oversight in Arizona

Capacity and Usage Assessment

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

Summary Assessment

The Arizona legislature possesses adequate capacity to effectively engage in oversight of the executive branch and does engage in some oversight. Its staff resources are abundant, and the quality of its work appears solid. The process of reviewing agency progress before releasing quarterly funds is a powerful mechanism for oversight. There are several other mechanisms in place that allow for a moderate level of oversight, despite one-party dominance. Although the Department of Administration takes the lead in contract monitoring, the legislative support bureaucracies (audit and fiscal staffs) have some authority to investigate contracting problems directly. This was demonstrated in an audit of the Department of Administration, exposing issues with the oversight of contract administration in the department.

Major Strengths

The presence of powerful appropriations committees and the Joint Legislative Budget Committee (JLBC) ensures that the necessary information is available for oversight through the power of the purse. The quarterly review through the appropriations committee is a very powerful tool and could be used to assert strong control over agency performance. The sunset review process ensures that agencies are held accountable for implementing audit recommendations. It is typical for agency heads to reference audits when testifying of their efforts to improve the performance of the agency. Republicans have maintained trifecta control over the government for a majority of the last 21 years, yet the legislature still appears to take some oversight responsibilities seriously.

Challenges

The executive branch has placed a moratorium on administrative rulemaking. Although there is a process in place that allows agencies to request authorization to submit a rule, the moratorium “discourages state agencies from updating their current rules to ensure they are based on current scientific knowledge and continue to maximize net benefits” (Smith, 2014).

Also, the legislative mechanism for oversight over rulemaking was inactive. Some legislators do not seem to possess the program knowledge or understanding to effectively wield the powerful oversight tools they possess in the appropriations and committee processes. Therefore, tools such as the quarterly reviews in the appropriations processes are not used as effectively as they might be. Oversight through some committees of reference appears lax, largely because the available tools are not used effectively by legislators who do not appear to be familiar with the programs being reviewed.

Relevant Institutional Characteristics

Arizona has a hybrid legislature, with the majority of legislators holding full-time jobs in addition to their legislative responsibilities (Gray et al., 2017). Legislators receive approximately $24,000 for the legislative session as base pay, with an estimated maximum compensation of $28,000 including an unvouchered allowance (Gray et al., 2017). Moreover, the legislative session is short—beginning annually the week of the second Sunday of January and ending on the Saturday during the week in which the 100th calendar day falls. Despite this, Arizona is ranked as the 14th most professional legislature in the nation according to the Squire Index, owing to its relatively large staff size (Squire, 2017). There are approximately 598 permanent staff members (Gray et al., 2017), who work even when the legislature is not in session and another 97 staff serving only during the session (NCSL, 2017).

Arizona has a bicameral legislature with a total of 90 legislators—60 representatives and 30 senators. Term limits were enacted in 1992. Representatives and senators serve two-year terms with a limit of four consecutive terms. Once legislators meet the term limit in one chamber of the legislature, they can run for a seat in the other chamber. There are no lifetime limits in either chamber,[113] so legislators can cycle back and forth between the two chambers, assuming they win their election contest (Arizona Constitution, Section 21, Part 2). The first year the impact of these implemented term limits were was in 2000. Term limits will impact 20% of Senate seats and 13.5% of House seats in the 2018 elections.

Arizona's governor has only moderate institutional power, ranked 28th nationally (Ferguson, 2015). The governor possesses strong budgetary power, with full authority to propose the budget. The legislature can only adopt or revise the governor's budget. The governor has veto and line-item veto power, and a legislative override requires a two-thirds vote of both chambers. The governor is elected for a four-year term with a limit of two terms. The executive branch includes 10 other elected officials. In addition to the governor, other elected offices include the secretary of state, attorney general, treasurer, superintendent of public instruction, state mine inspection and a five-member corporation commission (Haider-Markel, 2008, p. 370). If these officials are affiliated with different political parties, it could produce a fragmentation in the executive branch that could limit the decision-making power of the governor. The elections for these positions are held opposite the presidential election cycle, leading to low voter turnout. All elected in 2014, the current governor, attorney general, secretary of state, and governor all identify as Republicans, so the executive branch is currently homogeneous.

Arizona has a lower than average percentage of its population employed as local and state government employees—10.3% compared to the national average of 11.3% (Edwards, 2006).

[113] https://ballotpedia.org/Arizona_State_Legislature, accessed 9/27/18.

This author's comparison of the smallest and biggest bureaucracies for certain classes of employment reveals that Arizona has the smallest welfare bureaucracy out of all of the states, with 0.7% share of total state and local government employment compared to a national average of 1.5%.

Political Context

Arizona citizens are registered approximately evenly across the parties as Republicans, Democrats, and Independents, 38%, 32%, and 30% respectively (Haider-Markel, 2008, p. 365). Reflecting this relatively even distribution of party identification, state legislative elections are highly competitive, ranking 8th in the nation during the 2014 election cycle.[114] This level of competition extends into the House and Senate, as well (Hinchliffe and Lee, 2016). Shor and McCarty rank both chambers as the third most polarized in the nation (2015).

One-party government pervades Arizona politics, with only one brief stint of divided government since 1993—from 2001 to 2002. Despite having only a moderate advantage in voter identification, the Republican Party has recently dominated state government, holding a trifecta for 17 of the last 21 years from 1993 to the present. The Republican Party held trifectas from 1993 to 2000, and again from 2009 to the present. The Democratic Party was able to govern under trifecta leadership for a short period of time from 2003 to 2008.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Arizona's auditor general is appointed by the legislature, specifically the Joint Legislative Audit Committee (JLAC), subject to confirmation by a majority vote in both legislative chambers. The JLAC is responsible for overseeing the audit function of the legislature and requiring state agencies to comply with audit findings and recommendations. The JLAC, created by statute A.R.S. 41-1279, provides direction to the Office of the Auditor General (OAG).

The functions and qualifications for the OAG and the auditor are specified via statute ARS 41-1278-1279.01. The auditor must be a certified public accountant (CPA). He or she is supported by a deputy and 200 employees, 54 of whom hold a CPA designation (NASACT, 2015). The OAG has five divisions: accounting services, financial audits, financial investigations, performance audits, and school audits. During the fiscal year 2015, the office had a budget of $20 million, of which $18.2 million was a state appropriation, with an upper level auditor having an average salary of $73,310 and 10.6 average years of experience (NASACT, 2015).

The OAG has audit responsibility for state agencies, counties, universities, school districts, and community college districts. The three main report types include performance and special audits, financial and federal compliance audits, and procedural and compliance reviews and investigations. According to the Auditor General's 2017 Annual Report, the OAG completed 223 reports during the 2017 fiscal year and reported that agencies consistently implemented 95%

[114] https://ballotpedia.org/Party_control_of_Arizona_state_government, accessed 10/23/18.

of performance audit recommendations within two years.[115] Of these reports, 53 focused on state agencies, but only 10 of these were performance audits or similarly comprehensive special reports. The OAG shares the audit responsibility for financial audits and the single audit with an outside CPA firm. The audited agency selects the firm with assistance from the OAG. The OAG has the authority to obtain information, but does not have authority to issue subpoenas.

Some audits are mandated, but the legislature also can request audits, as well as specific research and investigative projects. Prior to conducting performance audits, the OAG attempts to get input from a legislator or committee staff on the focus and scope of the audit. For mandatory performance audits, statute requires that the agency be allowed 40 days to make comments on the audit after the first draft.

After audit reports have been released, the JLAC ensures that each report gets a public hearing with a legislative committee. The hearing could be with the committee of reference, another relevant committee, or the JLAC. Committees of reference are five-member subcommittees assigned by the JLAC to participate in the sunset and sunrise processes and to prepare any legislation necessary to implement audit recommendations. During these hearings, the audited agency must respond to each audit recommendation, indicating whether they agree with the recommendation or not. The OAG follows up with audited entities to assess their efforts to implement recommendations at six and 18 months, or longer if additional follow up is necessary. These reports are submitted by the OAG to the JLAC regarding the implementation of the audit recommendations.

A legislative staffer confirmed that reports generated by the OAG are used frequently when committees are considering legislation and during the sunset and sunrise processes (interview notes, 2018).

Oversight Through the Appropriations Process

In Arizona, the governor must produce a budget within five days of the start of the legislative session for legislative review. Next, the Joint Legislative Budget Committee (JLBC) staff provides legislators with a baseline document that includes the consensus revenue estimate and spending estimates. The baseline document is not a budget proposal, but is a guideline on the size of the projected budget. In order to produce revenue and spending estimates, the JLBC consults with the Finance Advisory Committee (FAC), which is a 14-member committee of private and public sector economists. Estimates from the JLBC, FAC, and two University of Arizona models are equally weighted to produce a revenue estimate for the current and upcoming fiscal years. However, neither the governor nor the legislature is constrained by these estimates.

Next, the legislature crafts its own appropriations bill, and as part of this process JLBC staff creates a line-by-line comparison of proposed appropriations and proposed gubernatorial budget requests. This comparison is used during appropriations hearings. As a result of Republican dominance in Arizona, the governor gets much of what is submitted in the gubernatorial budget. However, during the 2017 budget cycle, the governor requested an additional $113.6 million for K-12 education initiatives. The final budget "included an additional $167 million for K-12 education, plus additional money for inflation and student growth" (Rau

[115] https://www.azauditor.gov/sites/default/files/Annual_Report.pdf, accessed 10/23/18.

2017).[116] This suggests some legislative independence from the executive branch even under one-party government.

To facilitate legislative oversight, Arizona was an early leader in the use of program review during the budget process. In 1993, Arizona adopted a series of budget reforms that included a Program Area Review (PAR) process. The PAR included a specific list of programs for review. This process evolved into a process established in 1999 known as the Strategic Planning Area Review (SPAR) process—another form of program review. The outcome of a SPAR review was retention, elimination, or modification of a program area. The JLBC was charged with selecting the programs for SPAR review.

SPAR was highlighted in a 2005 Government Accountability Office (GAO) report on performance budgeting.[117] Despite this acclaim, Arizona repealed SPAR in 2013 (Laws 2013, First Special Session, Chapter 6). Review of legislative hearings indicates that there was no significant opposition to the repeal in the Senate, but that there was pushback in the house hearings.[118,119] Representatives worried repealing SPAR would remove the requirement for agency goals to be included in strategic plans and absolve the senate and the house appropriations committees of the requirement to review strategic plans annually. Specifically, Rep. Carl Seel asserted that agencies would no longer be accountable for appropriate use of the people's money.[120] Although vocal opposition to the bill is evident in this committee hearing, it still passed with 18 ayes, 11 nays, and 1 abstention. Despite concerns about undermining oversight of state agencies, video recordings of JLBC hearings, discussed below, demonstrate that legislators have tools that facilitate oversight.

The legislature uses small powerful joint budget planning bodies, which include the JLBC and appropriations committees in each chamber, which must approve budget recommendations, to hold state agencies accountable for use of money appropriated. As part of this process, some agency funds are not released until the agency reports progress in meeting performance targets for some programs.

The JLBC has a total of 16 members, including chairs of the appropriations committees in each chamber, the Finance Tax Committee Chairs from each chamber, the majority party leader from each chamber, and five other members of the appropriation committees of each chamber. Chairs of the appropriations committee from each chamber take turns chairing the JLBC. The JLBC receives support from 30 professional analysts. It is typical for agencies to give full reports during appropriations hearings, and those reports will include information from the OAG audit reports (interview notes, 2018). They report on the improvements the agency has made as a result of implementing the audit recommendations. Additionally, the auditor general will testify during appropriations meetings (interview notes, 2018).

The JLBC hearing on December 14, 2016, focused on several agencies' third quarter progress reports.[121] The JLBC met to approve the release of funds for several agency programs based on whether the agency had met their third quarter performance targets. One of these, the

[116] https://www.azcentral.com/story/news/politics/arizona-education/2017/05/06/arizona-education-funding-budget-ducey-legislature/308655001/, accessed 10/23/18.
[117] https://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-05-215/html/GAOREPORTS-GAO-05-215.htm, accessed 10/23/18.
[118] http://azleg.granicus.com/MediaPlayer.php?view_id=21&clip_id=12834, accessed 10/23/18.
[119] http://azleg.granicus.com/MediaPlayer.php?view_id=21&clip_id=12835, accessed 10/23/18.
[120] http://azleg.granicus.com/MediaPlayer.php?view_id=21&clip_id=12857, accessed 10/23/18.
[121] http://azleg.granicus.com/MediaPlayer.php?view_id=26&clip_id=18230, accessed 9/29/18.

review of Joint Technical Education Districts (JTED), was presented by the director and another manager from the Arizona Department of Education (ADE). The chair's opening remarks about an Arts Management program jokingly asked, "What do they do? Move art around on the wall?" Legislator A repeatedly interrupted the both presenters and rephrased their statements using pejorative terms. At one point, the committee chair interjects, saying, "Gotcha." That aptly characterizes the hearing at that point. It does not appear that this is a genuine effort to learn about the progress ADE was making to implement the state programs for technical education of high school students. The department reported that it has disqualified seven of the programs and was still gathering data about seven other programs, while the 44 remaining programs were judged to meet state standards. The department reported that it would now proceed to examine individual courses within the programs. Legislator A seemed to have a very hard time understanding the difference between a program and courses within a program. Things became even more chaotic as this senator pressed the presenter about whether school districts would receive state funds for students enrolled in courses if the district's program was one of the seven not certified by the Department of Education. Legislator E attempted to help him understand how schools were reimbursed for vocational education. The committee members argued among themselves for almost 10 minutes, while the presenters waited to continue. Legislator C was recognized by the chair and asked the presenters a question returning the focus to them. The chair tried to narrow the focus to the specific question of whether to give extra funding for the vocational education. Legislator B asked where the funds appropriated for the special technical education programs go if the department cannot spend them. The chair replied that the money would return back to the general fund. Legislator B protests that we're cutting education. The chair retorted, "Here we go again." Shortly after, the chair interrupted and said, "I'm not patient today." Then, he asked the presenter to explain the criteria for the programs. And they voted. The Department of Education recommendation for the vocational technical programs was adopted, with only a small number of no votes. This portion of the hearing could be characterized by the chair's "gotcha" interjection. The tone of the hearing at this point was partisan. Other portions of the hearing, however, demonstrated higher quality oversight—focused on evidence gathering and less on partisanship.

The next presenter was JLBC staff reporting on a program that provides funding for school construction. She was allowed to make her presentation without interruption. Legislator A, who interrupted the previous presenters, had left the hearing. Legislator D argued for giving teachers raises instead of building more schools. No one said anything else. The motion passed with no further discussion.

Later in the hearing, JLBC staff presented information about the Department of Child Safety's progress on program benchmarks. No one interrupted him, but also no legislator asked any questions. The chair then invited the department director to address the committee. He reported that the department had been reducing its 3,248 case backlog and that there were only 17,900 children in foster care—a slight decline rather than the 10% annual increase in foster care services the state had experienced recently. Legislator A, who had returned, said he had received an email saying that caseworkers only needed a high school diploma and five years of experience. The director replied that he might be describing the requirements for a case aide to be promoted within the agency to a caseworker position. The director said that case aides were, with several years of experience, demonstrating that they were some of the best case managers in the department, but if they did not have a bachelor's degree they could never be promoted to the position of caseworker. Given the low pay for case aides, these employees were transferring to

other state government positions—a loss to his department in his view. Therefore, the department changed the requirements for the caseworker position to either hold a bachelor's degree, or five or more years of experience within the department. Legislator A wanted to know if that change is part of the bill before the committee. The director said that that change was already made internally. Legislator A said well if it's not part of this bill then forget about it. Legislator B asked about whether there was any information about whether the decline in foster care placements was a result of kids aging out of the system or other sources. The director referred him to some of the slides on the packet of information provided by the department that provides information about "exits" from foster care. Legislator B then asked for a chart that would combine the age, the number of children, and their progress through the foster care system. The director said that they have the data and would produce such a chart. Next, Legislator B asked about the money budgeted for open caseworker positions. He wanted to know where the money appropriated to pay for those positions went and what use was being made of it. The director pointed out that the numbers the legislator cited, 1,406 funded positions, would also include managers, and not just caseworkers. Therefore, he wanted to check on exactly how many vacant lines there were, and also said he wanted to check on the status of the money from vacancies. Therefore, he said he would get back to Legislator B with the accurate information. Legislator D asked whether the department would meet the director's previous goal of reducing the backlog of cases to 1,000 by the end of December. (The hearing occurred on December 14). The director said no, but he hoped the committee would appreciate the progress they were making even if they had not yet reached their targeted level of backlog reduction. Legislator D then asked about use of funds that had been appropriated to deal with the backlog. The director deferred to JLBC staff to respond to that question. JLBC staff provided a detailed response about the use of the funds, contracting with outside entities to reduce the backlog and contracts that would find permanent placement for children. After a very detailed description by staff, Legislator D followed up by saying, "I'm just trying to determine whether the money is being used for the appropriate activities." The JLBC staff said yes, it is. Legislator C asked about the amount of in home care services being provided to children. The director explained that these services are provided by private contractors and sometimes those organizations have "resource constraints," so they might be slow in providing the services. The department, he said, is working with the contractors to try to increase the response time for in-home services. Legislator C asks about whether the director was concerned that the outside service providers might continue to feel these constraints. She has heard that many of them are going out of business due to financial problems. The director replied that the department is concerned about that, and they are working with the companies to make sure that they can afford to stay in business. Legislator C then asked about the department progress in redoing contracts for paid aides. The director replied that the contract guidelines were being revised to incorporate nationwide best practices and the proposal language would be done in about March. The vote to release the next quarter's funds was held and passed unanimously.

This section of the committee hearing demonstrates a genuine interest among committee members for information about progress the department is making to improve its performance and for evidence about whether funds appropriated to reduce a case backlog are being use effectively. However, only three legislators consistently asked questions that probed for more evidence about the department's performance. One legislator appeared to appreciate the importance of the interface between the department and the private sector entities under contract to provide service to children. The chair was out of the room for much of the hearing, so the vice

chair managed the discussion—again underscoring the importance of a committee chair in setting the tone and tenor of a budget hearing such as this. Moreover, Legislator A, who asked unrelated and uninformed questions, was not in the room for much of this discussion. Clearly some knowledgeable Arizona legislators asked probing, but respectful, questions of the Department of Children's Services director. This hearing illustrates the extent to which the quality of legislative oversight can be easily influenced by committee decorum, legislator knowledge, and relationships between committee members (O'Donovan et al, 2016).

Oversight Through Committees

Arizona's Senate has 10 standing committees in addition to the appropriations committees. The House has 14 standing committees in addition to the appropriations committees, plus three appropriations subcommittees. According to a Senate staffer, the reports from the OAG are reviewed during standing committee meetings (interview notes, 2018). The source also reported that it is typical for a report to be read by committee members. Often times a report will be mentioned during meetings by a liaison from the agency or a member from the standing committee. The JLAC assigns each audit to a committee for a public hearing. The JLAC can also take other steps if it feels that an audit report needs further review.

Standing committees meet regularly during the legislative session. For example, the Education Committee met 21 times during the 2018 legislative session. Agendas for most of these meetings list bills considered, but there are also presentations from local school district officials, education programs (some of them private-sector entities), the state board of education, and others.

The February 8, 2018, meeting of the Senate Education Committee was selected for review because its agenda featured some items that seemed likely to trigger legislative oversight. There were two gubernatorial nominees appearing before the committee, and several pieces of legislation related to state agency performance: a cost study, certification of technical education programs, pupil assessment data, a tool for evaluating teachers and principals, annual achievement profiles for schools, and statewide assessment of schools through a private vendor. The committee hearing opened with a presentation from the Zip Code Project about a program to meet the educational needs of at-risk and non-traditional high school students. The program staff from the Department of Education explained the program and brought a recent top graduate from the program to tell the committee about how much the program had helped her. Committee members asked questions about how they might be able to get such a program in their own district and generally praised the presenters. Questions, however, did not demonstrate much knowledge about education in general. For example, one committee member asked the presenters what "soft skills" were. The next item on the agenda was a confirmation hearing for two executive nominees to the Commission for Post-Secondary Education. Staff described the position for which the candidates had been nominated. The nominees spoke to the committee and described their background and their interest in the position and their qualifications. No one asked either nominee any questions. The committee voted on whether to recommend each nominee to the full Senate. Both votes were unanimous in their support of these nominees. It would appear that in this case oversight of executive nominees was pro forma.

The remainder of this committee meeting addressed several pieces of legislation. Staff provided an overview of each item. The first piece of legislation involved a cost study to

determine appropriate levels of funding for special education services. Questions from committee members about this cost study probed for relevant information about the specific details of the bill and the rationale for sampling school districts to estimate an appropriate cost formula. Agency experts and staff from the auditor's office answered most of the committee members' questions and tried to reassure committee members that a sample of school districts would provide the information needed to estimate costs. The committee unanimously supported sending this item to the full Senate with a "do pass" recommendation.

In general, staff would read a bill and any amendments to the bill, and the chair would ask if anyone on the committee had questions. The chair would then provide time for lobbyists, the public, private organizations, and others to make comments. Often, there were just a few committee questions or public comments. For some bills, there was extensive conversation and questions. The public appeared to be a valuable resource for this committee. The public commenters provided a lot of data and evidence about these pieces of legislation. One legislator proposed an amendment that she said resulted from a substantive expert who is one of her constituents. Most committee members' questions asked for an explanation of program details. The discussion and questions asked about AZMerit—a standardized achievement test—revealed that the legislators have limited understanding of the information provided by this test. Staff had a difficult time explaining some of the technical issues involved in standardizing test scores and in-test security if some data were to be released. The discussion seemed to add to legislators' confusion by introducing more and more technical details involved in standardized tests. Despite this, the committee voted unanimously to send the bill to the full Senate with a "do pass" recommendation. In fact, all items considered in this committee hearing were sent to the full Senate with a unanimous recommendation to pass, even on items for which there seemed to be substantial uncertainty and confusion among the committee members.

Although standing committee meetings provide an opportunity for oversight, that opportunity was not necessarily realized in this meeting. Contrary to comments by interview respondents, it was not clear in this particular hearing that legislators were familiar with reports and information on the topics that arose in the committee. Comments made during this hearing suggest that some discussions occurred outside the hearings in the chair's office. This means that some oversight could occur in informal settings. Therefore, interview responses that claim that audit reports are used by standing committees could reflect behind the scenes work by committee members.

Arizona uses a system of joint chamber subcommittees, called committees of reference, to transact business during the interim between legislative sessions. These 10-member subgroups (five legislators from each chamber) are described as proxies for standing committees.[122] No more than three of the five members from each chamber of a committee of reference may belong to the same political party. The JLAC assigns specific state agencies to committees of reference, based on substantive jurisdiction. Committees of reference hear auditor's reports and also implement Arizona's statutory requirements for sunset and sunrise review at the request of the JLAC. In this capacity, the committee of reference holds public hearings to decide whether to continue, revise, consolidate, or terminate specific programs within state agencies, boards, commissions, and institutions, as well as entire state agencies.[123]

[122] https://www.azleg.gov/sunset_review.pdf, accessed 10/7/18.
[123] https://www.azleg.gov/sunset_review.pdf, accessed 10/1/18.

The agenda for a hearing of the Senate and House Education Committee of Reference held November 14, 2016,[124] began with an overview of the committee of reference's duties. The chair of the subcommittee explained very briefly what the committee would be doing. Next, staff from the OAG gave the first presentation, an audit report on state school districts. The OAG audits school districts on a rotating basis. Staff provided the general findings of these audits. For example, to paraphrase staff comments, there is a pattern across schools of over reporting mileage, which then uses up funds that could pay for other educational activities. Later in the meeting, the committee of reference heard an audit of another Department of Education program, Empowerment Scholarship Accounts (ESA). This program provides parents with funds to seek other school options for children with special needs. The parents receive a debit card to purchase educational resources and services. The OAG audit identified problems with inappropriate use of funds. The department replied to this audit finding by explaining ways it was improving the tracking of the funds. Legislators' questions reflected their concerns about monitoring the use of public funds. Public commenters included parents who used ESAs for their special needs children. The chair limited public presenters to one or two minutes. They argued that the flexibility provided by debit cards was crucial to their success in accessing services for their children. There was no action taken, and no legislative recommendations. This section of the hearing simply ended with public comments. The next audit, a statutory audit of the Arizona Department of Education K-3 Reading Program, was presented by OAG staff. The department replied to the audit findings explaining that it had just taken over this program, which had been operated by the State Board of Education during the audit period. There were no questions, and the meeting adjourned.

Although Arizona's committees of reference appear to have specific oversight responsibilities, they do not operate in the way that interim committees work in other states. In other states, such as Montana or New Mexico, interim committees meet for several days in a location outside the state capital to investigate and learn about public programs under their jurisdiction. Arizona's committees of reference appear to meet for about the same amount of time that standing committees typically meet, and meet in the Arizona Capitol rather than spend a couple of days together and visiting sites to observe public programs in action. Additionally, their responsibility to hear audit reports for the agency over which they have jurisdiction is merely to listen to a presentation of the audit and the agency response, then ask a few questions, and listen to public comments. Even when committee members expressed concerns about a program, such as the debit cards for ESA, no legislative action was mentioned. The legislators acted like spectators.

Oversight Through the Administrative Rules Process

An agency must have statutory authority from the legislature to make rules and must specify the costs and benefits to rules, including any impacts to small business. With respect to rule review, however, the executive branch takes the lead. The Governor's Regulatory Review Council (GRRC) is responsible for reviewing most rules, but emergency rules are reviewed by the attorney general. The members on the GRRC are appointed by the governor, but must be approved by the Legislative Rules Committee. The GRRC must review rules before finalization

[124] http://azleg.granicus.com/MediaPlayer.php?view_id=26&clip_id=18191, accessed 10/7/18.

using the following criteria: (a) legality and/or procedure; (b) authority and legislative intent; and (c) reasonableness, efficiency, and effectiveness. If the rule does not meet this criteria, the GRRC may return the rule with comments to the agency. The GRRC has mandatory approval or veto power over rules.

A periodic review of all rules is required every five years by statute A.R.S. 41-1056. The executive agencies are required to complete the review and submit a report to the GRRC. The reviews assess the ongoing need of rules, public complaints, and economic impacts. The GRRC must approve the agency reports or the rules expire. If the agency fails to submit the report, the rule expires.

In 2009, the Administrative Rules Oversight Committee was established via statute A.R.S. 41-1046. The members of the committee are appointed by the legislature, and the committee is staffed by the Legislative Council. The statute indicates that the committee may review rules for conformity with statute and legislative intent. The committee can provide comments or testimony to the GRRC regarding rules. Per statute, the committee is also responsible for an annual report to the legislature regarding duplicative rules. However, the state website does not have a page for this committee and there are no reports of this type under the website for the Legislative Council. Knowledgeable staff report no awareness of a legislative review for rules (interview notes, 2018). This is consistent with Schwartz's assessment that legislative review is inactive (2010, p. 98 and p. 161).

The larger issue with oversight of administrative rules is a moratorium of new rules. A recent 2018 executive order requires that any agency seeking to promulgate a rule must seek special permission from the governor.[125] This includes new or amended rules. A prior moratoria was initiated by former-Gov. Brewer based on her view that rules have a negative economic impact on the state. She described rules as potential "job killers" and obstacles to economic growth" (Smith, 2014).[126] According to a GRRC staffer, if an agency wants to make a new rule, they can request approval from the governor's office. If the agency receives approval to submit a rule, it still goes through the rulemaking process and review by the GRRC (interview notes, 2018). The staffer indicated that rules packages, not individual rules, are counted. Even during the moratorium, the GRRC still received approximately five to six rulemaking packages per month.

Oversight Through Advice and Consent

The governor directly appoints 21 administrative officials. Out of the 21 officials, 19 positions require approval by the Senate (CSG, 2016). The exceptions are the directors for the Department of Emergency and Military Affairs, and the Department of Health Services. With a Republican trifecta, it is not expected that the Senate would oppose gubernatorial appointments. In the 2017 session, the Senate confirmed 68 out of 74 gubernatorial appointments. The remaining six have not been confirmed, but have also not been withdrawn from the respective committees, either. The appointees can serve for one year after nomination without Senate consent (A.R.S. 38-211 E.).

[125] https://azgovernor.gov/executive-orders, accessed 10/1/18.
[126] https://www.theregreview.org/2014/06/26/26-smith-arizona-should-end-regulatory-moratorium/, accessed 10/23/18.

According to a Senate staffer, the Senate confirmation process is a key oversight process (interview notes, 2018). For each gubernatorial appointee, a pamphlet is created with all of their information. The majority staff reviews all appointees to prepare recommendations for the senators. The appointees testify and present themselves to the appropriate committee. According to the staffer, appointees are often highly qualified, which results in a quick confirmation process. The appointees are fully vetted, and there is assurance that they are qualified. There is discussion at times about party affiliation during debate, in an effort to ensure fair representation. As a result of the appointees being fully vetted, and because appointments frequently are renewals, there often is not much debate on nominees. If and when there are red flags, such as convictions, issues with background checks, or answers during testimony that do not align with the background check, those red flags are reported to the president of the Senate. There is no evidence of denials of appointees in recent sessions, apart from the six appointees who have yet to be confirmed.

Yet according to media reports, there have been serious problems with some of Gov. Ducey's appointees, which suggests that vetting by members of the same party may not have protected the public interest.[127] Problems with four of these appointees were serious enough that the governor fired them or forced them to resign. Any mention of legislative intervention to oversee the work of these appointees is absent in media coverage of their misadventures, although the attorney general has been involved in investigations of some actions by these appointees.

In addition to cabinet level appointees, there are hundreds of gubernatorial appointments to boards and commissions. Although these nominees appear before standing committees, as we described above, the process observed in the Education Committee of Reference did not involve any questions or inquiry into the nominees' qualifications.

The governor does have implied power to authorize executive orders, without the requirement for legislative review. However, executive orders must be filed with the secretary of state. Arizona's governors do use executive orders to make policy, addressing topics such as testing autonomous vehicles in the state and establishing a "substance abuse program for individuals exiting prison."[128] The governor is allowed to reorganize bureaucracies with no oversight by the legislature.

Oversight Through Monitoring of State Contracts

The State Procurement Office, a division of the Arizona Department of Administration is responsible for state-wide procurement and contract administration. The legislature does not generally have oversight authority over contracts. However, through the audit function, there is an opportunity for oversight. An example of the legislature attempting to use the audit function for contract oversight is the 2010 audit of the Sports and Tourism Authority. The audit concluded that the agency's procurement process for concession services mostly adhered to best practices and that the agency should continue to use these practices in the future.[129] A second example is

[127] https://www.phoenixnewtimes.com/news/phoenix-protestors-call-jeff-flake-cowardly-and-disingenuous-10878735, accessed 10/1/18.
[128] https://azgovernor.gov/executive-orders, accessed 10/4/18.
[129] https://www.azauditor.gov/sites/default/files/10-09_Report_0.pdf, accessed 10/23/18.

the 2015 audit of the Arizona Department of Administration.[130] The audit was completed as a part of the sunset review process. The audit revealed that the agency should strengthen oversight of procurements.

There is one area in which the legislature has authority over contracts: "All contracts entered into by the School Facilities Board for professional and other outside services" must be review by the JLBC before any commitment is made.[131] This review prior to the contract for the School Facilities Board also applies to equipment and school facilities contracts, as well as service contracts. As noted in the JLBC hearing discussed earlier, legislators asked questions about some of the service contracts, especially for the Department of Child Safety.

Oversight Through Automatic Mechanisms

Arizona is one of ten comprehensive review states that facilitate oversight through sunset legislation (AZ Laws, 1978, Chapter 210). All statutory agencies are required to undergo a sunset review on a regular review schedule. Sunset clauses may also be present in selected programs or legislation (Baugus and Bose, 2015). The OAG is responsible for coordinating and conducting many of the sunset reviews for agencies. The OAG provides the JLAC with the list of agencies scheduled for termination during the next legislative biennium. The JLAC determines whether the auditor general or the legislative committee of reference will conduct the sunset review. The review process includes at least one public hearing after the findings have been reported to the appropriate committee. The committee of reference must hold at least one public hearing in conjunction with a sunset review. During even-numbered years, Senate staff assists with sunset reviews, while during odd-numbered years House staff delivers this service. There are numerous steps in the sunset review process and the timeline stretches across 20 months.[132]

The committee is responsible for making a recommendation to the full legislature whether to continue, eliminate, or modify the reviewed entity. During sunset review, agencies will often discuss audit reports to assert what steps have been taken to improve the performance of the agency. It is typical for the agency head or staff from the OAG to testify and discuss the audit reports. This has occurred several times during the 2018 session, where testimony was given before the Commerce Committee and Judiciary Committee (interview notes, 2018).

As we mentioned earlier, the Senate and House Education Committee of Reference held November 14, 2016, included a sunset review. The entity reviewed by this committee of reference was the School Safety Program Oversight Committee. The auditor general's office sent 17 questions to the Arizona Department of Education to ascertain whether there was a need to continue this oversight board. The OAG staff presenting the information cautioned the legislators that it was the oversight board that was sunsetting, not the School Safety Program. Despite this, all of the committee members' questions (with the exception of the chair) asked about the program, but not the oversight board. After a few questions, the chair reminded the committee that they needed to figure out what the oversight board does, if it is still necessary, and if could the State Board of Education do this work. The chair then asserted that this is a 10-member board that is a rubber stamp for whatever the agency wants it to approve. The Superintendent of

[130] https://www.azauditor.gov/sites/default/files/DOA_15-102_0.pdf, accessed 10/23/18.
[131] https://www.azleg.gov/icommittee/Joint%20Legislative%20Budget%20Committee.pdf, accessed 9/30/18.
[132] https://www.azleg.gov/sunset_review.pdf, accessed 10/1/18.

Education was present, and the chair asked her whether the State Board of Education could provide the reports and information that the oversight commission provided. She said yes, the State Board of Education would be glad to do so. The committee voted to let the oversight board sunset. The chair did a good job of refocusing the discussion on the actionable issue, but there really was not much information gathered about what the oversight board actually did. The burden of proof was on the board to argue for its survival, and no one did.

Arizona also has a sunrise review process (AZ Laws, 1985, Chapter 352). ARS 32-3101 provides a mechanism for professions to request regulation or expansion in scope of their practice. The sunrise application is submitted to the president of the Senate and speaker of the House, who are required to assign the written report to the appropriate committee of reference for review. The committee of reference submits a recommendation to the governor and the two legislative leaders. If it is necessary, a report is also submitted to the regulatory board or entity responsible for regulating the group on whose behalf the application was submitted. Legislative committee staff works with the Legislative Council to draft any necessary legislation. The applying group is responsible for finding a sponsor for the legislation.

Methods and Limitations

In Arizona, we contacted seven people to request interviews; two of them granted us interviews. Online, the Arizona Legislature provides ample and well organized archival material of its proceedings. Agendas and video of both legislative sessions and committee meetings are readily available, in addition to live streams. Its website also features a full text search engine of recent legislation. Overall, Arizona provides sufficient resources with which to assess its legislative oversight capabilities.

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Legislative Oversight in Arkansas

Capacity and Usage Assessment

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

Summary Assessment

Despite the existence of fairly substantial resources to conduct legislative oversight, there is little evidence to suggest that the Arkansas legislature is conducting much oversight of the state's executive branch. Indeed, the absence of anything more than the most cursory documentation of Joint Legislative Auditing Committee and Joint Budget Committee hearings makes it difficult to discern what oversight is taking place.

Major Strengths

The Arkansas legislative auditor, whose actions are directed by the Legislative Joint Auditing Committee, conducts a wide range of financial audits, reviews and special reports and has a substantial budget. Arkansas' unique budget structure, while it has its drawbacks, functions quite well in keeping the legislature appraised of revenues and allowing flexibility through revenue stabilization bills to prevent deficit spending. Also, the legislature has demonstrated a willingness to create special oversight committees on various issues as it deems necessary.

Challenges

The recent convictions of several former legislators and investigations of current legislators for fraud, corruption, and accepting bribes and kickbacks raises serious issues about the general assembly. Another challenge is the lack of transparency in committee hearings. There is a lack of detailed minutes or easy access to videos of committee hearings, so it is difficult to accurately assess the level of engagement of legislators in oversight activities. Moreover, the ad hoc informational nature of administrative rule review does not seem like a robust system for examining the benefits and costs of rules. The reliance on private sector actors to review existing administrative rules and regulations may elevate the concerns of private interests over the public welfare.

Relevant Institutional Characteristics

The National Conference of State Legislatures (2017) classifies Arkansas' Legislature as a hybrid between a full-time, professional legislature, and a part-time, low-pay, or "citizen's legislature." The Arkansas Legislature's regular session is 60 days in odd-numbered years, but this can be extended by a 2/3rds vote of the legislators themselves.[133] In even numbered years, the legislature meets in a 30-day "fiscal session." Legislators receive an annual salary of $40,188 plus a $155 per diem for legislators 50 miles or more from the state capitol and a per diem of $60 for those within 50 miles.[134] This means that legislators living far from the capital make about $50,000 per year in odd-numbered years and around $45,000 in even-numbered years. The legislature consists of 100 representatives in the house and 35 senators. The legislature has 532 staff members, 435 of whom are permanent staff, which is comparable to other states with similarly-sized legislatures in this region of the country.[135] Due in part to staff, salary resources, and other considerations the Arkansas General Assembly is ranked as the 24th most professional legislature in the country.[136]

Similar to many other southern governors, the executive branch in Arkansas has limited institutional powers. The lieutenant governor, secretary of state, attorney general, state treasurer, and state auditor are all constitutionally elected positions. A number of other powerful agency heads require confirmation by the senate.[137] According to the Council of State Governments' (2015) Governors' Institutional Powers Index (GIPI), the office of Arkansas governor is the eighth least powerful among the 50 states. Other gubernatorial rankings indicate that the governor is weak, but not that weak. Ferguson's (2015) analysis ranks the Arkansas governor as the 24th most powerful in the country.[138] This is due in part to the shared budget-making responsibility with the legislature. While the governor does have a line-item veto on appropriations bills, such a veto can be overturned by a simple majority in the legislature (Beyle, 2008). As a result, the governor vetoes bills, but not frequently; this is true for the line-item veto and regular veto. From 1973 to 2017 Arkansas governors have issued 91 vetoes with the legislature overriding only 19. Unlike other states with simple majority overrides, for example Maine where during Governor LePage's eight-year administration he issued 642 vetoes with the legislature overriding 302[139], in Arkansas the veto occurs so rarely that when governors issue a veto it has a greater impact. Governors are limited to two four-year terms. The lack of appointment powers over the executive branch, weak veto powers, shared budget authority with the legislature, and limited tenure potential constrain the power of Arkansas' governor.

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[133] https://ballotpedia.org/Arkansas_General_Assembly, accessed 11/15/18.
[134] http://www.ncsl.org/research/about-state-legislatures/legislator-compensation-2018.aspx, accessed 9/3/18.
[135] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 9/3/18.
[136] Squire, Peverill. 2017. "A Squire Index Update." *State Politics & Policy Quarterly*. 17(4): 361-371.
[137] *The Council of State Governments*. 2014. "The Book of States" Table 4.10
[138] Ferguson, Margaret (2015). Governors and the Executive Branch, In Gray, V.H., Hanson, R.L., & Kousser, T. (Eds.) *Politics in the American states: A comparative analysis* (11th Ed., pp. 235-274). Washington, DC: CQ Press.
[139] https://bangordailynews.com/2018/07/16/politics/how-lepage-and-his-veto-pen-remade-maine-politics/, accessed 9/27/18.

Political Context

Prior to the 2012 elections, both chambers of Arkansas' legislature had been controlled by the Democratic Party for decades, but that changed in 2012 (NCSL, 2017). In 2018 Republicans held 73 of 100 seats in the House of Representatives, and 26 of 35 seats in the Senate. Each Representative's district is comprised of just under 30,000 residents and each Senate district represents about 83,000.

Arkansas' legislature does not appear to have a great deal of partisan polarization. According to Shor and McCarty (2015), as of 2014 Arkansas had both the 7th least polarized House of Representatives and the 7th least polarized Senate. This is due in part to both the Senate and House Democrats being the most conservative in the country, per Shor and McCarty's criteria. (Shor & McCarty, 2015)

The Arkansas governor in 2018 was also a Republican. The governorship has alternated fairly frequently between the two major parties over the last three decades, however. From 1996-2007 Republicans controlled the governorship, from 2007-2015 Democrats, and from 2015 to present Republicans have controlled the governorship and the legislature. While Republican dominance at the state level is relatively recent, Arkansas has been solidly Republican in its voting patterns at the national level since 2000.

Recently, there has been a high profile case of Medicaid fraud and corruption which has involved former state legislators and has resulted in a federal investigation, charges, and several trials and plea deals. The Medicaid fraud centered on a long time lobbyist, Rusty Cranford and the state's largest provider of behavioral health services, Preferred Family Healthcare (PFH).[140] The fraud and embezzlement scheme diverted millions of state funds to PFH with kickbacks to legislators who helped appropriate funds for PFH.[141] The most high profile state senator to become ensnared in the federal investigation is Governor Hutchinson's nephew, State Senator Jeremy Hutchinson, who is accused of pocketing $500,000 from Cranford.[142] As a result, Senator Hutchinson has recently resigned from office and did not run for re-election.[143] This has also resulted in the Arkansas attorney general launching an investigation into other current state legislators who may be involved. Charges were also issued against a high level administrator at PFH who participated in Cranford's kickback and embezzlement operation.[144]

A local state politics show indicates that no one is exactly sure how many current legislators the federal and state attorney general's office are involved with kickbacks and corruption.[145] The show suggested that, while this fraud scheme was brazen, fraud is not anything new to Arkansas politics. Indeed it does not appear that this is an isolated incident. It arose from the Grants Improvement Fund (GIF) that has been described as a "slush fund" that was used by legislators to award money to various public and nonprofit entities, including colleges and universities within the state.[146] The key to the fraud investigation is the kickbacks

[140] https://arknews.org/index.php/2018/08/16/the-saga-of-rusty-cranford/, accessed 9/3/18.
[141] https://newsok.com/article/feed/2721656/former-arkansas-lobbyist-pleads-guilty-in-bribery-scheme, accessed 9/3/18.
[142] Ibid.
[143] https://www.washingtonpost.com/national/lawmaker-nephew-of-arkansas-governor-charged-with-wire-fraud/2018/08/31/998c3a94-ad46-11e8-9a7d-cd30504ff902_story.html?utm_term=.1ea0a302e2fb, accessed 9/4/18.
[144] http://www.nwaonline.com/news/2018/aug/23/more-state-lawmakers-targeted-in-corrup/, accessed 9/4/18.
[145] https://www.aetn.org/programs/arkansasweek/s36/e33, accessed 9/4/18.
[146] https://www.arkansasonline.com/news/2018/nov/04/grants-size-1st-thread-pulled-in-unrave/, accessed 11/15/18.

given to legislators by officers of these entities. By November 4, 2018 six former legislators were among the 17 people charged with fraud. The investigation was ongoing.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Arkansas' main analytical bureaucracy is known, simply, as Arkansas Legislative Audit (ALA). Led by the legislative auditor (not to be confused with the State Auditor, an executive branch position), it operates "[u]nder the authority of the Legislative Joint Auditing Committee… [and] annually issues over 1,000 financial audits, reviews, and special reports" (Arkansas Legislative Audit-About). The ALA conducts performance audits and financial audits many aspects of local government, including school districts and, oddly enough, county prosecuting attorney offices. However, there was no record of any performance audits being conducted from 2014 to 2018. For all intents and purposes, the ALA functions as a state auditor, except in this case Arkansas has an elected state auditor who, as we describe below, does not conduct audits of any kind.

The Legislative Joint Auditing Committee (LJAC) "is comprised of 16 senate members and 20 house members." (Arkansas Legislative Audit-LJAC Handbook, 2016, p. 3) The committee is co-chaired by the senate president pro tempore and the house speaker. The partisan breakdown is roughly in proportion to the number of seats controlled by each party. Of the 20 representatives, 16 are Republican and 4 are Democratic and the 15 senators had a 10-5 split in favor of Republicans.[147] By statute, the legislative auditor is appointed by the committee co-chairs (AR Code § 10-4-406, 2012) Committee members are assigned by the committee's co-chairs to one of three subcommittees, one of which pertains to audits of state agencies. Any legislator, regardless of chamber or committee assignment, may request that a specific audit be performed, but the executive board of the LJAC has the ultimate authority to decide which audits the ALA conducts. "ALA currently employees 266 professional staff and 12 support staff", including 154 CPAs, and 2 attorneys (Arkansas Legislative Audit-LJAC Handbook, 2016, p. 5).

The ALA website lists LJAC general committee and subcommittee meetings and posts the audits discussed in each meeting. The ALA enjoys a substantial budget of $41 million for FY18. The ALA reports to LJAC every month to present reports. During this time legislators ask a variety of questions that range from simple clarifications and to more in-depth technical questions.[148] According to one source familiar with the hearing process, the quality and depth of the questions depends on the issue and the members involved. As seen in other term limited states, often there is a learning curve for newer members that must be addressed.[149] The Arkansas' Legislature website also lists Committee and Subcommittee meetings, along with agendas, which provide very little information beyond the general topics of discussion. Neither

[147] http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/Legislators.aspx?committeecode=905, accessed 11/17/18.
[148] Interview notes, 11/7/18.
[149] Interview notes, 11/7/18.

audio/video recordings nor transcripts of LJAC meetings are available. However, starting in December 2018 the LJAC meetings will be broadcast live.[150]

An additional analytic bureaucracy, the Bureau of Legislative Research (BLR), assists the legislature, providing research, legal, and technical information to legislators. (AR Bureau of Legislative Research) The BLR is a non-partisan research agency and is comprised of 47 staffers who serve as the primary staff for committees and all senators and representatives. The BLR drafts all bills and reviews and monitors proposed agency rules.[151] The BLR provides general policy research, prepares fiscal notes, revenue projections, and interim committee studies. For FY18 the budget for the BLR was $19.3 million.[152] While the BLR has a publications link on its website, most of the information relates to guidebooks for various agencies.[153] Much of the information is dates back to 2016 or earlier and there appears to be very little from 2017-2018 posted.

The constitutionally elected state auditor does not perform any auditing functions, despite the title.[154] Rather, the state auditor serves as the chief accountant for the state and disburses funds for most state agencies, including the executive, legislative, and judicial branches.[155] The state auditor's duties include management of unclaimed properties. The auditor attempts to connect residents with their unclaimed property through the *Unclaimed Property Program*, previously referred to as the Great Arkansas Treasure Hunt.[156] To administer these programs the State Auditor was appropriated $54.2 million for the FY18.[157] The state auditor conducts no performance audits, financial audits, or audits of any kind nor does he or she monitor the fiscal activities of state agencies or local government.[158]

Oversight Through the Appropriations Process

While Arkansas' budget is technically considered biennial, the general assembly can only appropriate on an annual basis.[159] The reason for this biennial hybrid structure is due to a constitutional amendment that voters passed in 2008 with nearly 70% of the vote that requires the general assembly to meet annually in odd numbered years for their regular session and added a short 30 day fiscal session to meet in even numbered years thus reducing appropriations bills from two years to one.[160] This compressed schedule focuses solely on fiscal issues and appropriations. This makes conducting oversight of spending problematic.[161] For FY18 the overall state budget was $31.7 billion.[162]

[150] Interview notes, 11/7/18.
[151] http://www.arkleg.state.ar.us/BUREAU/Pages/default.aspx, accessed 9/4/18.
[152] https://www.dfa.arkansas.gov/images/uploads/budgetOffice/authorizedAppropriation.pdf, accessed 9/4/18.
[153] http://www.arkleg.state.ar.us/bureau/pages/bureauPublications.aspx, accessed 9/4/18.
[154] Interview notes, 11/7/18.
[155] https://auditor.ar.gov/about-our-office, accessed 9/4/18.
[156] https://auditor.ar.gov/about-our-office, accessed 9/4/18.
[157] https://www.dfa.arkansas.gov/images/uploads/budgetOffice/authorizedAppropriation.pdf, accessed 9/3/18.
[158] Interview notes, 11/7/18.
[159] Interview notes, 8/22/18.
[160] https://ballotpedia.org/Arkansas_Legislative_Sessions,_Proposed_Amendment_2_(2008), accessed 9/3/18.
[161] Interview notes, 8/22/18.
[162] https://www.dfa.arkansas.gov/images/uploads/budgetOffice/authorizedAppropriation.pdf, accessed 9/3/18.

Appropriations bills and budget proposals are submitted by the general assembly to the Joint Budget Committee (AR Legislature-Joint Budget Committee). "Presession (sic) Budget Hearings" are conducted in conjunction with the Arkansas Legislative Council (also a joint committee, discussed below), prior to their referral to the Joint Budget Committee itself (Arkansas Legislative Council-Rules, 2017, p. 15). There do not appear to be any transcripts, recordings, or minutes of committee meetings or hearings. The only apparent documentation is a brief agenda of each meeting, as well as the text of the bills discussed. Our inspection of recent media did not reveal anything of particular interest, involving the activities (oversight-related or otherwise) of the Joint Budget Committee.

The Joint Budget Committee (JBC) is an extremely large committee with 28 Senators and 27 Representatives listed on the committee roster.[163] The JBC also has five subcommittees that cover specific budget areas, like claims, personnel, special language, peer review, and administrative rules and regulations.[164] Interestingly, these subcommittees do not appear to deal directly with the appropriations process but with other issues related to state spending. For instance the JBC-Claims Subcommittee "presides over all claims against the state over which the Arkansas State claims commission has jurisdiction." All claims in excess of $15,000, as determined by the Commission, are reported to the JBC-Claims Subcommittee for approval, reversal, amendments, or remanded for review or additional hearings.[165] This suggests some type of review over the rulings of the claims commission, but the lack of minutes or agendas prevents a deeper examination of the activities of the JBC-Claims level of oversight. With the exception of the JBC-PEER Review Subcommittee, which examines agency and higher education institutions' budget requests[166], the other subcommittees do not deal directly with state expenditures. Rather, these subcommittees appear to be focused on issues of review or determining how or when agencies can transfer already appropriated funds.[167] Knowledgeable observers of the appropriations process say that often times the disputes or issues legislators have with an agency are resolved prior to committee hearings.[168] However, when trust levels are low between legislators and staff from agencies, informal resolution of issues is not the norm. In one instance involving the Forestry Commission that was described to us, legislators were not satisfied with staff responses to legislator inquiries. This resulted in a closer examination of the commission's budget requests.[169]

Article 5, Section 30 of Arkansas' Constitution (2015) stipulates that general appropriations bills must pertain solely to "ordinary expenses" of the three branches of state government. Unlike other states that pass one or two large appropriation bills, Arkansas' Constitution requires all appropriations must be passed in an individual, single-subject bill, resulting in six appropriation bills that fund approximately 93% of state government activities.[170]

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[163] http://www.arkleg.state.ar.us/assembly/2017/2018F/pages/CommitteeDetail.aspx?committeecode=005, accessed 9/4/18.
[164] http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/SubCommittees.aspx?committeecode=005, accessed 9/4/18.
[165] http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/CommitteeDetail.aspx?committeecode=009, accessed 9/5/18.
[166] http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/CommitteeDetail.aspx?committeecode=024, accessed 9/5/18.
[167] http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/CommitteeDetail.aspx?committeecode=028, accessed 9/5/18.
[168] Interview notes, 8/22/18.
[169] Ibid.
[170] Ibid.

Article 5, Section 31 requires a 2/3 majority in each chamber to enact new taxes and budget items that do not pertain to (rather vaguely) "defraying the necessary expenses of government," paying the state debt, funding "common schools", or defending the state from "invasion" or "insurrection" (AR Constitution, 2015, p. 15).

One final element of the Arkansas appropriation process is the utilization of revenue stabilization bills, which are separate from the normal appropriations and funding process. In conjunction with governor's office and the Department of Finance and Administration (DFA), the general assembly continually assesses revenues and produces, as necessary, revenue stabilization bills to keep spending consistent with previously passed spending authorizations from the fiscal session. According to knowledgeable sources, the importance of the revenue stabilization bills is vital to how the legislature manages spending; stabilization bills are separate from the appropriation bills and help the state prevent deficit spending.[171] This ongoing approach to managing finances certainly has advantages in a state where the legislative fiscal session in an incredibly short 30 days.

Oversight Through Committees

According to the Bureau of Legislative Research (BLR) website, "the Arkansas Legislative Council… is the legislative committee responsible for coordinating the activities of the various interim committees and provides, through the various committees, legislative oversight of the executive branch of government."

Aside from directing the activities of the Bureau of Legislative Research, the Legislative Council (ALC) refers various matters to its 16 subcommittees, from which specific categories of oversight appear to occur, outside of the regular legislative session. For instance, part of the administrative rules review process goes through an ALC subcommittee, as discussed below. Additionally, the ALC has subpoena powers, subject to the approval of 2/3 of its membership. (AR Legislative Council-Rules, 2017)

As for regular session standing committees, it appears that the House and Senate's respective State Agencies and Governmental Affairs Committees are the two committees whose duties most closely pertain to oversight of the executive branch. It does not appear that recordings, transcripts, or minutes of Senate committee (that is, *any* Senate committee) hearings are available.

There are several other "special" joint committees that appear to pertain to oversight actions, but there is no information about their meetings, minutes, or agendas. In some cases there are no legislators assigned to the committees. For example, the Desegregation Litigation Oversight Subcommittee, Education Reform Oversight, and the Joint Adequacy Evaluation Oversight Subcommittee have no legislators currently assigned and have no present or past meetings posted.[172] Whether these were special one-time oversight committees created for a limited time and purpose is impossible to determine. However, in the case of the Desegregation Litigation Oversight Subcommittee, its activities were focused on a lawsuit stemming from the desegregation of Little Rock schools during the Eisenhower Administration. When the federal courts ordered the desegregation of the mostly white Little Rock School District the long term

[171] Ibid.

[172] http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/Committees.aspx?committeetype=Joint, accessed 9/4/18.

consequence of that action led to high levels of white flight into neighboring suburban school districts.[173] This led to a situation of *de facto* segregation based on people's residential choices rather than legally required segregation. In the 1980's the Little Rock School District sued the state and three surrounding school districts claiming that the suburban school districts were attracting white students and would in effect leave Little Rock a predominantly black school district.[174] The state sent annual payments to all four school districts to aid the desegregation process. A federal court in 2014 ruled that the state could end these annual payments, which by 2014 had been in excess of $1 billion dollars.[175] The Desegregation Litigation Oversight Subcommittee was responsible for oversight of these payments and the progress of the schools districts in their efforts to desegregate. As a result this committee has not met since 2016.[176] The presence of these committees suggests that legislators at some point recognized the need for additional investigations into non-appropriations related governmental actions and acted upon that need.

Overall, it is difficult to accurately ascertain the level and depth of oversight being conducted in standing committees due to the lack of detailed minutes and the byzantine labyrinth of recorded hearings. The Arkansas House of Representatives does provide some recordings of committee meetings and almost all floor sessions,[177] but very, very few actual committee hearings are available. Many of the actual hearings in the standing committees are hearings reporting out bills from the respective committee.[178] Very little discussion of the bills is taking place and certainly nothing that can be construed as oversight. For example, a March 21, 2017 hearing, of the House Public Health, Welfare, and Labor Committee, considered nearly 60 bills or amendments in a one-hour and 17 minute hearing.[179] Many bills were "discussed" for less than two minutes. With short legislative sessions and the sheer volume of bills and amendments to be considered, it is no surprise that few penetrating questions were asked of witnesses or of the bill's sponsor. During 2018 there were three House committee hearings that were listed as available—all held on the same day. One of those, the Insurance Commerce Committee, was blank. The other, a hearing of the judiciary committee, was mislabeled. The label on the scroll along the bottom of the screen was stated that this was a meeting of Public Health, Welfare and Labor Committee. This appears to be correct because the discussion was about a bill that concerned hog farm liquid waste permits. It had no audio for a segment of the tape. The other committee hearing posted for that day consisted of the missing minutes from the Public Health, Welfare and Labor Committee. The agenda for this meeting listed two bills that were to be considered with presentations from their sponsors, but the committee only considered one bill. The coverage of committee meetings is very limited and the quality of the postings is poor.

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[173] https://www.npr.org/sections/codeswitch/2014/01/07/260461489/decades-later-desegregation-still-on-the-docket-in-little-rock, accessed 10/15/18.
[174] https://www.nytimes.com/2014/01/14/us/judge-approves-desegregation-plan-in-little-rock.html, accessed 10/15/18.
[175] https://www.nytimes.com/2014/01/14/us/judge-approves-desegregation-plan-in-little-rock.html, accessed 10/15/18.
[176] http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/PastMeetings.aspx?committeecode=114, accessed 10/15/18.
[177] http://www.arkansashouse.org/video-library, accessed 11/7/18.
[178] http://sg001-harmony.sliq.net/00284/harmony/en/PowerBrowser/PowerBrowserV2/20160329/-1/11282#agenda_, accessed 11/8/18.
[179] Ibid.

In Senate, no links or evidence of recorded committee hearings or floor sessions were found. There are, however, agendas and detailed meeting minutes posted for current committee hearings. We were able to assess oversight through the Legislative Council based on the minutes provided as an attachment to the November 16th 2018 meeting. These were draft minutes for the House and Senate Interim Committees on Judiciary.[180] The interim hearings focused on several interim reports regarding the use of body cameras on police officers and providing for adequate data collection and storage of data. In one instance the general counsel for the Commission on Law Enforcement Standards and Training (CLEST) was questioned about the level of oversight that CLEST has over the what types of body cameras are used and if there is a uniformity of rules regulating their use. Counsel replied that it would be necessary going forward to develop a standard for the type of cameras that would be used.[181] Furthermore, it was noted that legislation would be necessary to give CLEST the authority to promulgate rules related to body cameras.[182] CLEST is charged with improving the competency and professionalism of law enforcement officers in Arkansas by establishing standards of employment and training.[183] While the hearing was relatively short and the minutes not extremely detailed it does demonstrate on some level that legislators are engaged in relatively obscure areas of oversight, body camera standardization, and what changes need to be made legislatively to the main oversight commission to keep the state from falling behind in its regulatory structure.

The Arkansas Independent Citizens Commission, adopted by voters through a constitutional amendment to set salaries for public officials, holds meetings that are recorded, and those recordings are posted on the state legislative archives of meetings. At its April 24th, 2018 commission meeting[184] this commission called a witness, the director of the office of Economic Analysis and Tax Research, and was open to the media. Despite the absence of legislators, this commission seemed to perform its activities in the way that one might expect of legislative committees. Commissioners asked probing, but respectful questions. The commissioners listened to a detailed report on the fiscal health of the state, including the revenues and expenses. The reason that it is important to describe the performance of this commission is that it demonstrates that the state has highly qualified staff willing and available to provide information in a committee style forum. It also demonstrates that the state has the capacity to record and post committee hearings on its website. The absence of these hearings and lack of testimony from analytic staff in the few hearings available is an institutional choice that is being made by the Arkansas legislature. Given the currently growing list of legislators involved in the GIF scandal, more transparency might be beneficial.

Oversight Through the Administrative Rules Process

Section 5-42 of the Arkansas Constitution (2015) specifies that the legislature may require legislative review and approval of 'administrative rules promulgated by a

[180]http://www.arkleg.state.ar.us/assembly/Meeting%20Attachments/420/805/10%2022%2018%20Draft%20Minutes.pdf, accessed 11/17/18.
[181] Ibid.
[182] Ibid.
[183] https://www.clest.org/mission-objectives, accessed 11/17/18.
[184] http://www.arkansashouse.org/video-library, accessed 11/16/18.

state agency before the administrative rules become effective" (p. 16). Arkansas Code 10-3-309 (2016), further stipulates that rules proposed by state agencies must be approved by the Legislative Council's (ALC) Administrative Rule and Regulation Review Subcommittee (when the Legislature is not in regular session), or by the Joint Budget Committee's (JBC) Administrative Rule and Regulation Review Subcommittee (when the Legislature is in regular session). Emergency rules must be reviewed and either approved or rejected by the ALC's Executive Subcommittee, which reports its actions to the Administrative Rule and Regulation Review Subcommittee.

The Council of State Governments (2016) further clarifies the limitations to the Arkansas Legislature's powers regarding administrative rules, stating, "A motion may be made in the Legislative Council or its Administrative Rules and Regulations Subcommittee to not approve [a] rule… [only if] the rule…is inconsistent with state or federal law or inconsistent with legislative intent." These recommendations made by the ALC are nonbinding and the general assembly's role is legally advisory in nature.[185] In practice, even though Arkansas' legislature has only advisory power over administrative rules, state officials typically try to resolve any concerns expressed by legislators (Schwartz 2010), Thus, Arkansas is an example of a legislature that possesses only advisory power but nonetheless wields considerable influence.

Despite the Arkansas Legislative Council's (ALC) role as an "agency watchdog", much of the administrative rule review flows through one of its subcommittees, the Administrative Rule and Regulation Subcommittee (ARRS).[186] The goal of both the ALC and the ARRS is to ensure that proposed rules, and even existing rules to varying degrees, comply with legislative intent.

While most reviews of new rules is fairly routine, there is evidence that public comments play a key role is how the rule is received. Agencies are not only required to submit a financial impact statement for all proposed rules and a small business impact statement for some rules, but must also state whether there is any controversy about the new rule and if public comments are expected.[187] While the agencies are not legally bound by ALC recommendations, their reluctance to proceed without the blessing of legislators, and in particular ARRS, suggests that legislators, agencies, and executive officials work informally to ensure all parties are satisfied with the intent and goals of the proposed rule.

Approximately, 52 rules or regulations were reviewed in 2017 by the ALC's Administrative Rule Subcommittee, while its Executive Subcommittee reviewed 12. The JBC's Administrative Rule Subcommittee has reviewed two. Detailed minutes of rules hearings, including transcripts, are provided on the websites of the above subcommittees. Hearing transcripts reveal extensive public comment, including questioning of agency heads by members of the public.

Overall, it appears that the Arkansas General Assembly exercises vigorous review of rules despite possessing only advisory powers. Agencies are often responsive to recommendations made by ARRS and hesitate to move forward without ARRS approval. This

[185] The Council of State Governments. 2015. *The Book of the States 2015.* Table 3.26

[186] http://www.arkleg.state.ar.us/assembly/2017/2018F/pages/CommitteeDetail.aspx?committeecode=040, accessed 9/5/18.

[187] Schwartz, Jason. 2010. "52 Experiments with Regulatory Review: The Political and Economic Inputs into State Rulemaking." *Institute for Policy Integrity* pp.165-169.

can lead to long delays in rule implementation since there are no definitive deadlines regarding approval.[188]

In contrast to new rules, review of existing rules is rare. Arkansas does not have any sunset provisions requiring periodic review. This may heighten the importance of reviewing rules when they are proposed. The Economic Development Commission does, however, review existing rules. This is a council consisting of 16 gubernatorial appointees who serve four-year terms. These nominees are subject to senate confirmation, but none of them are legislators. Membership is geographically distributed across the state with four at large members and three members from each of Arkansas' four congressional districts. This commission provides an opportunity for the business community to weigh in on existing rules. With its pro-business mission statement, it seems likely that this injects special interest influence into the review of existing rules.

Oversight Through Advice and Consent

The Arkansas Governor's appointment powers are somewhat limited, as the state's "executive officers", including the Secretary of State, State Auditor (not to be confused with Legislative Auditor), Treasurer, and Attorney General, are elected by popular vote (AR Constitution, Article 6-3, 2015). The governor does appoint the members of all state boards and commissions, and private sector individuals on boards such as the Economic Development Commission can play an important role in governing the state.

The advice and consent process is extremely informal, deferential, and cooperative. The formal process in Arkansas is that the Senate only approves appointees if the law creating the commission or agency specifically requires senate approval.[189] The governor submits the information to the Senate and the Rules Committee, which subsequently reviews the nominee's qualifications and then the Rules Committee reports the recommendation to the whole Senate where only a simple majority vote is necessary for approval. While this process would suggest some advice and consent through formal mechanisms, in practice the process is highly informal. In most circumstances, when an individual is up for consideration of a board or agency post, fellow senators will defer to the recommendation of the senator that represents the nomination.[190] The governor's staff will often reach out to the representing senator *prior* to submitting a nominee for approval.[191] In most situations, if the senator objects the nominee will not go forward through the formal process outlined above. Even in situations where senatorial approval is *not* required for appointment, the governor will still consult with the relevant senator before making the appointment. This highly informal process has resulting in very few *formal* rejections by the senate. One observer who is familiar with the Senate's formal and informal procedures could only recall 2 or 3 outright rejections over the last 30 years.[192] Furthermore the governor can make recess appointments for positions when the legislature in not in session, in consultation with the appropriate senator.

[188] Ibid.
[189] Interview notes, 10/15/18.
[190] Ibid.
[191] Ibid.
[192] Ibid.

Arkansas Gov. Asa Hutchinson has only issued 14 executive orders during the first 10 months of 2018.[193] According to the Book of the States (2014), Arkansas' governor does not have authority to issue executive orders responding to federal programs or requirements. Nor does he or she have authority to issue executive orders in the areas of state personnel administration or in other areas of administration. The 11 orders issued in 2018 all cover hazard mitigation funding and the Governor's Disaster Fund. Therefore, it does not appear that executive orders are a mechanism through which the governor attempts to make policy. The legislature can, and apparently does, pass legislation that overturns gubernatorial executive orders. Although the governor has the authority to reorganize state agencies and to create new agencies, according to the Book of the States 2014, the governor's proposed reorganization of the state's Department of Agriculture was defeated in the house in March 2017 (Bennett, 2017).

Oversight Through Monitoring of State Contracts

The Office of State Procurement, a subdivision of the Department of Finance and Administration (an executive branch agency), conducts oversight of state contracts (Arkansas Department of Finance and Administration-Procurement). It is unclear what form such oversight entails, aside from the publishing of state contract information on the state's transparency website.[194] Transparency Arkansas was created by statute in 2011 and provides comprehensive information on contracts, expenditure, salaries, state revenues, bonds and debts, and state payments to local municipalities and counties.[195] The site allows citizens, legislators, news media, scholars or anyone with an interest in how funds are spent in Arkansas access to a large database of expenditures, revenues, contracts, and state employee compensation.[196] Procurement standards and processes are delineated within the *State of Arkansas Procurement Law and Rules* (Arkansas Office of State Procurement, 2007). Other than the comprehensive transparency website, there does not appear to be any formal mechanism exercised by the legislature relating to oversight of state contracts.

Oversight Through Automatic Mechanisms

According to the Council of State Governments (2016), Arkansas has discretionary use of sunset processes. Per media reports, it appears that sunset provisions are occasionally attached to legislation (Hardy, Koon, & Millar, 2017)

[193] https://governor.arkansas.gov/our-office/executive-orders/executive-orders-archives, accessed 9/5/18.
[194] https://transparency.arkansas.gov/, accessed 9/5/18.
[195] https://transparency.arkansas.gov/, accessed 9/5/18.
[196] https://transparency.arkansas.gov/about.html, accessed 11/7/18.

Methods and Limitations

There are only a very, very small number of recordings committee hearings available, and then only for one chamber, the house. There are minutes posted for current meetings for the senate, but archival material is again limited. Moreover, links that are supposed to provide archival recordings of committee hearings yield a “page not found” message. We contacted nine people in Arkansas to ask for information about legislative oversight. We were able to talk to three of them.

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Legislative Oversight in California

Capacity and Usage Assessment

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

Summary Assessment

Despite cuts in staff, California still has abundant staff resources to support legislative oversight. California's websites provide easily accessible information about audits, audit recommendations, and recommended legislative action. The emphasis is often on proactive rather than reactive oversight. The institutional structure of the Little Hoover Commission—quasi-legislative and quasi-executive branch—and its supervision of the state's auditor is unique. Oversight appears to provide both an assessment of current performance by agencies conducted by the auditor and a policy generating link through reports on how government should operate, provided by the Little Hoover Commission.

Major Strengths

California's legislative audit agency recommends needed legislative action and then follows up with a report on whether the legislature made efforts to pass the recommended legislation. This transparency appears to encourage proactive efforts by the legislature. The presence of the Little Hoover Commission clearly augments, and in some cases supersedes, the efforts of the auditor's office. The commission is a powerful actor in the oversight environment, despite not being a legislative audit agency. California's standing committees take testimony and conduct extensive hearings proactively to address ongoing problems rather than just reacting to crises. Some of their hearings, especially for standing committees, are conducted jointly with legislators from both chambers present—an efficient use of time for staff, agencies, and the public—rather than duplicating the same presentations and information sharing for each chamber separately. Legislators' questions during these hearings indicated extensive familiarity with the reports and information presented. This could result from their full-time status, which provides them with the opportunity to delve deeply into the job of legislator, although high turnover from term limits could attenuate this strength. The knowledge in committee hearings could also result from staff efforts to prepare legislators for hearings, which is feasible given the large legislative staff available to legislators. The insight into the importance of provider rate-setting that

legislators exhibit during budget hearings underscores their knowledge of the system of relationships between government and the private for-profit and non-profit sectors.

Challenges

The legislature has an extremely limited role in administrative rules review either with respect to the promulgation of new rules or with respect to existing rules. The California State Auditor recently reported that state contract monitoring by the executive branch is lax, and legislative involvement is needed. Currently, however, there is little or no role for legislative oversight of state contracts. Moreover, the legislature does not appear to use its advice and consent powers to monitor gubernatorial appointments. This is true even during periods of divided government. Until recently, California's lower legislative chamber had extremely short term limits. Going forward, legislators can remain in the same chamber for their entire 12-year maximum tenure in office. Given California's heavy reliance on committee hearings to oversee the work of state agencies, this opportunity for legislators to acquire knowledge and expertise may improve the already strong oversight conducted in budget hearings and by standing committees. Joint budget hearings would seem to be a more efficient use of agency, staff, provider advocates, and legislators' time, especially given that many budget hearings are three hours or more.

Relevant Institutional Characteristics

California's legislature is ranked most professional in the nation (Squire, 2017). Despite its first-place ranking, the institutional capacity of California's legislature has declined in recent years. According to the National Conference of State Legislatures (NCSL), staff resources have declined. California's legislative staff peaked in 1988 at 2,865. As part of its term limits law, implemented in 1996, California cut its legislative staff by more than 300 positions. In 2015, approximately 2,100 permanent staff members help the legislature. These include non-partisan professional staffs—the chamber fiscal agencies and the Legislative Services Bureau (LSB)—in addition to partisan staff, committee staff, and personal staff.[197] Despite these cuts and restrictions, California's legislature still has more staff than any other chamber in the country (NCSL, 2015).

Stringent term limits reduced legislator experience as well—to only six years in the lower chamber and eight years in the upper chamber. Legislator compensation for 2017 was $100,113 plus $176 per session day in expenses associated with the job,[198] an amount that is high enough to consider the job full-time. Hence, despite their limited tenure in office, California's legislators have an opportunity to devote all their attention to learning about issues and agencies—and their abundant staff help to educate them. Although they might not be as knowledgeable as their veteran predecessors from the 1990s, they might compare favorably with legislators from states in which the job is so poorly paid that legislators need other full-time employment, leaving little time to acquire knowledge about issues and agencies. In 2012, California's voters changed the

[197] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 2/12/18.
[198] http://www.ncsl.org/Portals/1/Documents/legismgt/2016_Leg_Comp_Session_Per%20Diem_Mileage.pdf, accessed 2/12/18.

state's legislative term limits so that legislators elected in 2012 or later can serve a total of 12 years in one chamber or a combined total of 12 years in either chamber—a change that could enhance their job performance.[199]

California's legislature consists of 80 general assembly members who serve two-year terms and 40 state senators who serve four-year terms. Considering California's large population this is an extremely small state legislature. As a result, a state senator on average represents approximately 931,000 residents, and an assembly member represents 465,000 residents.[200] In comparison, a U.S. representative from California represents 710,000 residents as determined by the latest round of reapportionment following the 2010 census.[201]

As is typical of many states with a strong legislature, California has a weak governor, ranked 44th nationally (Ferguson, 2015). California governors are limited to two four-year terms. The governor has the line-item veto for budget items, and it takes a vote by two-thirds of the elected legislators in each chamber to override gubernatorial vetoes. However, California also requires a two-thirds vote in the legislature to pass a state budget, so even in times of one-party control compromise and negotiation may be required to pass the budget. California's governor has only modest appointment powers.

Additionally, California employs a plural executive structure with numerous constitutionally elected officials: the attorney general, secretary of state, state treasurer, state comptroller, and so forth (Perkins, 2018).[202] The separation of executive functions into separately elected offices tends to lessen the control and influence of the governor over these key policy areas, like public education, and can lead to fragmentation in policy if these officials are affiliated with different political parties.

Despite its robust resources for elected officials and reputation as a "big government" state, California has a smaller than average share of local and state government employees as a percentage of its workforce. These state and local government employees comprise only 10.8% of California's workforce, while the national average is 11.3% (Edwards, 2006). Of these employees, a slightly lower than average share work in K-12 education (5.4% for California compared to 6.1% nationally) (Edwards, 2006).

Political Context

California at the state and national level is one of the most Democratic states in the country. Democrats currently control both the general assembly, state senate, the governor's office, and all major statewide elected offices. In the last presidential election, Hillary Clinton beat Donald Trump 61.7% to 31.6% or by over 4.3 million votes. California was one of Clinton's largest margins of victory in the 2016 presidential election, where she outperformed the national

[199] Previously the state shared with Michigan and Arkansas this extremely stringent lifetime ban. Consequently turnover, especially in the lower chamber, was extremely high, and state representatives had little time to learn the more complex parts of their job, such as oversight. Given this change, oversight could improve as more legislators have an opportunity to stay in the lower chamber for 12 years instead of six.

[200] https://ballotpedia.org/California_state_legislative_districts, accessed 10/2/18.

[201] https://www.govtrack.us/congress/members/CA, accessed 10/2/18.

[202] file:///F:/State%20Oversight%20Project/Resources%20for%20Summaries/Book%20of%20States%20Method%20of%20Selecting%20Top%20Exec%20Branch.pdf, accessed 10/4/18.

Democratic vote of 48.3% by +13.4%. The last Republican to win California and crack 45% of the vote in a presidential election was George H.W. Bush in 1988, who won the state with 51.1% of the vote (Krishnakumar, Emamdjomeh, & Moore, 2016).[203]

Currently, Democrats have a 55-25 advantage in the general assembly and 26-14 advantage in the state senate. This gives Democrats a two-thirds supermajority, which allows for easy overrides of any gubernatorial vetoes. But more importantly, with a two-thirds majority being required to pass the state budget, Republicans have lost any leverage to prevent the implementation of Democratic spending priorities or negotiate some inclusion of key Republican initiatives in exchange for their votes.

The Democratic Party has controlled the state's legislature almost without interruption since the 1960s. In 1994, the GOP won a slim 40-39 majority in the general assembly.[204] However, the majority was short-lived as defections from the Republican Party returned control of the lower chamber to Democrats before the next election. In the senate, the Democrats have had complete control of the upper chamber since 1992, with the smallest margin of control coming in 1994, where the Democrats held a 21-17 majority.[205] The only other period of Republican control since 1960 in either chamber occurred in 1968, when they won control of the general assembly, which only lasted until 1970.[206] Recent data rank California's house as the most polarized lower legislative chamber, and its senate is also the most polarized upper chamber, based on differences between median roll call votes for each party in each chamber (Shor & McCarty, 2015).

Unlike the state legislature where Democratic control has been the norm since 1960, control of the executive branch has alternated regularly between political parties. California had a Republican governor from 1992--1998, a Democratic governor from 1999--2003, a Republican governor from 2004--2010, and its current Democratic governor was elected in 2011. Interestingly, California governors of both parties have often governed according to the ideals of the "California Party" (Pawel, 2018).[207] This idea reinforces elements of bipartisanship and cooperation on issues that comes with managing the world's fifth largest economy and governing an increasingly "vast and diverse nation-state (Pawel, 2018).[208] The Party of California appeals to the ideal that California is a special and unique place that when it comes to its governors, are not easily confined to a partisan box and are expected to exhibit key pragmatic postures when pursuing their political agendas (Pawel, 2018).[209] With younger voters increasingly refusing to register for either party, the ethos of the California Party may still shape and alter the partisan postures of future governors (Pawel, 2018).[210]

[203] http://www.latimes.com/projects/la-pol-ca-california-voting-history/, accessed 10/4/18.
[204] https://ballotpedia.org/California_State_Assembly, accessed 10/2/18.
[205] https://ballotpedia.org/California_State_Senate, accessed 10/2/18.
[206] https://ballotpedia.org/California_State_Assembly, accessed 10/2/18.
[207] https://www.nytimes.com/2018/08/18/opinion/sunday/california-politics-jerry-brown-arnold-schwarzenegger-.html, accessed 10/2/18.
[208] https://www.nytimes.com/2018/08/18/opinion/sunday/california-politics-jerry-brown-arnold-schwarzenegger-.html, accessed 10/2/18.
[209] https://www.nytimes.com/2018/08/18/opinion/sunday/california-politics-jerry-brown-arnold-schwarzenegger-.html, accessed 10/2/18.
[210] https://www.nytimes.com/2018/08/18/opinion/sunday/california-politics-jerry-brown-arnold-schwarzenegger-.html, accessed 10/2/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

California has an auditor general's office, the California State Auditor (CSA), that conducts audits and investigations at the request of legislators. The agency derives its authority from statute. With a budget of about $27 million and a staff of 164, most of whom are professionals (NASACT, 2015), the CSA has ample resources to contribute to legislative oversight in the state. The CSA has three divisions: two conduct performance audits and one conducts financial audits, some of which are performance-based financial audits.

The state auditor says she and her staff "technically reside in the executive branch (but do not report to the governor and are independent of any agencies in the executive branch)" (NASACT, 2015). The specific part of the executive branch that CSA falls under is called the California Little Hoover Commission (Chapter 12, Statutes of 1993, codified at Government Code § 8543). The commission itself is described in detail below.

The auditor is appointed to a four-year term by the governor subject to confirmation by both chambers of the legislature. But the Joint Legislative Audit Committee (JLAC) provides the governor with a list of three candidates from which the governor may choose his or her appointee. Hence, although the state auditor is technically a part of the executive branch, the auditor reports directly to the JLAC and may be removed for cause by the legislature (NASACT, 2015). Legislators may request an audit either through the JLAC or by passing legislation. These audits are not limited to state agency investigations but may also examine the work of cities and counties as well as special single-purpose districts, including school districts. The annual Budget Act also includes mandated audits, which will be discussed below, in "Oversight Through the Appropriations Process."

The CSA regularly provides reports to the California state legislature. Its website provides access to the 41 reports completed in 2017, but the website also notes that not all reports are available online. Among these posted reports, four are classified as financial reports, two are investigative reports, which appear to address potential fraud, 11 are mandatory reports, which focus again on financial issues, and 25 are described as discretionary reports, which appear to be performance reports.

The most recent annual report from the CSA recommends that the legislature take 34 actions to address concerns identified in audits. Most of these involve changing reporting requirements for boards and agencies throughout the state. For example, the CSA reports that many state entities are vulnerable to information attacks or disruption and recommends that the legislature require that agencies report independent security assessments and moreover that the legislature should authorize agencies to redirect funds to remediate information security weaknesses. To identify follow up action by the legislature on its audit findings and recommendations, the CSA publishes a list of the status of various pieces of legislation that it follows up on or are related to subjects of audit reports. The list designates bills that have been "chaptered" (i.e., passed and become statutes) or vetoed. In the 2016 Regular Session, there were 23 such bills, 18 of which were chaptered and five were vetoed.[211] This list does not include audit reports with recommendations for which the legislature made no effort to address the audit

[211] https://www.bsa.ca.gov/pdfs/reports/2016-701.pdf, accessed 6/25/18.

concerns and findings. The report describes 34 audit reports that included recommendations that would have required one or more legislative actions.

Additionally, the CSA implements the California Whistleblower Protection Act by conducting investigations of state agencies and state employee conduct based on complaints made by state employees, the public, or on its own initiative. The CSA receives more than 4,000 of these complaints per year.[212] The CSA publishes a biannual report on these investigations and the actions taken by state agencies to rectify any problems identified. The CSA is solely an investigatory agent. It can only recommend corrective actions. It is the responsibility of the state agency to act and respond to these recommendations. The online listing of Investigative Reports shows that of the 4,000+ complaints received, most do not rise to the level of serious offenses. The reports from 2017 include 16 instances in which state employees or agencies engaged in improper activities, such as misuse of state resources, improper overtime pay, taking extended lunch breaks, wasting university funds, disclosing confidential information, personal use of state vehicles, inaccurate attendance records, and so on. The only link between these activities of the CSA and legislature seems to be that the legislature receives the reports, which are available to the public as well. It does appear that occasionally, the CSA recommends that the legislature take action to remedy systemic flaws in state procedures, but this seems to be rare.

Findings of all audits are presented at JLAC hearings and released publicly. The agencies being audited are monitored at three intervals: 60 days, six months, and one year to ensure that they are making adequate progress implementing the recommendations in the audit report. In 2018, the CSA produced a total of 30 fiscal, investigative, discretionary and mandatory reports, suggesting it is an active auditing agency.[213] In addition to audits requested by legislators, the CSA conducts program evaluations and performance audits. Program evaluations may be mandated or requested by legislators. Performance audits seek to establish best practices and to determine whether there is "duplication, overlap, or conflict" between public programs.[214]

The analytic bureaucracy that oversees with work of the CSA in California is the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, referred to as the Little Hoover Commission. The Little Hoover Commission hires an auditor to audit the CSA. The Little Hoover Commission is an independent state agency that was created in 1962 with the intent to "investigate state government operations and policy, and – through reports and legislative proposals – make recommendations to the governor and legislature to promote economy, efficiency and improved service in state operations."[215] Its mission, which is distinct from the CSA and the LAO, is to examine how state programs *could* and *should* function with the intent that its reports should trigger reform legislation. The commission is also statutorily required to make recommendations and review any government re-organization plans. The commission expressly investigates matters beyond the typical fiscal or performance reviews that are commonplace in most audit offices.[216] It has broad authority to investigate the structure, organization, function, and mechanisms for appropriating and administering funds of every state agency and department in the executive branch.[217]

[212] https://www.auditor.ca.gov/aboutus/investigations, accessed 6/25/18.
[213] http://www.bsa.ca.gov/reports/search_results, accessed 10/5/18
[214] https://www.auditor.ca.gov/aboutus/performance_audits, accessed 6/25/18.
[215] https://lhc.ca.gov/about/history, accessed 10/3/18.
[216] https://lhc.ca.gov/about/history, accessed 10/3/18.
[217] https://lhc.ca.gov/about/history, accessed 10/3/18.

The Little Hoover Commission is comprised of 13 members, nine public members of whom five are appointed by the governor, two by the speaker of the general assembly, and two by the Senate Rules Committee. The remaining four members are sitting members of the legislature with two coming from the general assembly and two from the senate.[218] Some of the public members currently on the board are former legislators. By statute the commission must be bipartisan, and public member terms are staggered four-year terms.[219] The commission has six listed staff members[220] and for FY 2016-17, it had an annual budget of just over $1 million.[221]

Since 2013, the Little Hoover Commission issued 29 reports on issues ranging from fixing California's Denti-Cal program, to forest management, to improving oversight and transparency of California's independent special districts.[222] In a sign of the commission's overall effectiveness in the 2017-2018 Legislative Session, the commission supported 12 pieces of legislation that would implement commission recommendations and Governor Brown signed six of those bills into law.[223]

Vignette: The Little Hoover Commission Builds on the Work of the CSA

Oversight of the Denti-Cal program is an interesting example of overlapping efforts on the part of the CSA and the Little Hoover Commission over a period of several years. The Denti-Cal program is a $1.3 billion state and federal program located in California's Medicaid program, Medi-Cal. Denti-Cal is designed to deliver dental services to eligible Medicaid beneficiaries, which in California, covers roughly 13 million residents, including children and physically and mentally disabled individuals.[224] In December 2014, the CSA released a report highlighting the failures of the Denti-Cal program, citing an astonishingly low utilization rates by Medi-Cal beneficiaries, in particular, over half of the 5.1 million children enrolled in Medi-Cal were taking advantage of the dental program benefits.[225] Complicating the utilization rates, was the lack of available providers. In 32 counties, there were either no Denti-Cal providers at all, providers no longer willing to accept new Denti-Cal patients, or a lack of providers to deliver a sufficient level of services to beneficiaries.[226] The primary reason for this lack of providers was directly tied to the low reimbursement rates for services, which had not been increased since FY 2000-01.[227]

The Little Hoover Commission released its own scathing report on the deficiencies and inadequacies of the Denti-Cal program in April 2016.[228] The commission verified many of the findings in the CSA report, but the language of the report itself is far more direct, blunt, and damning of Denti-Cal, Medi-Cal, and the Department of Health Care Services, which administers both programs. To leverage and build on the CSA report, the commission held public hearings on the failures of the Denti-Cal program, which highlighted areas where the

[218] https://lhc.ca.gov/about/faq, accessed 10/5/18.
[219] https://lhc.ca.gov/about/faq, accessed 10/5/18.
[220] https://lhc.ca.gov/content/staff-directory, accessed 10/4/18.
[221] http://www.ebudget.ca.gov/2016-17/Enacted/StateAgencyBudgets/8000/8780/spr.html, accessed 10/4/18.
[222] https://lhc.ca.gov/report/list, accessed 10/5/18.
[223] https://lhc.ca.gov/report/list, accessed 10/5/18.
[224] http://www.bsa.ca.gov/pdfs/factsheets/2013-125.pdf, accessed 10/5/18.
[225] http://www.bsa.ca.gov/pdfs/factsheets/2013-125.pdf, accessed 10/5/18.
[226] http://www.bsa.ca.gov/pdfs/factsheets/2013-125.pdf, accessed 10/5/18.
[227] http://www.bsa.ca.gov/pdfs/factsheets/2013-125.pdf, accessed 10/5/18.
[228] https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/230/Report230.pdf, accessed 10/5/18.

program was failing beneficiaries and other at-risk populations. This series of hearings in September and November of 2015 demonstrated a high level of knowledge about the Denti-Cal program on the part of the commission members. Based on that knowledge, they were able to ask insightful questions relating to the failures of the program. The commission report stated the central problem in stark terms finding that Denti-Cal is stuck in a "vicious cycle of dysfunction," where "most dentists don't participate in Denti-Cal due to its low reimbursement rates and administrative obstructions. Additionally, fewer than half of people eligible for benefits use them in any given year because there are so few dentists who will see them."[229] The commission made twelve overall recommendations, seven short-term recommendations and four long-term recommendations to re-orientate Denti-Cal towards better service to beneficiaries and improved cooperation between providers and administration. In response to the CSA audit report, the commission's report, and subsequent follow-up letters to Governor Brown in 2017[230] and 2018[231] urging major reforms of the program, there has been significant legislative action. In the 2015-16 legislative session, four bills were introduced, and two were signed by the governor, and in the 2017-18 session, two more bills were introduced to address the issues with Denti-Cal.[232] Additionally, various legislative committees, for example, the Budget Committee and the Subcommittee on Health and Human Services, have held hearings to examine the long-standing issues with Denti-Cal and how best to fix the troubled program.[233] The end result is a coordinated effort of oversight driven by key analytic bureaucracies with appropriate legislative and executive action to correct the failing Denti-Cal program. The Dental Transformation Initiative (DTI) is the culmination of these efforts. The DTI is a Department of Healthcare Services plan to transform the Denti-Cal program by 2020 by addressing four key domains that will improve dental care for children and other beneficiaries identified in the CSA and Little Hoover Commission reports.[234]

In addition to the CSA and its parent, the Little Hoover Commission, the Legislative Analyst's Office (LAO) supports the legislature's role in the budget process by providing non-partisan analysis of the governor's budget proposal.[235] The LAO reports to the Joint Legislative Budget Committee (JLBC) but provides support to any legislator who requests it. The JLBC is comprised of 16 legislators, 10 Democrats and six Republicans in 2017. The LAO employs 43 analysts who forecast state revenues, assess the fiscal impact of ballot initiatives, and produce fiscal and policy analyses. During 2017, the LAO produced 125 reports and 78 hearing handouts on a wide range of topics. Hearing handouts are bullet point summaries of information germane to the hearing that, importantly, include a list of oversight questions for legislators to pursue.[236]

California's state government also provides other support services for legislators, such as the California Research Bureau (CRB), which is housed in the California State Library. The CRB provides "independent, nonpartisan, timely and confidential research or analysis for the

[229] https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/230/ExecutiveSummary230.pdf, pp. 5, accessed 10/5/18.
[230] https://lhc.ca.gov/report/letter-governor-brown-and-legislature-denti-cal-program-still-broken, accessed 10/5/18.
[231] https://lhc.ca.gov/report/letter-governor-brown-and-legislature-denti-cal-update, accessed 10/5/18.
[232] https://lhc.ca.gov/impact/supported-legislation, accessed 10/5/18.
[233] https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/April%2024%202017%20agenda%20Denti-Cal%20Oral%20Health.pdf, accessed 10/5/18.
[234] https://www.dhcs.ca.gov/provgovpart/Pages/DTI.aspx, accessed 10/6/18.
[235] http://www.lao.ca.gov/About, accessed 6/25/18.
[236] https://lao.ca.gov/handouts/resources/2018/Overview_SWP_Proposed_Contract_Amendment.pdf, pp. 6 provides an example of oversight questions, accessed 9/17/18.

Governor, Legislature, and other Constitutional Officers."[237] Its 361 public reports posted on its website cover a wide range of topics, some of which assess the performance of California laws and policies. For example, one of the reports published in 2017 assess the effect California Assembly Bill 2494 had on frivolous litigation. Datasets accompany these reports.

Oversight Through the Appropriations Process

California's state legislature lists, separately from other committee meetings, hearings designated as oversight hearings. Recordings of these hearings are on publicly available webpages—one for the state's Senate Budget and Fiscal Review Committee[238] and another for the State Assembly Committee on Accountability and Administrative Review.[239] Most of these are joint chamber hearings, and the assembly webpage appears to be updated regularly.

Meetings held by various subcommittees of the Budget and Fiscal Review Committee are prominently featured on the list of senate oversight hearings. More than half of the oversight hearings held in the spring of 2016 were conducted by these various budget and fiscal review subcommittees. During the 2017-2018 fiscal year, there were 20 oversight hearings listed on the webpage for the Senate Budget and Fiscal Review Committee.[240] Some of these hearings appear to have been canceled, however, and some are simply descriptions of budget items. On the other hand, the Senate Appropriations Committee does not appear to have conducted oversight hearings during this time. It appears that oversight, at least in the senate during the appropriations process, is the responsibility of specific legislative committees and subcommittees rather than shared across all standing committees.

The LAO appears to work closely with the appropriations subcommittees. The agenda for the Subcommittee on Resources and Transportation lists each budget item and then provides a line with the staff recommendation for committee action. For example, the $1.067 million request in the governor's budget to relocate the Temecula Fire Station is described in one paragraph with the following: "Staff Recommendation: Approve as Budgeted," or in some instances, the staff recommendation was "Hold Open."[241] For more controversial budget items, the LAO comments included in the hearing minutes provide graphs and multiple paragraphs of explanation about any concerns the LAO had with the proposed activities and funds. In several of these instances the staff recommendation was labeled "Informational Only."

A Senate Budget and Fiscal Review Subcommittee No. 3 oversight hearing, held on November 9, 2017, addressed the topic, "Achieving and Maintaining Adequate Provider Networks in Medi-Cal Managed Care." The three-member subcommittee was chaired by a senator with an MD—a pediatrician. The video showed only two subcommittee members present. The agenda included an agency presentation, a panel of managed care organizations, a panel of patient advocates, a reply from the agency representative, and public comments. This is a pattern we observed in the written agenda of several other senate budget subcommittees. It

[237] https://www.library.ca.gov/crb/, accessed 6/26/18.
[238] https://www.senate.ca.gov/content/senate-oversight-hearings, accessed 9/17/18.
[239] https://aaar.assembly.ca.gov/content/2017-18-oversight-hearings, accessed 9/17/18.
[240] http://senate.ca.gov/senate-oversight-hearings/search?startdate=&enddate=&committee=83596&upcoming-hearings=on&past-hearings=on&page=2, accessed 6/26/18.
[241] http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/March%2029%20-%20Forestry%20Fire%20Conservancies%20(3).pdf, accessed 6/26/18.

appears to reflect an understanding that there is a system that depends on state government funds and that the private contractors (in this case the managed care organizations) are an important part of agency service delivery. Moreover, these private entities can be driven out of business if state government fees for service or reimbursement rates are too low. However, legislators also do not want to overpay. Thus, budgeting and appropriations decisions need to involve a dialog between the legislature and the providers as well as the state agency. Feedback from advocates who represent large groups of service recipients can provide information about service delivery performance. This way of organizing a budget oversight hearing, while apparently common in California, is not something we found with any frequency in other states. It appears to provide an opportunity for legislators to engage in oversight of service delivery of contracted entities. We return to this in the section, "Oversight Through Monitoring of State Contracts."

This particular hearing opened with a presentation entitled, *Medi-Cal Management Care Rate-Setting and Implementation of New State and Federal Requirements*, given by the Chief Deputy Director of the Department of Health Care Services (DHCS). After her presentation, the chair questioned her extensively about the problems posed by fewer and fewer health care providers accepting Medi-Cal patients at the same time the number Medi-Cal eligible recipients were expanding. He wanted to know what portion of the rate-setting was handled by a private contractor versus handled by the department. He wanted data to compare to a cost report from 2013. The chair asked what was being done to adjust the managed care estimates, which overshot the expenses by about 50% in the initial estimates. The deputy director explained how the department was trying to recoup those overpayments. The chair expressed concern that the downward adjustment might be too much to meet pent-up demand as some beneficiaries gradually realize that they have access to services and begin to use them. The chair concluded by asking about the response time for DHCS to respond to client complaints. The deputy director thanked the subcommittee for expanded funding for the ombudsperson's staff to improve response time. The chair pushed her to provide more personal support to people having problems.

The next item on the agenda was a panel with three presenters from Medi-Cal Managed Care Organizations: Anthem Blue Cross/Wellpoint, Inland Empire Health Plan, and Central CA Alliance for Health. Anthem Blue Cross/Wellpoint has two managed care models operating in California: a capitation model and a fee-for-service model. The Inland Empire CEO explained the problems they faced with providing care in their region within the reimbursement rates and maintaining solvency. They were working to attract providers by giving them Medicare rather than Medicaid reimbursement rates, but then trying to do more outpatient care rather than inpatient care. They are also partnering with other outside of network providers to extend the network. He says it ultimately goes back to the rates, and they must be adequate. The CEO of Central CA Alliance for Health is working to avoid provider burnout and they also pay Medicare rates to get enough providers into the system. They quizzed the three panelists about why they paid more for services to providers for commercial clients than they paid to providers for Medicaid clients. Additionally, the chair challenged the panelist about their claims that their provider pool was increasing when the state-wide number of physicians accepting Medi-Cal patient was dropping.

Next on the agenda was the "reactor panel," consisting of six Medi-Cal Providers and Consumers. Some of the presenters discussed access for cancer patients to specialists and access to home health care, radiology, and urology. One presenter asked for more state oversight of providers ensure access to services. Wait times on the phone to report problems to the DHCS

ombudsperson were around 45 minutes. One presenter described access problems for non-English speakers and the need for translators. The chair asked about the study showing that outcomes for patients on Medi-Cal were no better than people who had no insurance. One of the presenters pointed out that timely access to care was crucial for cancer patients. Eventually the conversation moved into the potential for telemedicine to increase access and reduce costs.

The deputy director returned to respond to issues explored and raised by the two panels. Comments from the public followed. Most of these were not individual citizens, but rather representatives of advocacy groups. One, a dental health group, mentioned the Little Hoover Report on Denti-Cal and that the legislature had not included funding in the current budget for the needed dental services identified in that report. Two private citizens commented on their personal experiences with wait time and access issues. The chair promised that this topic will be part of ongoing oversight.

The assembly budget subcommittee hearings share some but not all of the same features of the senate budget subcommittee hearings. The assembly budget subcommittees include agency staff, advocacy requests, and public comments. They add a presentation from the LAO and another from the Department of Finance. They do not seem to the contracted service providers specifically in the hearings agenda, but representatives of the providers could use the public comment period for input.

The Assembly Budget Subcommittee No. 1 on Health and Human Services met on March 1, 2017, to consider 14 different issues related to the Department of Developmental Services Community Services Program. Five legislators were present for the hearing. The first issue was a survey the department initiated to determine rate-setting for group home providers. The public commenters were primarily advocates for group home providers and for group home residents. The LAO staff pointed out the impact of changes in minimum wage and other labor law requirements that need to be considered in rate-setting discussions. The LAO made recommendations to the legislature as well as to the agency. For example, she said that LAO recommended that the legislature set more specific goals and tasks for a newly funded research unit in the department. The chair asked that the LAO work with the department to "pinpoint" issues with the service providers and get back to the committee by the May meeting with the information. The chair asked most of the questions of the witnesses but one other legislator also asked questions.

It appears that the interface between state agencies and private-sector entities (including non-profit organizations) that provide service, whether it is development disabilities care or access to health-care professionals, is a major issue in California's state budget—and we suspect could be in many other states' budgets as well. Some of the payment rates probably involve federal guidelines and mandates. Thus, legislators need to determine appropriate rates (not too high and not too low) in order to determine how much money to appropriate to some departments. The subcommittee chair asked very specific questions about shifts in funds from the developmental centers to the community centers. Legislators wanted to know if the money the development center receives follows a client to the community centers. The chair (a Democrat) and a committee member (a Republican) followed up on each other's questions until they received detailed enough information to follow the money. The LAO staff and the agency director both tried to explain how the money, services, and individual's needs were connected. The committee members collectively were knowledgeable, persistent, and precise in their questions. The LAO and agency provided detailed evidence to respond to committee questions.

Oversight Through Committees

The CSA reports directly to the JLAC, and JLAC approval is required for any state audits. In 2016, the JLAC considered 33 audit requests, approved 28 audits, denied two, and held its decision on three audit requests.[242] Thirteen audits conducted by the CSA were mandated audits. The optional audit requests were generated by legislators, while the CSA proposed the two high-risk audits, which target agencies or programs with high risk of fraud or similar issues. The CSA administers the state's whistleblower act, so recently the legislature granted it the authority to propose high-risk audits (NASACT, 2015). The JLAC also holds hearings on some audit reports (seven hearings in 2015-16), and some of these hearings (four of seven in 2015-16) are held jointly with other relevant appropriations subcommittees and/or standing committees. This is a small proportion of the 30-40 audit reports released by the CSA annually.

According to the Rules of the Chamber (Assembly Rules 2017-18,243 see also Joint Rule 36), all standing committees in the assembly, which include standing committees with jurisdiction over a substantive policy area, are automatically empowered as investigative committees over the issues that fall under the committees' jurisdictions. A standing committee may also request permission from the Rules Committee to initiate an investigation in another topic area outside its jurisdiction. California's senate also conducts oversight hearings through its regular standing committees. The senate webpage includes a list of upcoming and past oversight hearings by committee. Oversight is listed separately from other committee work on this separate webpage. For each committee conducting an oversight hearing, there is an agenda that lists the topic of the committee's oversight hearing, along with the location and date of the hearings. Hearings that have already occurred include a video of the hearing itself. There are dozens of these hearings. Additionally, the senate has a committee specifically charged with investigations and oversight. It is called the General Research Committee and consists of all 40 members of the senate, but it operates primarily through subcommittees tasked with specific investigations. This committee is constitutionally required. It may not duplicate investigations being conducted by the standing committees, but if the standing committee has not initiated an investigation then the General Research Committee may form a subcommittee appointed by the Committee on Rules to conduct that investigation. However, subpoenas issued by these subcommittees require approval from the Rules Committee.

A randomly selected joint standing committee hearing conducted by the Natural Resources Committee listed among the oversight committees, held on February 17, 2017, featured four speakers who gave the committee members more than an hour of presentations about fire and forest management in the state. Questions from committee members were generally insightful, particularly questions from the senators, most of whom exhibited more knowledge than many of the representatives about the issue. The second hour of the hearing consisted of other speakers presenting information on this issue. This hearing is an example of police patrol oversight, addressing an ongoing issue in California (fire and forest management) during a time of year (winter) when crises are unlikely. The time horizon of the solutions discussed was long-term, and the focus was on ongoing program options.[244]

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[242] http://legaudit.assembly.ca.gov/sites/legaudit.assembly.ca.gov/files/Digital%20Copy%20-%20JLAC%202015-16%20Complete%20End%20of%20Session%20Report.pdf, accessed 6/26/18.
[243] http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180HR1, accessed 6/26/18.
[244] http://www.calchannel.com/video-on-demand/#, Joint Legislative Informational Hearing on Tree Mortality, Forest Health and Prescribed Fire, February 27, 2017, two hours and 20 minutes, accessed 6/26/18.

In addition to oversight by the substantive standing committees, the assembly's Committee on Accountability and Administrative Review (AAR) is responsible for a wide range of overarching oversight activities. This committee has jurisdiction over the state's Administrative Procedures Act and the state's Office of Administrative Law. The committee consists of seven members, distributed across the two political parties based on their proportional representation in the Assembly. In 2017, there were five Democrats and two Republicans on the committee. There were three staff members assigned to this committee, and several hearings were posted for this committee. An example of the type of oversight work performed by this committee is described in a letter from the AAR Chair.[245] According to the letter, the committee worked closely with the LAO to examine the effectiveness and efficiency of special districts in California.[246] Special districts are used to deliver a wide array of services in California ranging from mosquito control to libraries to sanitation. The committee held hearings and requested information from the LAO. The chair expressed his intention to continue the "conversation" with the potential for legislative action in the coming year. These include monitoring state government efficiency and costs, property acquisition, state government organization and reorganization, state printing and binding contracts, as well as state procurement and state government oversight, more generally. Here again, the California Legislature appears to engage in police patrol oversight. The committee website provides a list of a few oversight hearings per year designated as oversight hearings (typically fewer than five), among its other committee meetings.[247] These oversight hearings are typically conducted jointly with other standing committees.

The assembly rules also provide an additional avenue for legislative oversight thru the Assembly General Research Committee.[248] This committee is chaired by the assembly speaker and described in the chamber rules as a permanent fact-finding committee. The speaker may create subcommittees from the membership of the full committee to launch investigations of anything that other assembly committees are not already investigating. The investigations are chosen in collaboration between the speaker and the Rules Committee. Funds are provided from the Assembly Operating Fund to support investigations undertaken by this committee. Witnesses called by any of these various assembly investigative committees are paid for their time and effort based on a schedule established by the Rules Committee.

Vignette: Fixing a Potential Gap in Oversight: Homeschooling and Child Abuse in the State of California

One example of "fire alarm" oversight was the legislature's attempt to monitor homeschooling practices in California. This effort followed a high-profile child abuse case in Riverside, CA, that drew national attention, when 13 children were discovered locked up and

[245] http://aaar.assembly.ca.gov/sites/aaar.assembly.ca.gov/files/Special%20district%20letter.pdf, accessed 6/26/18.
[246] California uses special districts to provide a wide range of service. There are airport districts, water districts, community service districts, sanitation districts, fire protection districts, library districts . . . These districts are described in the state senate report,
https://web.archive.org/web/20130203160416/http://www.calafco.org/docs/TimetoDrawLine_03.pdf, accessed 9/17/18.
[247] http://aaar.assembly.ca.gov/content/2017-18-oversight-hearings, accessed 6/26/18.
[248] http://www.leginfo.ca.gov/rules/assembly_rules.pdf, pp. 12, accessed 9/17/18.

chained in their rooms in extremely foul living conditions (Riley, 2018).[249] Since many cases of abuse are discovered and reported through public schools, some legislators argued that the lack of state oversight of homeschoolers was part of the problem when attempting to understand how the Turpin's abuse could have gone on for so long undetected (Phillips, 2018).[250] In California, all parents need to do is register with the state informing them of their intention to homeschool their children.[251] The general assembly sought to tighten the regulations surrounding homeschool oversight by initially pushing legislation that would have required the state to collect and publish a list of families that homeschool their children.[252] After three hours of testimony by organized homeschooling groups concerned over government intrusion into their homes, Assemblyman Jose Medina's bill, AB 2756, was not even voted on.[253]

This is an interesting case of attempted oversight by the assembly's Education Committee. It serves as a reminder that not all oversight efforts, by definition, are successful in solving the problems identified. Moreover, we note that in other states, the legislature might work with the Department of Education to promulgate rules governing homeschooling. But in California, as we learn in the next section, the legislature is almost completely shut out of the rule review process.

Oversight Through the Administrative Rules Process

The legislature has no advisory powers over existing or proposed rules, other than indirectly through approval of gubernatorial appointees to the Office of Administrative Law (OAL). Additionally, there are no committees listed in either the general assembly or senate that have any jurisdiction over rules review. Although the Book of the States (2015) classifies California as a state in which the legislature has advisory powers only (Table 3.26), it acknowledges that the executive branch has "more than advisory powers." According to the Office of Administrative Law website, the California Legislature is not part of the flowchart for the regular administrative rules process.

There are only two indirect ways that the legislature can influence administrative rules. First, any standing committee of the legislature can ask the OAL to review an existing rule if any legislative committee believes that the regulation "does not meet the standards of necessity, authority, clarity, consistency, reference, and nonduplication" (Schwartz, 2010). However, the legislature has no further role in the OAL review. Second, the state's senate has authority to confirm or reject the gubernatorial appointee directing the OAL.

Beginning in 1980, the California Administrative Procedures Act (APA) established responsibility for overseeing administrative rules promulgation with the OAL, a unit within the executive branch, which is responsible for coordinating public hearings and comments on proposed rules as well as training state agencies in how to write rules. The OAL is regarded as a

[249] http://www.latimes.com/opinion/op-ed/la-oe-riley-turpin-child-welfare-law-20180206-story.html, accessed 10/3/18.
[250]http://www.latimes.com/local/la-me-ln-perris-home-school-20180116-story.html, accessed 10/3/18.
[251] https://www.responsiblehomeschooling.org/policy-issues/current-policy/, accessed 10/3/18.
[252] https://aedn.assembly.ca.gov/sites/aedn.assembly.ca.gov/files/AB%202756%20%28Medina%29.pdf, accessed 10/3/18.
[253] http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=5433, accessed 10/4/18.

well-funded, activist review body that disapproved 150 agency rules in the decade between 2000 and 2010 (Schwartz, 2010). Additionally, the OAL disapproved 47 rules between 2016 and 2018.[254] Yet, it is an independent part of the executive branch and not an agent of legislative review.

Oversight Through Advice and Consent

Most state agency heads require senate confirmation of gubernatorial appointments. California separately elects the attorney general, secretary of state, and the state treasurer, but the governor may appoint candidates to fill vacancies in these positions until the next statewide elections, subject to confirmation by the senate. However, there are numerous other appointed positions. The senate must act to confirm or reject these appointments, and a majority vote is required for confirmation.

It is exceptionally rare for the California senate to reject these nominees, even during periods of divided government. During the five years from 2005 to 2010, a period of divided government in the state, the senate only rejected three of Governor Schwarzenegger's appointees (Hindery, 2010).[255] The rejection of two Gov. Pete Wilson's nominees in 1994 was the most recent previous use by the state senate of its confirmation authority. Furthermore, that was the first time ever that an appointee to the State University Board of Trustees was rejected and the first time in more than a century that the senate rejected an appointee for the University of California Board of Regents. The last Board of Regents appointee rejection by the senate dates back to 1883. We found no evidence that the senate has rejected cabinet-level appointees.

According to the Council of State Governments, gubernatorial executive orders in California are not subject to legislative review (Perkins, 2017).[256] In any event, executive orders do not appear be a preferred method for policy-making by California's governors. During Governor Brown's administration, he has only issued 63 executive orders, mostly pertaining to emergencies related to drought or wildfires, or more ceremonial orders honoring someone or raising awareness of a particular issue.[257]

On issues of executive reorganization of government, the legislature has delegated this authority to the governor through the California Constitution, Article V, Sec. 6, and through statute under Gov. Code Sec. 12080. In this process, the governor has fairly wide discretion to reorganize the executive branch by consolidating responsibilities, transferring responsibilities to other agencies, or even by abolishing and creating new agencies. However, the governor cannot create new functions or powers for agencies and commissions through the reorganization process.[258] The reorganization process involves both the Little Hoover Commission, whose role and function are described in the analytic bureaucracy section, and the legislature. The commission's role is established by statute in Gov. Code Sec. 8523 and is responsible for reviewing the governor's plan 30 days prior to submitting his plan to the legislature.[259] While the commission's role is technically only advisory, and it recommendations are non-binding, the

[254] https://oal.ca.gov/publications/disapproval_decisions/, accessed 10/3/18.

[255] http://www.sandiegouniontribune.com/sdut-calif-senate-rejects-govs-education-board-choice-2010apr29-story.html, accessed 9/17/18.

[256] http://knowledgecenter.csg.org/kc/system/files/4.5.2017.pdf, accessed 6/28/18.

[257] https://www.gov.ca.gov/2018/09/?cat=13&jalid=27, accessed 10/6/18.

[258] https://lhc.ca.gov/about/governors-reorganization-plan, accessed 10/6/18.

[259] https://lhc.ca.gov/about/governors-reorganization-plan, accessed 10/6/18.

stature and independence of the Little Hoover Commission gives its recommendations a great deal of influence on the final plan. Once the commission has reviewed the plan and offered its recommendations, the plan is submitted to the legislature for review. The legislature has 60 days to review the plan and if it takes no action, the plan automatically goes into effect. However, if the senate or assembly by a majority vote rejects the plan, it cannot be implemented.[260]

The latest report by the commission to examine a reorganization plan was in May 2012. In this report, the commission recommended the legislature adopt the governor's plan with the understanding that a reorganization this large would require regular oversight through the budget and appropriations process to ensure that agencies affected continued to carry out their duties and conformed to the new reorganization.[261] The plan reduced major state agencies from 12 to 10 and consolidated the duties of dozens of agencies that were considered duplicative and spread throughout state government (Gotten, 2012).[262] The plan was automatically adopted when the legislature did not vote on the governor's plan (Gotten, 2012).[263] While this might suggest a lack of oversight on the part of the legislature by not voting on the plan, it is more likely that the unanimous approval of the Little Hoover Commission and the long needed reorganization of executive agencies resulted in a broadly accepted plan that required little formal review by the legislature. Readers are reminded that the leaders of the two chambers are members of the Little Hoover Commission and appointed two other legislators and four other non-legislators to the commission. Thus, the commission itself is quasi-legislative, with only five of its 13 members appointed by the governor.

Oversight Through Monitoring of State Contracts

The Department of General Services Procurement Divisions administers state contracts. The CSA recently published a report complaining about lax oversight of no-bid contracts by state agencies. The CSA also advised the legislature to become involved in contract oversight. It appears that state agencies oversee their own contracts, and that they do not do so vigorously (Douglas, 2017).[264] As we noticed in the section, "Oversight Through the Appropriations Process," much of the time spent on oversight by the two chambers' finance subcommittees concerned rate-setting for private sector entities that provide public services. This is part of the contracting process that California's legislature monitors to some extent through the appropriations process. More than most other states, California's legislature seems to realize that outsourcing government increases the importance of these providers and the way government pays them.

[260] https://lhc.ca.gov/about/governors-reorganization-plan, accessed 10/6/18.
[261] https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/211/Report211.pdf, accessed 10/6/18.
[262] https://californianewswire.com/calif-governor-browns-government-reorganization-plan-becomes-law/, accessed 10/6/18.
[263] https://californianewswire.com/calif-governor-browns-government-reorganization-plan-becomes-law/, accessed 10/6/18.
[264] http://www.govtech.com/policy/Following-Audit-California-State-Agencies-Update-Policies-Around-Noncompetitive-Bidding.html, accessed 6/28/18.

Oversight Through Automatic Mechanisms

According to Baugus and Bose (2015), California permits the addition of sunset clauses to state legislation selectively.[265] There is no mandatory sunset review process.

Methods and Limitations

The California Constitution (Article 4, Section 7(c)), requires that the committees of each chamber provide video and audio of their hearings. The senate additionally provides agendas and some transcripts.[266] Although agendas themselves are not required, hearing notices are required, and the Senate Daily Journal reports committee votes, reports, and proceedings relating to bills (interview notes, 2019). One interviewee said they do not recall seeing meeting minutes for the senate (interview notes, 2019). For the assembly, committees choose to publish their agendas on The California Channel, but they are not required. The assembly does not have transcripts or meeting minutes (interview notes, 2019). For California, five people were interviewed out of the 17 people that were contacted.

[265] https://www.mercatus.org/system/files/Baugus-Sunset-Legislation.pdf, accessed 6/28/18.
[266] https://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/committees/2017-18/sagri.senate.ca.gov/node/62.html, accessed 1/3/19.

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Legislative Oversight in Colorado

Capacity and Usage Assessment

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

Summary Assessment

Evidence suggests that the Colorado Legislature possesses extensive formal capacity to engage in oversight of the executive branch. The analytic bureaucracies are especially strong, well-funded, and well-staffed. The Office of State Auditor (OSA) authority includes fiscal and agency oversight, while the Committee on Legal Services (CLS) has oversight over administrative rulemaking. There are automatic oversight mechanisms in place that require regulatory review and sunrise review of new agencies.

Major Strengths

The State Measurement for Accountable, Responsive, and Transparent Government Act (SMART), which ensures that standing committees take an active role in monitoring the work of state agencies, is especially useful in promoting oversight in Colorado. Under this act, all audit reports must receive a committee hearing. Additionally, balanced partisan membership on the oversight committees establishes a norm of bipartisan oversight. The audit agencies provide legislators with reports showing agency compliance with audit recommendations. These reports are used in standing committee and appropriations hearings to "persuade" agencies to comply with audit recommendations through the legislative power of the purse. The OSA also suggests legislative actions needed to fix problems identified in its audit reports. OSA encourages legislative follow through by tracking the number of these suggested bills that were sponsored and enacted (six enacted in 2017). The legislature plays an active role in the review of administrative rules, and these rules are reviewed on a regular basis. Colorado is making effective use of audits to monitor state contracts despite having only limited authority in this arena.

Challenges

This is a hybrid legislature that does not meet year-round, and it is also a legislature with term limits, which constrain legislators' ability to develop expertise. The rule review process

allows agencies to adopt a temporary rule when the legislature is not in session even a rule that the legislature has challenged. Finally, although most oversight often appears to be motivated with public welfare in mind, there are instances in which special interests and partisans use oversight to achieve their personal goals. But overall, the Colorado Legislature illustrates some "best practices" that other states could emulate.

Relevant Institutional Characteristics

Colorado has what the National Conference of State Legislatures (NCSL) calls a hybrid legislature, which means that while legislators spend more than two-thirds of their time on state work, they are not paid enough ($30,000 to sustain a middle-class life style on the state's pay alone).[267] Despite that, one-third of the legislature identifies as full-time lawmakers (Gray, Hanson, & Kousser 2017). Colorado State University professor John Straayer speculates that many of those who identify as full-time lawmakers are retirees or individuals who aspire to use state legislative experience to launch political careers (Kane, 2018).

Colorado is currently ranked 12th according to the Squire Index (Squire, 2015) of state legislative professionalism. There are 228 permanent staff members and another 88 staff members are classified as session-only (Gray, et al., 2017). The legislature is classified as part-time because the legislative session is limited to only 120 calendar days (CO Const. Art. V, Sec. 7).[268] Between legislative sessions, the members have no district or personal staff.

Colorado has a relatively small legislative body with a total of 100 members, 65 in the house and 35 in the senate. There are term limits in place for representatives and senators. Senators can serve no more than two consecutive four-year terms. Representatives can serve no more than four two-year terms (CO Const. Art. V, Sec. 3).[269] Once legislators meet the term limit in one chamber of the legislature, they can run for a seat in the other chamber. A legislator can run again for either office after being out of office for one full term. Colorado is currently a divided legislature—Republicans control the senate, while Democrats control the house. Only recently has a divided legislature persisted for more than one election cycle with a narrow 18-17 Republican control of the senate in 2014 and 2016. Prior to 2014, the Democratic Party controlled the governorship and both the house and senate.

Compared to other states, Colorado has a slightly below average share of local and state government employees as a percentage of its workforce. The national average is 11.3%, while Colorado has 10.4%, according to the CATO Institute (Edwards, 2006). Of these employees, Colorado does not have any agencies that fall into what the CATO Institute classifies as the "Biggest Bureaucracies" or "Smallest Bureaucracies".

There are several constraints on gubernatorial power in Colorado. The Governor Institutional Power Index (GIPI) score for Colorado is 2.92 compared to an average of 3.23,

[267] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed6/28/18.

[268] https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkxMS04YmJhNjBlNWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crid=5a478a24-6041-4ccf-8eb6-8d4667004eb3&prid=22101207-4be6-491b-a7f5-b46c8685cfb8, accessed 6/28/18.

[269] https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkxMS04YmJhNjBlNWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crid=5a478a24-6041-4ccf-8eb6-8d4667004eb3&prid=22101207-4be6-491b-a7f5-b46c8685cfb8, accessed 6/28/18.

placing it in the bottom half of the states regarding institutional power. The index is composed of a range of factors, and Colorado ranks high in some dimensions and low in others. First, the governor's responsibility for the budget is shared with the legislature, and the legislature has unlimited power to change the executive budget (Council of State Governments, 2015). Second, Colorado is one of only five states whose legislative bodies develop a budget independent of the governor.[270] Third, constitutional provisions on spending, revenues, and expenditures also limit the fiscal power of the governor (CO. Const. Art. IX, X, XI).[271] These provisions establish that money for the schools fund may not be transferred for the use of any other purpose including any interest accrued (IX), restrictions on public indebtedness (XI),[272] and forbids the elimination of corporate or corporate property taxes (X). This limits the discretion of the governor with respect to tax cuts that occur in many other states, but it also restrains the legislature from these activities.

On the other hand, Colorado grants some important powers to its governor. The governor has line-item veto power over appropriations, although the veto can be overridden with a special majority vote of 2/3rd of the legislators present or 3/5th of the legislators elected (Council of State Governments, 2015). The governor can issue executive orders, as with other governors, but here there is no legislative review. The governor's appointment power is considered slightly above average compared to other states (Council of State Governments, 2015). This is because some key appointments do not require senatorial approval. For example, the heads of the budget, economic development, energy, elections, information systems, and planning departments do not require confirmation by the senate (Council of State Governments, 2014). But this power is tempered by Colorado's civil service system, which limits gubernatorial appointments.[273] Moreover, Colorado allows its voters to separately elect the secretary of state, attorney general, treasurer, University of Colorado Board of Regents, and the state board of education. Thus, when considering appointments to major state agencies, including but not limited to K-12 education, corrections, and health, Colorado's governor is powerful, but not exceptionally so.

Political Context

Historically, the political environment of Colorado was moderate to conservative, leaning toward the Republican Party, until the 21st century. Beginning in the 1970s, divided government

[270] http://www.ncsl.org/research/fiscal-policy/the-power-of-the-purse-legislatures-that-write-st.aspx, accessed 6/28/18.

[271] https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkxMS04YmJhNjBlNWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crid=5a478a24-6041-4ccf-8eb6-8d4667004eb3&prid=22101207-4be6-491b-a7f5-b46c8685cfb8, accessed 6/28/18.

[272] "The state shall not contract any debt by loan in any form, except to provide for casual deficiencies of revenue, erect public buildings for the use of the state, suppress insurrection, defend the state, or, in time of war, assist in defending the United States; and the amount of debt contracted in any one year to provide for deficiencies of revenue shall not exceed one- fourth of a mill on each dollar of valuation of taxable property within the state, and the aggregate amount of such debt shall not at any time exceed three- fourths of a mill on each dollar of said valuation, until the valuation shall equal one hundred millions of dollars, and thereafter such debt shall not exceed one hundred thousand dollars; and the debt incurred in any one year for erection of public buildings shall not exceed one- half mill on each dollar of said valuation; and the aggregate amount of such debt shall never at any time exceed the sum of fifty thousand dollars (except as provided in section 5 of this article), and in all cases the valuation in this section mentioned shall be that of the assessment last preceding the creation of said debt."

[273] https://ballotpedia.org/File:Colorado_exec_org_chart.png, accessed 4/19/18.

was common, but then the state began to swing from control by one political party to the other. For example, from 1999 to 2000 and 2003 to 2004, the Republican Party controlled the governorship and both houses of the legislature, and from 2007-2010 and 2013-2015 the Democrats did.[274] The state is currently known as a purple state and very competitive (Haider-Markel 2009, p. 393). Yet, the state is still considered politically moderate. The current governor, John Hickenlooper, is a Democrat, and Democrats control the house while the senate is controlled by Republicans.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The state auditor is a constitutionally created position that heads the Office of the State Auditor (OSA), which was created in 1965 (CO. Const. Art. V, Sec. 49).[275] The OSA has approximately 75 non-partisan staff members and a 2015 state appropriation of $7.3 million to fund its work.[276] During 2018 it produced 50 reports of which 13 were listed a performance audits, while 31 were described as financial audits.[277] It reports to and is governed by the Legislative Audit Committee (LAC) and its head, the state auditor, is appointed by the legislature. This committee, which plays a crucial role in the oversight process, consists of four representatives and four senators with equal representation from the two major political parties.[278] The LAC is responsible for making a recommendation to the general assembly for the appointment of the state auditor for a five-year term. The LAC is also responsible for approving audit requests from the legislature and governor's office.

The state auditor must be a Certified Public Accountant (CPA) licensed in the state of Colorado. The current state auditor, Dianne Rey, has been recognized as Colorado's top administrator in 2015, received the President's Award from the National Association of State Auditors, Controllers, and Treasurers (NASACT) in 2014, the National Legislative Program Evaluation Society's Excellence in Evaluation Award in 2013, and was head of the office when it was recognized for producing two exceptional reports by NASACT, once in 2011 and once in 2014 (Bunch, 2015).[279] Colorado's analytic bureaucracy is noteworthy for its recommendation compliance rate, its recommendations that result in statutory change, and its auditing process, which requires mutually supporting interactions between the legislature and the analytic bureaucracy at key steps in the auditing workflow.

The authority of the state auditor is outlined in Section 2-3-103 of the Colorado Revised Statutes (CRS).[280] According to its website, the "Office of the State Auditor has broad authority to conduct performance, financial, IT audits of all state departments and agencies, public

[274] https://ballotpedia.org/Party_control_of_Colorado_state_government, accessed 6/28/18
[275] https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkxMS04YmJhNjBlNWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crid=5a478a24-6041-4ccf-8eb6-8d4667004eb3&prid=22101207-4be6-491b-a7f5-b46c8685cfb8, accessed 6/28/18
[276] http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf, accessed 4/19/18.
[277] https://leg.colorado.gov/sites/default/files/2018_annual_report_final_8-21-2018.pdf, accessed 12/25/18.
[278] https://leg.colorado.gov/committees/legislative-audit-committee/2016-regular-session, accessed 4/19/18.
[279] https://www.nasact.org/accountability_awards, accessed 5/7/18.
[280] https://law.justia.com/codes/colorado/2016/title-2/legislative-services/article-3/part-1/section-2-3-103, accessed 6/26/18.

colleges and universities, the Judicial Branch, most special purpose authorities, any state entity designated as an enterprise, and other political subdivisions as required by law."[281] Section 2-3-107(2)(a), C.R.S., provides the state auditor or designated representative "access at all times…to all of the books, accounts, reports, vouchers, or other records or information in any department, institution, or agency." In addition to this access, section 2-3-107(1), C.R.S., grants the LAC the power to subpoena witnesses, documents, and records, and to take testimony under oath.

The main work product of the OSA is the agency audit and the recommendations embedded within. The OSA is responsible for oversight over all state agencies, general audits, financial audits, and single audits. Audits may vary in scope based on the agency and the purpose of the audit. Agency audits include fiscal affairs and performance of the agency. During fiscal years of 2012 through 2016, which encompasses July 2011 through June 2016, the OSA made 2,224 financial, performance, and information technology audit recommendations to state agencies and other audited organizations. The OSA tracks the status of all recommendations to hold these entities accountable and to provide information to policy makers and the public.[282] OSA received commitments for implementation of 99% of these recommendations. As of October 2017, audited organizations had implemented 96% of the recommendations they had agreed to adopt. The *Annual Report: Status of Outstanding Audit Recommendations* was distributed to all eight legislators serving on the LAC and included a section on actions needed by the legislature to encourage agency compliance with the 4% of outstanding audit recommendations. As part of the report, the state auditor suggests that legislators on the "committee of reference" for the non-compliant agencies ask why the audit recommendations have not been implemented. In addition to recommendations to the audited agency, the OSA makes recommendations to the legislature for statutory change. For example, the 2017 OSA Annual Report cites six bills sponsored and six bills enacted as a result of audit activity.

Although Colorado's legislative session is limited to 120 days, minutes posted on the LAC website show that committee hearings are ongoing, with a break in April and May. For the year of 2017, there were 12 hearings (see "LAC 2017 Minutes"). Audio recordings of four hearings from 2017 indicate that legislators actively question auditees, OSA staff, and other actors included in the hearing. Interviewees typify legislative involvement as generally interested in the improvement of government performance rather than attempting to score political points. They note that it is typical for an outgoing legislator to express gratitude for serving on a bipartisan committee that fosters collaboration and provides objective solutions for improving government performance (interview notes, 2018).

Tracing the audit process in Colorado reveals a relationship between the LAC and OSA that ensures audits are relevant to legislative priorities, grants a level of participation to legislators in the process, and ensures there is an end user of the reports. The OSA's workflow ensures a high level of legislative participation at every step, from initiation to audit recommendation follow-up. There are four sources of an audit's initiation; 1) as required by federal law or statute; 2) citizens; 3) legislators, and; 4) the governor. Audits required by law or statute are put on the OSA work plan for assignment to an available audit team without any additional scrutiny. Requests by citizens are conducted at the sole discretion of the state auditor. Requests by legislators or the governor must be submitted according to LAC rules, which require the request to be written on the official's letterhead, signed by the official, and given to the state auditor. According to experts, often these requests are preceded by an informal conversation with

[281] https://leg.colorado.gov/agencies/office-state-auditor/about-us, accessed 6/26/18.
[282] https://leg.colorado.gov/sites/default/files/osa_11-13-17.pdf, accessed 4/19/18.

the OSA to determine whether any audits in process might have answers to their questions or clarify the purpose of the audit. Interviewees say that in some cases the intent is purely political and would have very little merit in the accountability environment. In such cases the requestor is often persuaded to pursue another course. Once a request is made, the state auditor must seek approval from the LAC to conduct initial research to determine the reasons for the audit and its feasibility. After the initial research, the OSA submits the findings to the LAC. Section 2-3-108 requires a majority vote of the LAC to proceed with performing the audit. Experts say that the process is objective and rarely used to play politics (interview notes, 2018).

Once initial research is completed, and the LAC approves the creation of an audit, then an audit team develops an audit plan, conducts field work and produces the audit report. The audited agency participates in all phases of the audit. A completed audit will list recommendations with responses from the audited agency and the agency's planned actions, if any, to meet the recommendations, including an implementation date. Experts point to negotiation and collaboration in the audit process as an explanation for the high rate of agreement in recommendations, around 99%. The LAC is not involved in the production of the audit. Sections 2-3-103(2) and 2-3-103.7(1), C.R.S. prohibit public disclosure during the audit process—only the OSA and the audited agency are allowed access to the report while it is being produced.

Once a final audit document is completed, a copy is given to the LAC and the audited agency in advance of the LAC hearing in which the document is made public. At the hearing, the OSA presents its conclusions, findings, and recommendations to the LAC. The audited agency is included at the hearing to respond to the recommendations and findings. The OSA may recommend statutory changes or the auditee may appeal to the LAC to sponsor legislation in order to meet an audit recommendation. A performance audit takes from "9 to 11 months to complete," according to the OSA website. However, due to high demand, in particular legislator-initiated requests, there is an 18-month backlog for performance audits.

The OSA uses multiple strategies to ensure its reports are used and relevant to the legislature. In November, at the start of the budget process, the state auditor presents the *Annual Report: Status of Outstanding Audit Recommendations* to the Joint Budget Committee (JBC). This presentation documents every state auditor recommendation for the past five years for every agency. It also notes whether the recommendation has been adopted or not. Interviewees liken this document to "your mom and dad getting the report card in the mail—it's not meant to shame anyone, it's just how you are doing at this particular time" (interview notes, 2018). The timing of this presentation (at the beginning of the budget process) is strategic, and it sends a signal to any agency not currently in compliance with recommendations. Experts stated that this practice began in 2014 to add teeth to recommendations and give agency heads a basis for funding requests (interview notes, 2018). As one interviewee said, "[The OSA] wanted to create a pathway that could help departments improve their performance and linking [the OSA's] recommendations into the appropriations process made sense" (interview notes, 2018).

The OSA also sends staff to SMART Act hearings when agencies are not in compliance. SMART requires that, prior to the start of each legislative session, each joint committee of reference hold hearings with each department assigned to the committee with jurisdiction over the agency.[283] The hearing will review the "department's regulatory agenda, budget request, and

[283] Committee assignments pursuant to the SMART Government Act are detailed in a October 23, 2013 Colorado Legislative Council Staff memo addressed to the Members of the General Assembly titled "Committee of Reference SMART Government Act Hearings Appendix A" located at the following link:

any associated legislative agenda," along with its performance plan (Mourik, 2013). SMART hearings also allow the legislative branch to ensure that departments are implementing laws as intended and to learn about planned changes to administrative rules. Experts said that dissemination of OSA audits to legislators has increased since the SMART Act (interview notes, 2018). Before, the OSA thought of its audience as the LAC and legislature, but now the OSA thinks more about the committees of reference[284] and how their reports will be received in these SMART Act hearings. Experts also said that the OSA thinks carefully about whether an audit will have a legislative champion upon completion (interview notes, 2018). In a term-limited state this includes whether a particular champion is likely to be serving by the time the audit is completed. Both the state auditor's presentation and its staff's participation in SMART Act hearings are attempts to leverage the appropriations process to force compliance and hold agencies accountable. These activities will be discussed further in the section below "Oversight Through the Appropriations Process."

The OSA also plays a role in monitoring contracts and procurements. Findings will be discussed in the section below titled "Oversight Through Monitoring State Contracts."

Vignette: The OSA's Performance Audits: Colorado Regional Tourism Act

The performance audit conducted on the Regional Tourism Act illustrates the interactive nature of performance audits, between the OSA, LAC, and legislature broadly. These interactions are formalized in statute. For example, key products of the OSA, the audit plan, and audit publication, must be approved by vote in the LAC. These interactions are mutually supportive, resulting in collaboration between analytic bureaucracy and the legislature. The audit of the Regional Tourism Act illustrates multiple points of interaction.

Projects awarded money through the RTA produced losers as well as winners among communities throughout the state, which attracted attention from legislators curious about how money was being awarded (interview notes, 2018; Asmar, 2015). The enabling legislation, the Regional Tourism Act (RTA) passed in 2009 for the purpose of funding large-scale projects using tax increment financing. The Economic Development Commission (EDC) and the Office of Economic Development and International Trade (OEDIT) were tasked with reviewing RTA applications with the final say on which projects would be funded (RTA fact sheet). As of this writing, the ability for money to be awarded through RTA has expired, no new money has been allocated to RTA. EDC awarded money to five projects, and of those five projects, none are complete and two have not yet broken ground. These projects drew the attention of a group of legislators interested in learning the basis for the awards (interview notes, 2018; Svaldi, 2015). To that end, Democratic Senator Guzman of Denver sought an audit at the March 10, 2015 LAC meeting. Interviewees indicate that this request formed the basis for initiating the audit (interview notes, 2018).

Minutes and audio recordings from the LAC hearing (March 10, 2015) document the LAC's discussion about whether to allow initial research by the OSA into the RTA audit. Both the LAC and OSA participated in these discussions. Senator Guzman is currently the minority leader and chaired the LAC in 2015. In these hearings, Senator Guzman said her purpose "was

https://www.colorado.gov/pacific/sites/default/files/13SMART%20Act%20Hearings%20Overview%20Memo.pdf, accessed 6/26/18.

[284] The committee of reference is the term the Colorado legislature uses to refer to substantive or policy that meet only during legislative sessions. See https://leg.colorado.gov/content/committees, accessed 10/10/18.

to investigate the processes and policies of how the RTA was administrated by OEDIT, and not to single out individual RTA grants." [285] *Of the eight LAC members, seven voted yes and one voted no. The single no-vote was cast by Democratic Representative Ryden of Aurora. Aurora is the site of a RTA project that local community actors tout as a major win for the community. It had already broken ground by 2015. Contemporaneous to the audit vote, the EDC weighed an application for funds to build a convention center, the National Western Center, in Denver. That project was approved on November 12, 2015 (Rupp, 2018; Sirota, 2018). Some sources suggested that the RTA audit was in part motivated by the established hotel industry in Denver (interview notes, 2018). That industry worried that the RTA, specifically the convention center, was being used to pick winners and losers, rather than the original, distributive intent. The discussions on March 10, 2015, focus a great deal on the technical dimensions of the audit in terms of scope and feasibility, particularly on the part of the OSA.*[286] *The political dimensions can only be inferred from the contemporaneous reporting and experts close to the situation. Experts characterized the early stages of the audit initiation as more politically divisive than normal, stating the LAC approval is "typically… a place for the exchange of information and ideas in an objective way where you can improve the function of government" (interview notes, 2018).*

The initial discussion about the audit was not a one-shot, simple interaction between OSA and LAC. Instead, it took several meetings to clarify the audit objectives, discuss important points, and bargain over key outputs. At the LAC hearing on March 30, the state auditor presented the initial audit approach. The state auditor specified that the audit would be forward-looking only, because there are no enforcement mechanisms to collect money already given out. At the subsequent June 1, 2015, LAC hearing, the committee voted unanimously (including Rep. Ryden) to approve the RTA audit. The hearing included some pointed questions from Rep. Guzman to OEDIT regarding the Gaylord Entertainment project in Aurora, Rep. Ryden's district and the site of an RTA project that had already broken ground. The Aurora project was challenged in the courts by the hotel industry and a taxpayer's rights group in separate cases (Denver Business Journal Staff, 2016; Westergaard, 2016; Sirota, 2018). Interviewees suggest the RTA audit was another vehicle to undermine the Aurora project and the Denver convention center (interview notes, 2018). However, the initial hearings about the audit specify that the moneys already awarded to Aurora and the moneys that would be awarded to Denver would not be jeopardized regardless of the audit conclusions. Instead, the initial audit design composed by the OSA and approved by the LAC defined an audit scope that would retrospectively evaluate the award process but would limit any changes to being prospective only. This is a key point that shows that despite the political origins of the audit, it was transformed into a technical audit concerned with the performance of government. Therefore, while it is exceptional for the politics to be so overt in the LAC audit process, the fact that the process itself resulted in an audit that transcended the politics demonstrates the power of the process. While the political jockeying boiled just under the surface, the process, which included the OSA, ensured the objective and technical aspects were ultimately the focus.

Once the initial audit design was approved, the OSA prepared the audit. The audit was made public at a Legislative Audit Committee Hearing on October 30, 2017, 29 months from approval of initial research. Experts state this is likely the result of OSA's significant backlog, since audit reports typically take a maximum of 11 months to complete. Once the audit was

[285] https://leg.colorado.gov/sites/default/files/2015_minutes.pdf, accessed 6/26/18.
[286] https://leg.colorado.gov/sites/default/files/2015_minutes.pdf, accessed 6/26/18.

finalized, the report was given to all parties two weeks before the hearing. All eight LAC members, OSA, OEDIT, and EDC were present at the hearing. All parties were actively involved in discussions. Both the minutes and the audio are available.[287] *Experts indicate that it is typical for both legislators and their staff to be equally familiar with the report (interview notes, 2018).*

The audit found that EDC and OEDIT did not properly administer the RTA. EDC adopted projects that did not have the support of the OEDIT director. Controls were inadequate to ensure that those projects given funding were actually using the money for its intended purpose. OSA recommended adding guardrails for the projects that were funded and recommended that, if any additional funding is allocated to the RTA, it needs to have clear, unambiguous criteria in place to judge the worthiness of a project for funding.

The public presentation of the audit findings at the LAC hearing provided a forum for the auditee, the state auditors, and legislators to discuss policy. Often the legislative intent was discussed—large distributive projects that would attract out-of-state tourists—which was then compared with the projects that were funded. There was sufficient evidence to show that the process could have been improved to rely on better criteria for selecting projects. For example, the incremental state sales tax calculations used by the EDT were greater than the calculations produced by a third-party analyst suggesting the projects were given more financing from the state than appropriate.

In contrast, there was also evidence that the program was an effective distributive policy, which the auditee cited to show that the project attracted tourists who would not have otherwise come to Colorado. Specifically, a survey of out-of-state customers for 500,000 pre-booked hotel nights, which found that 85% said their conference had never been held-in Denver and, without the convention center, would not have been held in Denver (Svaldi, 2017). This claim supports the notion that the RTA awards were in fact distributive and would be a net benefit to the established hotel and tourist interests. Experts close to the issue stated (interview notes, 2018) that the audit found many more indicators of good performance than of bad. At the hearing, OEDIT committed to the recommendations proposed by the OSA in its report. This also gave legislators in attendance the opportunity to consider additional legislation. At the meeting the LAC committed to route the report to several standing committees and to hold a joint meeting with an appropriations committee on the audit findings with the auditee and auditors present.

To produce the audit, OSA met several times with LAC. In these meetings, the auditors and legislators collaborated to define the audit in objective terms. This generated unanimous support for the audit. In subsequent meetings specific commitments were made by the auditees to address deficiencies. OSA is responsible for follow-up to ensure that these recommendations are implemented using two of its standard procedures: the November OSA presentation, which highlights any agencies not in compliance with audit recommendations, and in the yearly review document. In addition, the committee with subject matter jurisdiction over the RTA was notified of the audit findings. One very clear outcome of the RTA is that it killed any talk of additional funds for the RTA and likely killed any similar, future efforts (interview notes, 2018). The interactive process involving both legislators, auditors, and the agency itself facilitated effective oversight of this program.

Colorado's various legislative committees exercise oversight through multiple different government processes, and those oversight activities will be described intermittently throughout the remainder of this discussion. Three committees in the Colorado Legislature -- the LAC, the

[287] https://leg.colorado.gov/committee/granicus/810931, accessed 5/8/18.

Joint Budget Committee (JBC), and the Committee on Legal Services (CLS) -- have substantial oversight responsibilities. All three of these committees are what Colorado calls "year-round committees," which means that they meet even when the legislature is not in session. Oversight actions of the JBC are described extensively in the section on the appropriations process. The CLS oversees administrative rules, which we discuss in a section on that topic. Other committees, for example committees of reference that meet only when the legislature is in session, exercise oversight through the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act (HB 12-1299), reenacted in 2013 (CRS 2-7-101). This bill requires that, prior to the start of each legislative session, each committee with jurisdiction over an agency (the committee of reference) hold hearings with that agency[288] to review the "department's regulatory agenda, budget request, and any associated legislative agenda," along with its performance plan (Mourik, 2013).

Oversight Through the Appropriations Process

Unlike most states, Colorado's legislature has primary budgetary authority (CO. Const. Art. X). The legislature is responsible for a balanced budget and creates a budget independently of the governor. These budgetary powers provide the legislature with knowledge about the agency's performance that facilitates oversight. The JBC is the key legislative budget actor, but the SMART Act involves committees of reference in the appropriations process by granting them a role in their respective subject matter jurisdiction. Specifically, these committees help develop the department's yearly performance plans, which are used by the JBC in the allocation of agency budgets. There are several resources for these key legislative actors that provide information used in oversight through the appropriations process. These are: the state auditor's November presentation on noncompliance, audits routed to committees with oversight authority, public hearings including investigations, SMART Act hearings, and investigative hearings, which include staff of standing committees, field trips to agencies, legislative staff-to-agency staff communication, Requests for Information (RFIs) to the governor's office, footnotes in statutes, and institutional budgeting knowledge provided by joint budget committee staff. Legislative intervention to rein in an agency, which includes the ultimate threat—complete defunding, is often applied through informal relationships, threats to embarrass, technical fixes, and larger political fights over policy. Thus, the Colorado Legislature has a high degree of control over the budget process, and there is evidence that it utilizes this power for legislative oversight.

The JBC, whose members include the appropriations committee chairs in both chambers, is primarily responsible for the management, operations, programs, and fiscal needs of the departments of the state government. The JBC is responsible for drafting an omnibus appropriations bill (called the Long Bill). The budget recommended by the JBC must then be approved by party caucuses in each chamber before moving forward. The house and senate appropriations committees have the power to make amendments. Changes, however, are rare.

[288] Committee assignments pursuant to the SMART Government Act are detailed in a October 23, 2013 Colorado Legislative Council Staff memo addressed to the Members of the General Assembly titled "Committee of Reference SMART Government Act Hearings Appendix A" located at the following link: https://www.colorado.gov/pacific/sites/default/files/13SMART%20Act%20Hearings%20Overview%20Memo.pdf., accessed 6/26/18.

For example, in 2007, there were more than 100 proposed amendments to the budget, but few were adopted.[289] The 2019 fiscal year budget saw 179 proposed amendments in both the house and senate, with only 20 making it into the final budget bill (Wirthman 2018). One of the reasons amendments often fail is a Colorado House Rule that requires any amendments that recommend an increase in the budget to identify a source for funding the increase. This rule is in place to ensure a balanced budget.

The JBC is also responsible for reviewing the gubernatorial budget and holds hearings with each agency prior to the start of the session. This review includes the budget for the judicial branch as well as executive branch agencies. To prioritize budget funds, the JBC reviews the performance plans for agencies to inform budget decisions.

Committees of reference are involved in the budget process by way of the SMART Act. The Act requires any committee with subject matter jurisdiction over an agency to hold a SMART Act Hearing with the agency to review its performance plan and make recommendations for its improvement. SMART hearings allow the legislative branch to ensure that departments are implementing laws as intended and to learn about planned changes to administrative rules. The committees of reference are also notified when agencies have not completed an audit recommendation and when it does not adopt required or authorized rules. The performance plans and the SMART Act hearings are used by the JBC to inform its allocations.

The JBC has significant budgetary powers compared to the rest of Colorado's legislature. There is some concern within the legislature that the six JBC members have too much power vis-à-vis the rest of the chamber. Interviews reveal that this issue triggered various reforms over the years with one common theme: distribute authority for the appropriations process throughout the legislature. Two Republican legislators express this in the editorial provided below.

> Require committees of reference to be briefed, hold hearings about and create departmental budgets for their areas of oversight. These budgets would then be referred to the JBC by a date certain. At present, the JBC and its staff spends time with agency heads discussing proposed budget increases, but they rarely have time to discover whether a particular program is necessary, effective or wisely managed. That job is simply too large, even for the most talented and dedicated six people. The flip side of the current over reliance on the few is an under use of the many; to be more specific, there are scores of Republican and Democrat members whose experience and expertise could be useful to the budgeting process. Among current members are businessmen, financial planners, pilots, farmers, entrepreneurs, homemakers, lawyers, and others whose real-life experience with budgets and departments could ensure the state budget is given the scrutiny and insight it deserves. Their input will ultimately benefit the people of Colorado (Fort Morgan Times Editorials, 2017).

Accurate information is a critical component of legislative oversight. Colorado's legislature relies on a variety of sources of information: the state auditor's annual presentation, as discussed in the section on the analytic bureaucracy, gives a presentation once every year in November at the start of the budget process. This presentation identifies every agency and whether it has met the agreed to recommendations over the past five years. The report that

[289] http://www.ncsl.org/research/fiscal-policy/the-power-of-the-purse-legislatures-that-write-st.aspx, accessed 6/28/18.

accompanies the presentation is called the *Annual Report: Status of Outstanding Audit Recommendations*. Experts on Colorado identified this presentation as a key input because it highlights which audited departments have not adopted audit recommendations and gives something like an over all, “report-card-like” grade for every agency with clear instruction for improvement (interview notes, 2018). It is a ready-made tool for holding the agency accountable for its actions or inaction. Another observer described the presentation as "serving notice to agency heads by giving the legislature at a crucial time information on their performance" (interview notes, 2018).

There are several sources of information in these processes, including: public hearings, including investigatory hearings triggered by an event, SMART Act hearings held by committees to review department performance plans, or LAC hearings on audits; and reports furnished at regular intervals by the agency to the committees of reference.[290]

In contrast to non-budget committee staff, budget staff rely less on reports furnished by agencies. Rather, they are more likely to go to the agencies directly and get what they need. For example, staff field trips to the agency worksite or talking to the department—staff-to-staff—are both considered more common among budget staff. In general, budget staff feels like these informal conversations and site visits provide the information they need about the day-to-day operations of the agency (interview notes, 2018).

Budget staff also relies on requests for information (RFIs) to the governor’s office and the inclusion of footnotes in bills, especially when their information needs require more than informal interaction. A "request for information" or "RFI" consists of a letter sent to the governor’s office. The quality of this information is mixed. In the past, budget staff has had protracted battles, but at some point, the governor learns that cooperation is better. The relationship between the budget staff and the current governor was characterized as good, and the information provided by his office is generally considered to be of good quality (interview notes, 2018). Prior to the practice of RFIs, budget staff relied primarily on writing footnotes or stipulations into bills about how agencies would spend money and specifying required information from the agency. Non-budget committee staff demonstrates little familiarity with footnotes or RFIs. The privileges that budget staff have in making recommendations compared to other staffs were emphasized by the interviewee (interview notes, 2018).

A Colorado Supreme Court decision in the early 2000s determined that this practice was a violation of separation of powers. Since then the legislature has narrowly defined footnotes in statute to meet the court's definition and uses footnotes much less. A recent example of footnotes was an attempt by the legislature to stipulate the number of full time equivalent positions and tie

[290] For example, one budget briefing document states that a change in an agency disbursement cycle from one-year to two-year is accompanied by a requirement that the agency provide information to the relevant committee. The additional information written into statute provides a feedback mechanism and tool for the committee with jurisdiction over the agency to ensure the agency complies with legislative intent of the change in the disbursement cycle. This requirement for an agency update appears to be a typical pattern (interview notes, 2018). In this particular case, the intent was to allow well capping contractors to work through June 30 to July 1 without having to shutdown, which is required by procurement rules, thus saving in some cases $10,000 or ¼ of a given project’s cost by avoiding shut downs. Sources have indicated that reports written into legislation are somewhat common and help committees of reference keep tabs on agency activity. But, one source also said that they are not sure who is reading many of the reports furnished by agencies to the committee. Moreover, they expressed uncertainty about the use made of these reports (interview notes, 2018).

them to a dollar figure. The governor has not cooperated with the legislature's desire for FTE information and instead provides information using the dollar figure (interview notes, 2018).

In addition to RFIs, footnotes, conversations with agency staff, and field trips, interviewees identified broad institutional knowledge as a major source of information for budget staff. Budget staff members, in many cases, don't feel like they need much or any additional information from agencies (interview notes, 2018). Instead, they rely on experience or knowledge of past budget formulae or prior expenditures for a given agency to make most general determinations.

We are told by sources that the differences between budget staff and non-budget staff are not only reflected in the sources of information they rely on, but some sources indicate that the difference is codified in statute, while others say that it is simply a difference in practice, as well. The 13-budget staff and their director are the only staff who can make recommendations to the legislature about proposed legislation. Other legislative staff is barred from doing so[291] (interview notes, 2018).[292]

Some legislative oversight through the appropriations process relies on technical fixes rather than sweeping reform. The latter appears to be the purview of the standing committees. For example, in response to 14 explosions and four deaths resulting from petroleum and gas wells and well lines improperly inactivated, the funding for orphaned wells was changed. Capping of orphaned wells had not caught up with demand as more and more wells were being

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[291] We are told by one source that the difference is statutory and we await the statute. Another source suggests the statute might be 2-3-204, which the first source rejects. The second source doubts the existence of a statutory basis for the difference and suggests that it is the result of cultural, functional, and organizational differences between staff. Furthermore, this source posits that there are four kinds of staff: audit, budget, committee of reference, and legal. Audit and budget make recommendations on proposed bills as a matter of function and the respective committees, Legislative Audit Committee and Joint Budget Committee, rely on them to do so, e.g. recommending a bill to address an audit issue or providing fiscal analysis on a bill. Whereas legal and committee of reference staff do not, the former is prohibited by statute (2-3-5053) from lobbying and only their involvement on the statutory revision commission allows them to make recommendations dealing with defects and anachronisms in law while the latter does not have a statute barring them, there are fewer opportunities.

[292] (1) The committee shall interview persons applying for the position of staff director as to qualifications and ability and shall make recommendations thereon to the executive committee, which shall appoint the staff director as provided in section 2-3-303 (3). The staff director shall be responsible to the committee for the collection and assembling of all data and the preparation of reports and recommendations. The staff director shall also be responsible for preparing for consideration by the committee analyses of all requests for funds. With the approval of the committee, the staff director may appoint such additional professional, technical, clerical, or other employees necessary to perform the functions assigned to the committee. The staff director and such additional personnel shall be appointed without reference to affiliation and solely on the basis of ability to perform the duties of the position. They shall be employees of the general assembly and shall not be subject to the state personnel system laws. The committee shall establish appropriate qualifications and compensation for all positions. With the consent of the committee, the chairperson may contract for professional services by private consultants as needed.

https://advance.lexis.com/documentpage/?pdmfid=1000516&crid=a7d3b6c2-b0ba-44a3-94b3-bc7778bc8ce8&nodeid=AACAADAABAACAAE&nodepath=%2FROOT%2FAAC%2FAACAAD%2FAACAADAAB%2FAACAADAABAAC%2FAACAADAABAACAAE&level=5&haschildren=&populated=false&title=2-3-204.+Staff+director%2C+assistants%2C+and+consultants&config=014FJAAyNGJkY2Y4Zi1mNjgyLTRkN2YtYmE4OS03NTYzNzYzOTg0OGEKAFBvZENhdGFsb2d592qv2Kywlf8caKqYROP5&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5T3S-CJD0-004D-115D-00008-00&ecomp=-Jh89kk&prid=f28f27e0-c83d-44f9-8289-328c8cbbfdb6, accessed 10/10/18

abandoned due to energy price declines. A staff budget briefing argued for spending of funds for well capping over a two-year period.[293] This would facilitate paying contractors for this work. Interviewees described this as a technical fix--a legislative action through the appropriations process that improved government efficiency with no cost or fanfare. In contrast, Matt Jones, member of the Senate Agriculture, Natural Resources, and Energy Committee, is seeking wider and sweeping changes in what he calls the "Protect Act." This reform has largely failed at the time of this writing (Fryar, 2017). We will discuss these attempts further in the section "Oversight Through Committees."

Interviewees pointed to the broad and overall authority of the legislature over the purse strings and the informal ways this power is leveraged to induce compliance from an agency (interview notes, 2018). Good working relationships provide channels to resolve disputes over forecasting and budgeting. But interviewees reported that these good working relationships could stop if the executive didn't respect legislative prerogatives. One interviewee described the legislature's role with respect to the other branches in very clear terms:

> Think of it like the kid coming to his dad for a candy bar. Dad decides whether he gets one or not. The kid is probably going to approach his dad some different ways to get a candy bar but will learn that asking nicely is the way to do it (interview notes, 2018).

Moreover, these fights are rarely out in the open because public image plays a crucial role in the process. Informal negotiations that avoid embarrassment typified these conflicts (interview notes, 2018). The relationship is reciprocal. For example, while the legislature doesn't have to consider the governor's budget priorities, the legislature generally does so to maintain good working relationships (interview notes, 2018).

Oversight Through Committees

As previously discussed, other committees, including committees of reference, have oversight authority established by a joint resolution, JR 25b and through the processes established by the SMART Act. In contrast to the informal relationships and behind the scenes negotiation that characterize oversight through the appropriations process, other committees appear to take a more assertive approach, using public funding battles to induce agency compliance, even defunding programs. Media reports on defunding of the Colorado Energy Office by the legislature illustrate this approach (interview notes, 2018). As report in the Grand Junction Daily Sentinel:

> Because of policy disputes from both sides of the political aisle last year, the office was allowed to expire without new funding. Democrats wanted the office to continue to focus on promoting renewable energy, while Republicans said it shouldn't turn its back on traditional energy sources (Ashby, 2018).

[293] https://leg.colorado.gov/sites/default/files/fy2018-19_natbrf2.pdf, accessed 5/8/18.

Media describe a similar fight over defunding the Colorado Civil Rights Commission (CCRC) (Olabi, 2018a). The Joint Budget Committee voted to withhold funding pending a sunset review, the first of which was held February 13, 2018 by the House Judiciary Committee. Legislative oversight of the Civil Rights Commission reflects a hot-button, culture war political fight that originated from the Commission's decision to require a baker to make a cake for an LGBT couple and the political fury that ensued. Defunding, the intended use of the sunset, and a sharp confirmation vote—described in the section on gubernatorial appointments—demonstrate politically motivated oversight rather than bipartisan efforts to improve program efficiency or effectiveness.

Committees of reference, as well as other committees, gather information through questions at hearings posed by legislators to agency staff, statutory reports the agency is required to provide the legislature, and research produced by legislative staff. Questions at hearings arise from both staff input and legislative interest/initiative rather than from information in statutorily mandated reports (interview notes, 2018). As we noted above, these reports were not seen as a tool for appropriations staff to use in legislative oversight. Additionally, we found no indication that these reports were used by budget staff (interview notes, 2018).

Vignette: Oversight by a Committee of Reference: The Colorado Oil and Gas Conservation Commission

A current controversy over pipeline safety typifies how complicated and intense oversight by standing committees can be. An explosion on April 17, 2017 killed two people and injured two others. In response to this accident, two committees are reconsidering longstanding regulations governing orphaned wells. The explosion was caused by natural gas leaking from a well line six feet from the home (CBS Denver, 2017). The tragedy increased public attention on the dangers posed from leaking gas lines, not just to the homes and families who live in them, but also the environmental impact the lines pose to soil and water—a threat that could endanger thousands (Finley, 2017). In the wake of the explosion, the agency tasked with regulating the oil and gas industry, the Colorado Oil and Gas Conservation Commission (COGCC), ordered companies to identify and test all pipelines near occupied structures (Elliott, 2017).

In 2016, the COGCC deployed a team of three to monitor the thousands of miles of lines connected to 53,000 active wells and 36,500 inactive wells, including auditing companies' internal records (Finley, 2017). The April 2017 explosion fueled public pressure to publish the location of flowlines. The COGCC advocates updating the standards for designing, testing, permanently shutting down flow lines, and reporting the location of flowlines to the 811 number that property owners can call to have underground line locations flagged in advance of digging. The governor argues that making public a map showing the location of flow lines would be too dangerous, citing the risk of terrorism and thieves (Associated Press, 2018).

Legislators have deferred to COGCC and the executive branch, allowing them to address the hazards produced by the oil and gas industry. But, COGCC knows legislators are monitoring the issue, with the intent to draft legislation. The split legislative chamber has stalled the long overdue regulatory action (interview notes, 2018). These divisions within the legislature are urban and rural, rather than partisan (interview notes, 2018).

A hearing[294] held on March 7, 2018, by the Senate Agriculture, Natural Resource, and Energy, on HB18-1071, illustrates the current political divisions and coalition formation.[295] HB 1071 seeks to codify an appellate court ruling charging COGCC to prioritize environmental concerns rather than balancing environmental and commercial interests, as it has in the past. Various interests including commerce, resource extraction, workers, mineral rights, and residents who live near wells and well lines testified in opposition to the bill.[296] They cited economic benefits, the overall safety or lack of evidence of environmental harm, and the technological achievements made possible by fossil fuels. Proponents of the bill included the interests of the environmental, school children, and residents living near wells and well lines. These groups cited the health impacts of chemicals released, the danger to public water, the violence done by explosions, and danger to the public health. The committee chair, a Republican, sought to enforce a rule that would exclude references to the explosion, which led to a shouting match between himself and one of the proponents, a resident living near a well and well line (Olabi, 2018c).

Democrats hold the majority in the house, including the Agriculture, Livestock, and Natural Resources Committee with oversight responsibility of COGCC that passed HB18-1071. Republicans hold the majority of the Senate Agriculture, Natural Resource, and Energy Committee responsible for COGCC oversight, which held the hearing on March 7, 2018. This particular hearing is emblematic of the politics on this issue (interview notes, 2018).

As these examples illustrate, Colorado's committees of reference may be actively involved in oversight, but the quiet resolution of issues through relationships that typify budget negotiations can be replaced by partisan battles, citizen activism, interest group pressures, and contention interactions. Moreover, oversight by these committees often resembles fire alarm rather than police patrol monitoring.

Oversight Through the Administrative Rules Process

Administrative rule review is authorized through the State Administrative Procedure Act (APA), which provides the legislature with authority over executive rulemaking. Administrative rules are effective for only a limited time, expiring annually on May 15, unless they are included in the legislature's annual "rule review bill," which must pass both chambers and be signed by the governor. This annual piece of legislation allows for the continuance of selected agency rules.

To initiate the rule formulation process, executive agencies are required to submit newly adopted or amended rules to the Office of Legislative Legal Services (OLSS) (CRS 24-4-103), a non-partisan support agency that provides legal counsel to the entire legislature. OLLS takes direction from and works closely with the Joint Committee on Legal Services (CLS), which has 10 members, five from each chamber. CLS reviews rules to determine if they fall under the rulemaking authority of the agency and tracks legislation that requires new rules, notifying the sponsor of the legislation when the rules have been adopted.

[294] http://coloradoga.granicus.com/MediaPlayer.php?view_id=39&clip_id=12167, accessed 6/19/18.
[295] Audio link to Colorado General Assembly Agriculture, Natural Resources, and Energy hearing held March 7, 2018; http://coloradoga.granicus.com/MediaPlayer.php?view_id=39&clip_id=12167, accessed 6/19/18.
[296] http://coloradoga.granicus.com/MediaPlayer.php?view_id=39&clip_id=12167, accessed 6/19/18.

Agencies adopt rules and send them to the attorney general, who may reject them on constitutional or legal grounds only. The attorney general then files them as final. The agencies then have 20 days to submit them to the OLLS. The OLLS reviews each rule promulgated by an executive agency. If there is an issue with a rule, OLLS contacts the relevant agency for an explanation of the rationale for the rule. If the explanation by the agency is acceptable, the rule stands. There are two options available if the explanation is not acceptable. First, the agency may agree that there is a problem and start a separate rulemaking initiative. Second, if the agency believes that the rule is valid, it opts for a hearing before the JCLS. If rules are found to be improper, they will be identified in the rule review bill introduced in the next legislative session as rules that should not be continued. Rules with problems will be set for expiration on May 15 of each year. As noted above, JCLS introduces the rule review bill annually in both chambers to extend rules that are within the statutory authority of the agency. Rules that are outside of agency authority or conflict with the law or inconsistent with changes in statutes are allowed to expire. The agency determines the next course of action when a rule expires. The expiration of a rule can cause a gap and may result in non-compliance with statute. In general, they choose to promulgate a new rule to address the issue. According to an interviewee, "sometimes, the agency chooses to take no action, either because it leaves a 'clean' hole or some other reason" (interview notes, 2018). A "clean" hole means that the entire rule related to something that the agency does not have any rule making authority over and the entire rule does not get extended. This would leave nothing stranded in the rule. However, if the rule is supposed to address issues (a) through (e) and it only addresses issues through (d), due to a "sin of omission," that's not a clean hole, and they have to create a new rule to comply with the statute.

In circumstances where gaps may occur due to administrative rules not being authorized, agencies do have the option to adopt a temporary or emergency rule (CRS 24-4-103 (3a) (6)). Emergency rules are allowed to stay in effect for 90 days. If the emergency rule expires prior to the agency adopting a permanent rule or a second emergency rule adoption, the expired emergency rule is removed leaving nothing in its place.

Only occasionally will the OLLS contact agencies regarding issues with rules. The estimate given was less than 15% of rules require contact with the agency. Sometimes the person responsible for reviewing the rule misunderstood and overlooked something. Sometimes the agency is complying with a federal requirement that may require interpretation. The interviewee indicated that "in a significant number of cases, the agency ultimately agrees, and if there's enough time they will try to fix it before [the OLLS] move[s] forward to the public hearing" (interview notes, 2018).

Oversight Through Advice and Consent

The senate is responsible for confirmation of gubernatorial appointments unless the specific office is constitutionally or statutorily exempt from confirmation. The governor appoints most, but not all, department heads, as well as hundreds of seats on commissions and boards, most of which require senatorial confirmation. As noted in the political context discussed at the outset of this discussion, the heads of the budget, economic development, energy, elections, information systems, and planning departments are exceptions that do not require confirmation by the senate (Council of State Governments, 2014).

The recent split in control of the house and senate produces some tension in the appointment process. As previously mentioned, the CCRC has drawn political attention. Animus grew when, due to a reporting error, Commissioner Heidi Hess, an LGBTQ rights organizer, was erroneously identified as the business representative to the board. Despite having served and been confirmed every year since 2013, she was not confirmed in 2017 on an 18-17 vote with Republicans citing objections from the business community that she was being appointed to their seat on the board. Democrats argued, to no avail, that she wasn't the business representative, that this was a website error that had been corrected (Sealover, 2017). In the ensuing maneuvering the governor refused to nominate a replacement, allowing Hess to continue as commissioner. A 2018 bill to address the dispute was drafted. It sought to prevent the governor from appointing an individual to a state office if the appointment is rejected by the senate (Olabi, 2018b). SB43 says if a person has a negative confirmation vote, the governor can't reappointment them, even during a recess, and that the pick cannot serve even temporarily while a replacement is being found (Olabi, 2018d; Olabi, 2018b). The CCRC was reauthorized in a compromise bill at the end of the 2018 session by HB 18-1256. The bill adds another business representative to the commission, balances party membership, and ensures that a rejected gubernatorial appointment has no authority to act on the commission (Brasch, 2018).

Conflicts between the executive and legislative branches over when a non-confirmed appointee can act predate the current split government. The senate failed to confirm a gubernatorial appointment to the Water Conservation Board when members of the same party split over whether to conserve water in the Rio Grande Basin or prioritize access to water for the growing population on the Front Range (interview notes, 2018). The governor appointed, during the recess, the candidate the senate blocked. Although the newly appointed commissioner attempted to participate in these controversial issues, the water conservation board specified under section 3760-104, subsection 1, "member of a board may not vote until they are confirmed." This effectively blocked a board member's vote. This regulation reflects a longer running effort to rein in the power of the executive branch (interview notes, 2018).

These incidents combined with the proposed legislation to limit gubernatorial recess appointments indicates that the Colorado Senate exercises its oversight prerogatives with respect to gubernatorial appointments much more vigorously than many state legislatures do.

In Colorado, the governor can use executive orders to manage emergency situations, to reorganize government, to fill vacancies, and to influence policy. During 2018, Governor Hickenlooper issued an executive order to prohibit the separation of children from their parents or legal guardians based on immigration status. The legislature has not power to review these orders other than to pass legislation prohibiting the governor's orders, and if the governor vetoed such legislation, try to override his or her veto.

Oversight Through Monitoring of State Contracts

The legislature does not have oversight over state contracts with vendors, although the legislature or its auditors could, as in other states, choose to examine contracts. The Office of State Purchasing and Contracts under the Office of the State Controller is responsible for coordinating the purchasing process, including bids for contracts. The only aspect of contracts that has any legislative oversight deals with personal services contracts. Each department must report annually information on personal services contracts to the standing legislative committees

of reference in each chamber of the general assembly with oversight responsibilities for the department (CSR 24-102-205(7)). This type of oversight is an effort to maintain the integrity of the civil service system.

The 2017 annual report of the Office of the State Auditor indicates that the legislature is actively using the limited contract oversight mechanism that is in place to monitor the procurement process of state agencies. An example can be found in the *2017 Office of State Auditor Annual Report*. As a result of a legislative request, the OAS completed a performance audit of the process for contracting services and for personnel selection in the Department of Human Services. The audit revealed that the department did not adhere to the Procurement Code,[297] procurement rules, or its own established process for half of the RFPs audited. The OAS made three major recommendations and the Department of Human Services agreed to comply.

Oversight Through Automatic Mechanisms

Colorado was the first state to use sunset provisions in 1976. States can use different forms of sunset review: comprehensive review, regulatory reviews, selective reviews, and discretionary reviews. Baugus and Bose (2015) classify Colorado as a state with regulatory sunset reviews of agencies, boards, and government functions. A sunset review in Colorado is scheduled by the legislature, which sets a date on which an agency, board, or function of government will cease to exist unless its life is explicitly extended. The current list of scheduled sunset reviews includes nearly 150 entities and functions scheduled for review during the next decade.[298] Among the entities currently scheduled for review are the Public Service Commission and the Gaming Board. Most of the reviews are of specific licenses for professional groups, however.[299] The sunset review is conducted by the Colorado Office of Policy, Research, and Regulatory Reform (COPRR)[300] prior to the sunset date that the legislature set. COPRR is a division under the Colorado Department of Regulatory Affairs (DORA), an executive branch agency responsible for ensuring a fair and competitive marketplace and consumer protection. COPRR is specifically responsible for regulating professions, occupations, and businesses, sunset, and sunrise review. COPRR issues an annual advisory report on the agencies, boards and functions it has reviewed. This report is sent to the Executive Director of DORA and to the legislature with findings and recommendations for termination or continuation of reviewed agencies, boards, or regulations. Based on sunset reviews, the legislature must pass a bill that lists the entities and functions it wants to retain. Those not listed are terminated on their sunset date.

Other sunset reviews are completed by the legislative committees of reference. Colorado state law provides criteria to assess whether a public need exists for an agency to continue. These sunset provisions provide an opportunity for legislators to challenge the existence of boards and commissions for reasons that might be political rather than evidence-based oversight. For example, Republicans in the Colorado Senate, some of whom object to the mission of the state's

[297] https://www.colorado.gov/pacific/sites/default/files/Unofficial%20Procurement%20Code%20and%20Rules%2008-18-2009.pdf, accessed 6/26/18.
[298] https://www.colorado.gov/pacific/dora-oprrr/node/143201/, accessed 7/17/18.
[299] https://www.colorado.gov/pacific/dora-oprrr/node/143201/, accessed 7/17/18.
[300] https://www.colorado.gov/pacific/dora-oprrr/coprrr-sunset-reviews, accessed 6/28/18.

Civil Rights Commission (CRC), are using a variety of oversight tools, including sunset reviews to restructure this commission. On February 7, 2018, the Joint Budget Committee used the appropriations process to defund the commission starting July 1, 2018 (Goodland, 2018b). Republicans argued that their vote to defund was actually for the purpose of reforming the commission through the sunset review process (Roberts, 2018). Democrats, who control the house, argue that it is inappropriate to defund a commission just because you disagree with its mission. Republicans counter that the commission is likely to survive the sunset review, but they seek to change how it operates including making it more business friendly and changes to the process of selecting civil rights commissioners. A subsequent funding measure for the Civil Rights Commission did pass both chambers, granting a year of funding in what would be considered a phase-out year unless reauthorization was granted during the sunset (Herrick, 2018). The House Judiciary Committee passed a clean reauthorization bill for nine years and did not include any of the sunset review recommendations, for example increasing the minimum penalty from $50 for the first violation to $5,000 (Goodland, 2018a). Both Republicans in the house and senate pushed for additional changes. Ultimately, a compromise was reached on the last day of session, business would get a stronger voice on the commission, the governor would not be able to reappoint a person already rejected by the senate, and the Civil Rights Commission would be reauthorized for nine years saving it from a phase-out year in 2019 (Paul, 2018).

The COPRR is also responsible for completing a sunrise review of requests for new regulations, boards, or other entities. The creation of a new regulatory board must be justified with a benefit-cost analysis, along with any additional information that can justify and support a new board. As noted earlier in this discussion, Colorado also uses sunrise review for administrative rules.

Methods and Limitations

For Colorado, out of the 19 people that were contacted, 14 people were interviewed. For committee hearings, agendas in both chambers are typically available and audio appears to be always available.[301] Live and archived video as well as agendas are available for floor debates in both chambers.[302] The Legislative Audit Committee is required by statute to keep minutes, though, it appears other committees either rarely or do not publish meeting minutes.[303] There is no indication that transcripts are available online. There is no video for the Legislative Audit Committee or for the committees in the house or senate (interview notes, 2018).

[301] https://leg.colorado.gov/watch-listen, accessed 12/18/18.
[302] https://www.coloradochannel.net/watch-meetings/#, accessed 12/18/18.
[303] https://leg.colorado.gov/sitewide-search?search_api_views_fulltext=minutes, accessed 12/18/18.

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Legislative Oversight in Connecticut

Capacity and Usage Assessment

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

Summary Assessment

Our review of legislative oversight in Connecticut suggests that the state's general assembly is reasonably successful in monitoring and restraining the state's executive branch, particularly through the formal oversight mechanisms at its disposal. Much of this oversight appears to be conducted directly by professional staff members performing statutorily-mandated tasks under the general direction of the legislature—notably within the Office of the Auditors of Public Accounts (APA), as well as by legal staff attached to the Joint Legislative Regulation Review Committee (LRRC), and by the fiscal analysts for the Appropriations subcommittees. Connecticut's relatively short legislative sessions are likely to reduce the opportunities for committee members to conduct the type of in-depth oversight that the general assembly's analytic resources might potentially offer. Conversely, the cooperation that occurs between the chambers through the general assembly's joint committee system may explain—at least in part—the extent to which meaningful oversight of a strong governorship actually does take place. Additionally, the system of dual auditors, one appointed from each political party, decreases the risk of lax monitoring and oversight during periods of one-party control of both the legislative and executive branches of the state's government.

Major Strengths

Connecticut continues to be a leader in experimenting with good government reforms. It is currently involved in a multi-year experiment with Results-based Budget Accountability (RBA). This program emphasizes information about whether state programs make people better off. It currently is used systematically in agency budget requests and legislative budget decisions. The Joint Legislative Regulation Review Committee (LRRC) has balanced partisan membership with co-chairs from each political party. This committee uses this authority fairly regularly to force agencies to revise or withdraw rules. All permanent committees are joint committees bringing together members across chambers.

Challenges

Connecticut's audit agency, the Auditor of Public Accounts (APA), employs nearly 100 auditors, but yet conducts few performance audits. Most of the APA's audit efforts concentrate on fiscal audits rather than performance audits. Until recently, the Joint Legislative Program Review and Investigations Committee conducted reviews of state programs. But this committee was terminated in 2016. Furthermore, in 2017 fewer than 50% of APA's nearly 400 audit recommendations were implemented. The LRRC is supposed to review all rules every seven years. In practice, it appears that this does not occur. Connecticut's legislature lacks formal authority to review state contracts, but it has effectively, albeit infrequently, used special audit investigations of agencies involved in these contracts to insert itself into contracting problems.

Relevant Institutional Characteristics

Despite its short session length, Squire (2017) ranks Connecticut's General Assembly as the 13th most professionalized legislature in the country. The duration of the general assembly's regular session is roughly five months in odd-numbered years (in which the state's biannual budget is prepared), and approximately three months in even-numbered years.[304] Legislators' "[s]alaries range from $28,000 for rank and file to $38,689 for Senate President and House Speaker".[305] Legislators are not term-limited.[306] As of 2015, the general assembly had 590 total staff members, 465 of whom were permanent staff.[307] All standing committees, called permanent committees of the Connecticut General Assembly, are joint committees. Occasionally, select committees are formed to address a specific issue. These select committees are time-limited rather than permanent.

According to Ferguson (2015) the Connecticut Governor's office has the 8th strongest institutional powers in the country, based on data from the Book of the States. Ferguson finds that the Connecticut governorship's institutional powers are particularly strong in its "veto power", "tenure potential", and appointment powers; its budgetary and "party control" powers, however, are less extensive. The governor possesses the line-item veto; a 2/3rd vote of both legislative chambers is required to override any gubernatorial veto. During the Connecticut General Assembly's 2018 Session, the governor vetoed 7 of the 207 bills passed. One such veto was overridden by the house, but the senate failed to do the same.[308] Connecticut is one of the 24 states that have no gubernatorial term limits. The governor nominates almost all top department and agency executives, most of whom require confirmation by the general assembly.

Connecticut is a geographically small, densely populated New England state with a relatively small state bureaucracy. As of 2004, 10.7% of the state's workforce was employed by either state or local government—the 17th lowest percentage among the 50 states (Edwards,

[304] https://ballotpedia.org/Connecticut_General_Assembly, accessed 5/8/18.
[305] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 5/8/18.
[306] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 5/8/18.
[307] http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf, accessed 5/8/18.
[308] https://www.ctnewsjunkie.com/archives/entry/20180625_general_assembly_fails_to_override_any_of_malloys_7_vetoes/, accessed 7/18/18.

2006).[309] Despite a relatively low state unemployment rate of 4.9%, the state has a substantial budget deficit, with extensive debt and severely underfunded state pension funds.[310] Consequently, Connecticut's credit rating has been downgraded in recent years by three of the four major ratings agencies.[311]

Political Context

Connecticut is one of eight states where both chambers of the legislature and the executive branch are controlled by the Democratic Party.[312] Democrats currently hold a 79 to 71 seat advantage in the lower chamber,[313] while the state's senate is evenly split (18 seats each) between Democrats and Republicans, with the Democratic lieutenant governor holding the tie-breaking vote.[314]

Democrats have a substantial advantage in party affiliation in the state. Of the more than 2-million registered voters in Connecticut, 36% are registered Democrats, 20% are registered Republicans, while 42% are not registered as either, making Connecticut one of the eight states in 2015 in which there were more registered independents than registered members of either major party.[315] Accordingly, candidates for statewide office have found some success making 3rd party runs for office. For example, in 1990 Lowell Weicker won the governorship as an Independent, after serving in the US Senate as a Republican[316]; and in 2006, Joseph Lieberman was reelected to the senate as an Independent, having left the Democratic Party after losing in the party's primary earlier that year.[317]This could explain why the Connecticut General Assembly is somewhat less polarized than the typical state legislature. Shor and McCarty (2015) ranked the state house as the 36th most polarized in the country, while the senate was closer to the median, ranking as the 27th most polarized upper chamber in the country.

In recent decades, Connecticut has had several prominent instances of corruption at both the state and local levels, with various officials convicted of corruption-related offenses. For instance, former Governor John Rowland "served about 10 months of a year-and-a-day sentence after pleading guilty to corruption-related charges in 2004", followed, a decade later, by a one-and-a-half-year prison term for subsequent crimes committed as a political consultant.[318] In 2010, Hartford Mayor Eddie Perez was convicted of corruption; his conviction was overturned in 2016 by the Maryland Supreme Court, due to concerns over jury contamination, but he ultimately pled guilty to the same charges at his retrial in 2017.[319] In 2011, State Senator Thomas Gaffey resigned after pleading guilty to misdemeanor larceny.[320] Then-State Senator Ernest

[309] https://object.cato.org/sites/cato.org/files/pubs/pdf/tbb-0601-29.pdf, accessed 5/8/18.
[310] https://ctmirror.org/2017/01/30/a-legacy-of-debt-connecticut-standing-on-its-own-fiscal-cliff/, accessed 5/9/18.
[311] https://ctmirror.org/2017/05/12/ct-takes-another-credit-rating-hit-on-wall-street/, accessed 5/9/18.
[312] https://ballotpedia.org/Connecticut_General_Assembly, accessed 5/9/18.
[313] https://ballotpedia.org/Connecticut_House_of_Representatives, accessed 5/9/18.
[314] https://ballotpedia.org/Connecticut_State_Senate_elections,_2018, accessed 5/9/18.
[315] https://ivn.us/2015/01/19/8-states-party-registrations-lags-behind-independent-registration/, accessed 5/9/18.
[316] https://www.nga.org/cms/home/governors/past-governors-bios/page_connecticut/col2-content/main-content-list/title_weicker_lowell.default.html, accessed 6/18/18.
[317] http://www.newsweek.com/joe-lieberman-fbi-director-republican-independent-612868, accessed 6/18/18.
[318] http://www.courant.com/news/connecticut/hc-john-rowland-release-20180117-story.html, accessed 5/9/18.
[319] http://www.courant.com/news/connecticut/hc-eddie-perez-pleads-guilty-20170831-story.html, accessed 5/9/18.
[320] https://ctmirror.org/2011/01/03/gaffey-resign-plead-guilty-pac-case/, accessed 5/9/18.

Newton, too, was convicted of corruption in 2005, serving five years in prison, followed by a six-month sentence in 2015 for campaign finance law violations.[321] Most recently, State Representative Victor Cuevas was convicted of mortgage fraud in 2016.[322]

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Office of the Auditors of Public Accounts (APA) is Connecticut's legislative analytic bureaucracy charged with auditing the state's executive branch agencies. It is headed by two State Auditors, one Democrat and one Republican.[323] State Auditors (formally referred to as Auditors of Public Accounts) are nominated by the General Assembly and require confirmation by both chambers (p. 21).[324] The APA lists 104 staff members on its website, 99 of whom are auditors of various ranks (including the two State Auditors and a Deputy State Auditor).[325] Connecticut appropriated $12.2 million in 2015 to fund the APA (NASACT, 2015).

The APA's powers and duties are established by CT General Statute Title 2, Chapter 23, Section 2-90.[326] Subheading (c) of the statute stipulates that "[each] such audit may include an examination of performance in order to determine effectiveness in achieving expressed legislative purposes."[327] The statute further requires the APA to conduct regular audits of all state agencies and other public state-level entities[328]; it also audits the information provided in the State Comptroller's Comprehensive Annual Financial Report and the state's Federal Single Audit.[329] The APA also may conduct performance audits of state programs and agencies.[330] Additionally, the APA is required by statute to conduct whistleblower investigations.[331] It conducts IT audits, but is not empowered to conduct any local government audits (NASACT, 2015).

During 2017, the APA "completed 29 audits of state and quasi-public agencies and made 398 audit recommendations", roughly 43% of which have been implemented (APA Annual Report, 2017; p. 2).[332] Final reports of each audit are distributed to "to agency heads, members of the General Assembly, Appropriations Committee, Governor, Lieutenant Governor, Comptroller, Treasurer, Attorney General, Secretary of the Office of Policy and Management, Connecticut State Library, designated federal agencies, news media and, when appropriate, members of

[321] https://www.ctpost.com/local/article/Newton-lands-job-helping-fellow-ex-offenders-11237473.php, accessed 5/9/18.
[322] https://www.justice.gov/usao-ct/pr/former-state-representative-admits-mortgage-fraud-scheme, accessed 5/9/18.
[323] https://ballotpedia.org/Auditor_(state_executive_office), accessed 6/3/18.
[324] https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0031.pdf, accessed 6/3/18.
[325] https://www.cga.ct.gov/apa/contact-staff.asp, accessed 6/3/18.
[326] https://www.cga.ct.gov/current/pub/chap_023.htm#sec_2-90, accessed 6/3/18.
[327] https://www.cga.ct.gov/current/pub/chap_023.htm#sec_2-90, accessed 6/3/18.
[328] https://www.cga.ct.gov/APA/about-duties.asp, accessed 6/3/18.
[329] https://www.cga.ct.gov/APA/aud-descriptions.asp, accessed 6/3/18.
[330] https://www.cga.ct.gov/APA/aud-descriptions.asp, accessed 6/3/18.
[331] https://www.cga.ct.gov/APA/whistle-info.asp, accessed 6/3/18.
[332] https://www.cga.ct.gov/apa/reports/annual/Annual%20Report%20to%20the%20Connecticut%20General%20Assembly_20180130_CY2017.pdf, accessed 6/3/18.

boards and commissions and others" (p. 3).[333] While there were only three "performance" audits produced in 2018 (as of October 5), these were the first such audits that the APA has conducted since 2006.[334] Performance audits can be requested by legislators, and the APA tends to "fulfill all (such) requests" (interview notes, 5/30/18). There were also three special audits completed during 2018 (as of October 5). These audits were described: 1 program evaluation, 1 performance review, and 1 interim progress report, which assess economic impacts of a program. So the APA produced 6 reports that could, depending on one's definition, be considered to fall into the category of *performance audit*. Even so, the bulk of APA resources are devoted to fulfilling statutorily-required responsibilities, particularly financial audits of agencies, the Federal Single Audit, and preparing the State's Comprehensive Annual Financial Report. Importantly, however, agency performance is one of the various criteria considered within the APA's regular, statutorily-required audits. (interview notes, 5/30/18)

Vignette: The APA's Investigation of Public Agency Severance Agreements

Recent legislation limiting Connecticut public agencies from issuing exorbitant severance packages to departing employees in exchange for such employees accepting non-disparagement agreements provides a notable example of an APA audit being utilized by the general assembly to restrain executive branch practices. The APA's exposition of such practices began in its 2016 Annual Report to the General Assembly,[335] which noted that it had identified "large payments made by state agencies to departing state employees… made for the purpose of avoiding costs associated with litigation or as part of non-disparagement agreements." (p. 27) 2017 legislation to restrict such payments was passed unanimously by the Senate and nearly-unanimously by the House, "*only to be vetoed by Gov. Dannel P. Malloy for reasons unrelated to that portion of the bill."[336]*

The APA's subsequent 2017 Annual Report[337] also notes the practice of providing large settlements attached to non-disparagement agreements (NDAs) to departing employees. This report highlights the case of the Connecticut State Lottery's former president and CEO, Anne Noble, whose departure "cost taxpayers hundreds of thousands of unnecessary expenses and is another glaring example of why these arrangements require third-party scrutiny." (p. 27)[338] This agreement allowed Noble to remain in her position—with its $212,000 annual salary—long enough to accrue the requisite service time to qualify for a state pension, while simultaneously paying her an additional $25,000 per month as a consultant. The auditors surmised that "it appears that the principal reasons for the transition agreement were to enhance Ms. Noble's retirement benefits and to not reveal the existence of a Department of Consumer Protection

[333]https://www.cga.ct.gov/apa/reports/annual/Annual%20Report%20to%20the%20Connecticut%20General%20Assembly_20180130_CY2017.pdf, accessed 10/5/18.
[334] https://www.cga.ct.gov/APA/audit-performance.asp, accessed 6/3/18.
[335]https://www.cga.ct.gov/apa/reports/annual/Annual%20Report%20to%20the%20Connecticut%20General%20Assembly_20170127_CY2016.pdf, accessed 7/13/18.
[336] https://www.ctnewsjunkie.com/archives/entry/20180409_ct_government_not_immune_to_non-disclosure_agreements_and_generous/, accessed 7/13/18.
[337]https://www.cga.ct.gov/apa/reports/annual/Annual%20Report%20to%20the%20Connecticut%20General%20Assembly_20180130_CY2017.pdf, accessed 7/13/18.
[338]https://www.cga.ct.gov/apa/reports/annual/Annual%20Report%20to%20the%20Connecticut%20General%20Assembly_20180130_CY2017.pdf, accessed 7/13/18.

investigation and pending action against Ms. Noble that would have suspended or terminated her license…"[339]

The APA further revealed large severance payments to the former heads of "quasi-public" state agencies, such as the Connecticut Housing Finance Authority and Access Health CT, as well as several state university officials. In most cases, little or no information was given regarding the reasons for these officials' terminations. Moreover, each severance package included an NDA.[340]

In response to the APA's findings, legislation was introduced to require that any NDA-included severance agreements of over $50,000 from public or "quasi-public agencies" must be reviewed by the State's Attorney General.[341] *The legislation, included in a larger bill "[to] implement the recommendations contained in the annual report of the Auditors of Public Accounts", was passed unanimously by both the Senate and House on May 9th, 2018, and signed into law by Governor Malloy on June 11th.*[342]

In addition to the APA, there are 3 other legislative analytic bureaucracies. The Office of Fiscal Analysis (OFA) provides analysis of agency and program budgets for general assembly committees, mainly for the Appropriations Committee and the Finance, Revenue and Bonding Committee.[343] The Office of Legislative Research (OLR) conducts research for the substantive, "nonfiscal legislative committees".[344] Lastly, the Legislative Commissioners' Office (LCO) provides legal advice to general assembly members, and drafts legislation.[345]

Prior to 2017, the Joint Legislative Program Review and Investigations Committee conducted reviews of state programs. The committee was dissolved in 2016, with five of its eleven staff members reassigned to the APA.[346] Prior to its dissolution, the committee was assisted by a legislative analytic bureaucracy, the Office of Program Reviews and Investigations, which was dissolved along with the committee in 2016.[347]

The Office of Fiscal Analysis (OFA) provides staff for the Joint Appropriations Committee. Its other responsibilities include several that are likely to aid the legislature with oversight: to review state agency and program budget requests, to check executive revenue estimates and budget proposals, to prepare fiscal notes for proposed legislation, analyze costs of executive programs and proposed agency regulations, study programs, respond to requests from the Joint Committee on Legislative Management, and to compare fiscal note estimates and resulting impacts of legislation two-years and four-years after passage.[348]

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[339] https://www.ctnewsjunkie.com/archives/entry/20180409_ct_government_not_immune_to_non-disclosure_agreements_and_generous/, accessed 7/13/18.
[340] https://www.ctnewsjunkie.com/archives/entry/20180409_ct_government_not_immune_to_non-disclosure_agreements_and_generous/, accessed 7/13/18.
[341] https://www.ctnewsjunkie.com/archives/entry/20180509_senate_forwards_nda_threshold_bill_to_house/, accessed 7/13/18.
[342] https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2018&bill_num=175, accessed 7/13/18.
[343] https://www.cga.ct.gov/ofa/add-faqs.asp, accessed 6/3/18.
[344] https://www.cga.ct.gov/olr/about.asp, accessed 6/3/18.
[345] https://www.cga.ct.gov/lco/, accessed 6/3/18.
[346] http://www.courant.com/opinion/editorials/hc-ed-two-state-agencies-doing-same-thing-is-wasteful-20160929-story.html, accessed 6/3/18.
[347] https://ctmirror.org/2016/09/21/ct-legislatures-chief-investigative-panel-to-lose-all-staff/, accessed 6/10/18.
[348] https://www.cga.ct.gov/ofa/add-resp.asp, accessed 10/5/18.

Oversight Through the Appropriations Process

Connecticut's biennial state budget requires approval by the general assembly. The process is as follows: state agencies submit their respective budget requests to the Office of Program Management (OPM), which submits its proposed state budget to the governor's office, which then submits its revised budget recommendation to the Joint Appropriations Committee, which—through public hearings and the deliberations of its subcommittees—prepares legislation to implement its revised state budget, which is then voted on by both chambers of the General Assembly.[349]

Much of the oversight conducted by the Joint Appropriations Committee is done through its subcommittees (interview notes, 6/6/18). Of the 13 subcommittees, 10 are assigned to monitor specific agencies, with the assistance of OFA analysts.[350] Subcommittee members tend to attain some expertise in the functions of their assigned agencies through their ongoing interactions with such agencies, including informal interactions and relationships formed with agency staff. These relationships tend to facilitate cooperation between the subcommittees and agencies in preparing and finalizing agency budgets. Additionally, the expertise of subcommittee chairs has been important in dissuading executive branch actions—such as certain reorganization attempts by the governor—which did not reflect a sufficient understanding of the responsibilities and functions of certain agencies (interview notes, 6/6/18). Such hands-on practices at the subcommittee level have also resulted in some degree of bipartisan cooperation within the nearly evenly-split committee (21 Democrats, 20 Republicans). During 2017 budget negotiations, for instance, committee members from each party went so far as to exclude the governor from the ultimately-successful budget negotiations, as his preferred budget was viewed as unacceptable by the Republican minority. (interview notes, 6/6/18)

The State's adoption of results-based accountability (RBA) budgeting has assisted the Joint Appropriations Committee in monitoring the budget requests of state agencies, particularly within those areas in which RBA budgetary analysis practices have been implemented (interview notes, 6/6/18). The shift to RBA started in 2005 as a way to link quality of life outcomes with state-funded programs. Moreover, the program is designed to identify actions needed to improve outcomes.[351] The specific results focus on employment and training for Connecticut citizens and students.[352]

The Joint Appropriations Committee meets annually near the end of the calendar year to hear from fiscal analysts about the state's revenue and long-term budget needs. The November 30th, 2016 is the most recent one of these meetings archived and available for viewing.[353] OFA and the Office of Policy and Management both made presentations to inform legislators about the state's fiscal conditions. In other words, both the governor's and the legislature's budget analysts provided their perspective on state revenues and expenditures. These presentations occupied the first hour of a three-hour hearing. The chair limited committee members to two questions each. The chair started by asking about fixed costs for specific public programs. She wants a specific list of fixed and non-fixed costs. Legislators primarily wanted additional

[349] https://www.cga.ct.gov/2017/ofarpt/2017OFA-0299.pdf, accessed 6/10/18.
[350] https://www.cga.ct.gov/app/special/Subcommittee%20Assignments.pdf, accessed 6/10/18.
[351] https://portal.ct.gov/SDE/RBA/Results-Based-Accountability, accessed 10/5/18.
[352] https://www.cga.ct.gov/ofa/Documents/year/OD/2012OD-20120125_Results%20Based%20Accountability%20Summit.pdf, accessed 10/5/18.
[353] http://www.ctn.state.ct.us/ctnplayer.asp?odID=13482, accessed 10/5/18.

information about why New York was recovering more quickly from the 2008 financial crisis. Several legislators asked for information on whether actions taken in previous budgets were producing the intended effects. For example, the legislature chose not to cut funds to local governments in the hope that property tax increases would abate. But the general assembly wanted information on whether the millage rates continued to rise or not. A Republican legislator expressed frustration that there was natural growth in revenue not in spending, saying that it reflected a partisan approach by a nonpartisan support agency. The same legislator also complained that actuarial reports that typically were produced earlier in the year were not yet available. One legislator asked about what the state's policy was if cities go bankrupt paying for pensions. OFA staff referred to bankruptcy proceeding such as occurred in Detroit. He explains that the general assembly cannot abrogate pension responsibilities. Those would have to be negotiated. Both the governor's and the legislature's analysts explained several times that the fixed costs were based on existing legislation and not a choice they were making. These programs included things like the current Medicaid program. Those, as they acknowledged, could be changed by the legislature, but they have to base their calculations on existing laws.

Legislators on this committee demonstrated extensive understanding of the budget and revenue estimates. The questions were quite specific, and most of the legislators seemed capable of exploring budget details in great depth.

Hearings on specific agency budgets and appropriations are conducted by appropriations subcommittees. The Appropriations Committee on Human Services Subcommittee met with two state agencies (Department of Children and Families and Department of Social Services) on the governor's budget proposal on February 21, 2018.[354] The Department of Children and Families commissioner presented information on what the department does with the funds allocated to it. Commissioners' questions were exceptionally detailed and specific. They demonstrated high levels of familiarity with specific programs and the populations served. One legislator was particularly concerned about dollars appropriated for juvenile justice services that appeared to have been comingled with money for other programs. Questions to Department of Social Services staff probed for information about asset tests used determine eligibility for various social services programs.

Oversight Through Committees

One signal characteristic of the Connecticut General Assembly is the extent to which it is cooperative across chambers. The 2017 general assembly's *Rules and Precedents* delineate the specific functions of its 22 joint standing committees—including the departments that fall under each committee's jurisdiction—as well as three statutory joint committees (pp. 1-6).[355] Per general assembly precedent, committees are responsible for oversight of agencies that fall within their specific substantive purview. That is, no specific committee explicitly charged with conducting overall oversight of the executive branch; rather, each committee is responsible for oversight of certain agencies, according to subject matter, and determined according to legislative precedent. For instance, the 2017 Rules and Precedents cites the case of a bill pertaining to milk sold in public schools; ultimately, the deputy speaker referred the bill to the

[354] http://www.ctn.state.ct.us/ctnplayer.asp?odID=15007, accessed 10/5/18.

[355] https://www.cga.ct.gov/html/rulesprecedents.pdf, accessed 6/15/18.

Finance Committee, ruling that—as it both affected local school board finances, and pertained specifically to milk in schools (not milk in general)—it was not under the jurisdiction of the Environment Committee (Joint Rules and Precedents, pp. H121-H122).[356] The general assembly also can create "select committees" that are authorized to meet on a temporary basis to address specific issues that arise. Occasionally these committees are transformed into permanent committees. These committees are formed infrequently. There is no distinction between standing committees and interim committees. Standing committees appear to meet even when the general assembly is not in session.

The general assembly's organization of committees according to the agencies to which their subject area pertains may provide a legislative model by which committee members gain a technical familiarity with issues and agency functions that would—at least hypothetically—facilitate quality oversight. One recent example involving high profile problems at the state's Department of Children and Families (DCF) suggests that the general assembly's joint committees will act, at times, in a bipartisan manner to check perceived dysfunctions within executive branch agencies. The same example, however, suggests that such bipartisanship has its limits.

Vignette: Oversight of the Department of Children and Families (DCF)

Recently, legislation to reform existing oversight mechanisms of the state's Department of Children and Families—approved by the Committee on Children and passed by the General Assembly—was vetoed by Governor Malloy.[357] The legislation followed a series of controversies involving the Department[358] [359], which has been under federal supervision since 1992.[360]

On December 19th, 2017, the Committee on Children held hearings[361] in response to a report by the Office of the Child Advocate on the case of Matthew Tirado, an autistic 17-year-old who died by starvation under the care of his neglectful and physically-abusive mother, shortly after the DCF ended protective supervision of the family[362], "[withdrawing] a neglect petition to the court and [closing] its case file".[363] The State Child Advocate, Sarah Eagan, testified that the DCF failed to follow its own procedures in monitoring Tirado's care, despite numerous incidents of neglect and abuse. Eagan did acknowledge, however, that the failures were not the Department's alone, but rather that Tirado's death constituted "a multi-system breakdown" (13:45 in hearing video). She further noted the legal obstacles that the Department faces in gaining access to children at risk of abuse or neglect.[364] During the hearing, Republican committee members tended to be more direct in their questioning of DCF Commissioner Joette Katz, while Democratic members—as well as Katz herself—tended to emphasize systemic issues,

[356] https://www.cga.ct.gov/html/rulesprecedents.pdf, accessed 6/15/18.
[357] https://www.ctnewsjunkie.com/archives/entry/20180613_malloy_vetoes_dcf_oversight_bill/, accessed 7/19/18.
[358] https://www.ctnewsjunkie.com/archives/entry/dcf_chief_defends_actions_prior_to_death_of_hartford_teen/, accessed 7/19/18.
[359]https://www.ctnewsjunkie.com/archives/entry/child_advocate_seeks_to_strengthen_safety_net_for_children_with_disabilities/, accessed 7/19/18.
[360] https://assets.documentcloud.org/documents/3116238/Juan-F-Exit-Plan.pdf, accessed 7/19/18.
[361] http://www.ctn.state.ct.us/ctnplayer.asp?odID=14834, accessed 7/19/18.
[362] http://www.ctn.state.ct.us/ctnplayer.asp?odID=14834, accessed 7/19/18.
[363] https://www.ctnewsjunkie.com/archives/entry/dcf_chief_defends_actions_prior_to_death_of_hartford_teen/, accessed 7/19/18.
[364] http://www.ctn.state.ct.us/ctnplayer.asp?odID=14834, accessed 7/19/18.

including the legal, budgetary, and workload-related constraints under which the DCF operates.[365]

Even prior to the Tirado case, Commissioner Katz had been a frequent target of criticism from Senate Minority President Pro Tempore Leonard Fasano (R) (despite his not being a member of the Committee on Children). The Senator had called for Katz's resignation in 2015, following a report by the Child Advocate "detailing abuse and underreporting at DCF's two locked facilities";[366]*and in 2016, following "the near-death of a toddler" who nearly starved to death in a foster home that was under DCF supervision.*[367] *Following the Office of the Child Advocate's December 11th, 2017 report*[368]*on Tirado's death, Fasano again called for Katz's resignation, this time in a letter to Governor Malloy.*[369]

Senator Fasano, along with seven other Republican co-sponsors, introduced SB-188, a bill to reform oversight of the DCF; it was referred to the Committee on Children on February 22nd, 2018.[370] *The bill markedly increases legislative oversight of the DCF by modifying the composition and functions of the State Advisory Council on Children and Families (SAC). Among its provisions, the bill removes the 13 gubernatorially-appointed members from the council, replacing them "with 12 members appointed by legislative leaders and one member appointed by the Juvenile Justice Policy and Oversight Committee (JJPOC) chairpersons. It also adds… the Children's Committee chairpersons and ranking members, the child advocate, and the chief public defender, or their designees to the council…" (p. 1) Additionally, it increases the scope of the council's oversight of DCF, requiring that the council advise both the DCF and Committee on Children accordingly, and that the council annually report its findings and recommendations to both the Committee on Children and the Appropriations Committee. Lastly, it changes the council's name to the State Oversight Council on Children and Families.*[371]

On February 27nd, 2018, the Committee on Children held public hearings on SB-188.[372] *Written and in-person testimony were both largely in favor of the bill. For example, in written testimony submitted to the Committee, Senator Fasano (R) criticized the DCF for what he characterized as the Department's failure to adhere to its own requirements and procedures, stating that "[n]umerous reports from the Office of Child Advocate and other state officials over the last several years have highlighted 'gross systems failures' and 'institutional failures and omissions' within DCF operations that have contributed to the abuse, neglect and even death of children under DCF supervision."*[373] *Within his testimony, he alluded to various specific cases in recent years, including that of Matthew Tirado, noting the absence of any legislative appointees on the SAC, and arguing that the general assembly should have a larger role in*

[365] http://www.ctn.state.ct.us/ctnplayer.asp?odID=14834, accessed 7/19/18.
[366] https://ctviewpoints.org/2015/07/29/call-for-dcfs-katz-to-resign-is-about-children-not-politics/, accessed 7/19/18.
[367] https://www.ctnewsjunkie.com/archives/entry/one_calls_for_a_hearing_another_for_a_resignation/, accessed 7/19/18.
[368] https://www.ctnewsjunkie.com/upload/2017/12/MT.final.12.11.2017.pdf, accessed 7/19/18.
[369] https://www.ctnewsjunkie.com/archives/entry/dcf_chief_defends_actions_prior_to_death_of_hartford_teen/, accessed 7/19/18.
[370] https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2018&bill_num=188, accessed 7/20/18.
[371] https://www.cga.ct.gov/2018/BA/pdf/2018SB-00188-R01-BA.pdf, accessed 7/20/18.
[372] http://www.ctn.state.ct.us/ctnplayer.asp?odID=15049, accessed 7/19/18.
[373] https://www.cga.ct.gov/2018/kiddata/tmy/2018SB-00188-R000227-Fasano,%20Leonard,%20Senator-Connecticut%20General%20Assembly-TMY.PDF, accessed 7/20/18.

conducting oversight of the DCF.[374] Additional persons submitting testimony in support of the bill included Child Advocate Eagan; Steven Hernandez, Executive Director of the Commission on Women, Children and Seniors; Christine Rapillo, the state's Chief Public Defender; and others.[375] Two co-chairs of the SAC (whose positions on the commission would be eliminated by the bill) and two DCF officials were the only persons to testify in opposition to the bill.[376]

The Senate passed SB-188 on May 4th, with 33 Senators voting in favor and 3 opposed.[377] The House then passed the bill on May 9th, by a vote of 142 to 6.[378] All nine of the legislators who voted against the bill were Democrats.

Governor Malloy vetoed SB-188 on June 13th. In his message to the secretary of state, announcing his intention to veto the bill, Malloy contended that he had previously agreed after negotiations with Committee on Children members to support an earlier version of the bill[379], but could not support the current version, which he argued "represents a significant intrusion by the legislative branch into the functioning and administrative authority of an executive branch agency in violation of the separation of powers doctrine."[380] Notably, the original version of SB-188 reduces the number of gubernatorially-appointed commission members from 12 to 5, whereas the amended version that the governor ultimately vetoed removes all twelve of the gubernatorially-appointed members.[381]

On June 25th, the senate voted again on the bill, with a 2/3 majority in both chambers required to override the governor's veto. The override failed, with 16 votes in favor, 15 against, and 5 Senators absent and not voting. The votes were strictly along party lines, with 16 Republicans voting to override the veto, and two absent and not voting. 13 of the 15 Democrats who had initially voted in favor of the bill voted not to override the governor's veto, with the remaining two absent and not voting; of the three Democrats who had initially voted no, two did so again, while the third was absent and did not vote.[382]

This ill-fated attempt to reform the SAC illustrates two apparently contradictory tendencies within the general assembly's recent oversight practices. On the one hand, SBB-188 had enjoyed overwhelming support among legislators and experts (such as the Child's Advocate, various state commission members, et al.) prior to Governor Malloy's veto; accordingly, one might reasonably infer that democratic senators' refusal to override the veto can be attributed to partisan political calculations. Indeed, of the seven bills that Malloy vetoed during the 2018 session, none were overridden by both chambers. One of the vetoed bills, HB-5171 (a bill "[t]o prohibit the Governor from making rescissions to a town's education cost sharing grant during the fiscal year"),[383] was overridden by the house, before failing to reach the 2/3 majority

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[374] https://www.cga.ct.gov/2018/kiddata/tmy/2018SB-00188-R000227-Fasano,%20Leonard,%20Senator-Connecticut%20General%20Assembly-TMY.PDF, accessed 7/20/18.
[375] https://www.cga.ct.gov/asp/menu/CommDocTmyBill.asp?comm_code=kid&bill=SB-00188&doc_year=2018, accessed 7/20/18.
[376] https://www.cga.ct.gov/2018/JFR/s/pdf/2018SB-00188-R00KID-JFR.pdf, accessed 7/19/18.
[377] https://www.cga.ct.gov/2018/VOTE/s/2018SV-00203-R00SB00188-SV.htm, accessed 7/22/18.
[378] https://www.cga.ct.gov/2018/VOTE/h/2018HV-00289-R00SB00188-HV.htm, accessed 7/22/18.
[379] https://www.cga.ct.gov/2018/BA/pdf/2018SB-00188-R000092-BA.pdf, accessed 7/22/18.
[380] https://www.ctnewsjunkie.com/upload/2018/06/5C795D355082444D9BCEE7756CA714CA.pdf, accessed 7/22/18.
[381] https://www.cga.ct.gov/2018/BA/pdf/2018SB-00188-R01-BA.pdf, accessed 7/22/18.
[382] https://www.cga.ct.gov/2018/VOTE/s/2018SV-00395-R00SB00188-SV.htm, accessed 7/23/18.
[383]https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2018&bill_num=5171#, accessed 7/24/18.

necessary in the senate, despite having initially passed the upper chamber unanimously, prior to the governor's veto.[384] Of the 18 Democratic senators—all of whom initially voted for HB-5171—only four voted to override the veto, whereas 10 voted against, while four were absent and did not vote.[385]

On the other hand, these initially-bipartisan attempts to check executive prerogatives suggest that legislative authority to conduct oversight is frequently asserted by the general assembly and its joint committees, albeit more aggressively by members of the opposition party. In the case of SB-188, for example, the vast majority of Democratic legislators initially voted for a bill that would have dramatically increased legislative oversight of an executive branch agency, and thus would have diminished the Democratic governor's authority over that agency. Further, given Senator Fasano's unremitting criticism of Commissioner Katz and the DCF—which began well before the introduction of SB-188—it is quite plausible that he, along with other Republican legislators, perceived an opportunity to score political points over the repeated high-profile shortcomings of an agency under the direction of an opposing-party governor, rather than solely perceiving an opportunity to conduct legitimate oversight.

Oversight Through the Administrative Rules Process

Article XVIII of the Amendments to the Constitution of the State of Connecticut, adopted in 1982, establishes that, "[the] legislative department may delegate regulatory authority to the executive department; except that any administrative regulation of any agency of the executive department may be disapproved by the general assembly or a committee thereof in such manner as shall by law be prescribed."[386] The Joint Legislative Regulation Review Committee (LRRC) was established under the authority of this amendment (interview notes, 6/14/18).

The LRRC is comprised of 8 house members and 6 senators, with equal numbers of Democrats and Republicans. The committee has two simultaneous co-chairs, one from each party. The committee chairpersonships alternate biennially between house and senate members, ensuring that one member of each party and each chamber holds one of the two chairpersonships at all times.[387]

Proposed regulations are subject to a complex process, even prior to reaching the LRRC. The process is as follows: the proposing agency receives statutory authority to promulgate regulations from the legislature; as required by statute, the agency completes a statement of purpose, a small business impact assessment, and a fiscal note; the proposed regulation is then either approved or denied by the Office of Program Management; if denied, it must be modified accordingly by the agency; if approved, "[the] agency publishes all accompanying documents on the eRegs System and maintains the regulation-making record"; there is then a 30-day public commentary period, followed by agency response and possible revision; the attorney general then reviews the regulation's legality; if it is not rejected by the attorney general, the regulation is then submitted to the LRRC, the Office of Fiscal Analysis (which issues a report, submitting it to the LRRC), and the "Legislative Committee of Cognizance"; the LRRC also submits the

[384]https://www.ctnewsjunkie.com/archives/entry/20180625_general_assembly_fails_to_override_any_of_malloys_7_vetoes/, accessed 7/24/18.
[385] https://www.cga.ct.gov/2018/VOTE/s/2018SV-00399-R00HB05171-SV.htm, accessed 7/24/18.
[386] https://www.cga.ct.gov/asp/Content/constitutions/CTConstitution.htm, accessed 6/15/18.
[387] https://www.cga.ct.gov/rr/, accessed 6/15/18.

regulation to the Legislative Commissioner's Office, which reviews it, issues a report, and advises the LRRC.

Only after completion of the above process does the LRRC meet to review the proposed rule. It may either approve, disapprove, or reject the regulation "without prejudice". If approved, the regulation is published and adopted. If disapproved, it is "referred by House Speaker or Senate President to appropriate committee for consideration"[388], at which point "[the] general assembly may, by resolution, either sustain or reverse"[389] the LRRC's action. If "rejected without prejudice", it is returned to the issuing agency, which revises the regulation, then resubmits it to the attorney general's office, restarting the review process from that point.[390] [391] [392] Emergency regulations go into effect for up to 120 days (with a possible 60-day extension) unless explicitly disapproved by the LRRC within 10 working days.[393]

Outright disapproval of new regulations by the LRRC is exceedingly rare; a LRRC staff member could not recall any such action in recent years (interview notes, 6/14/18). Proposed regulations, however, are frequently rejected "without prejudice"; such rejections may occur due to either technical errors or substantive problems, including instances in which a regulation exceeds its legal basis or ambiguity exists in the means by which a regulation is intended to be implemented (interview notes, 6/14/18). Thus, while the committee did not formally disapprove any proposed regulations in either 2015[394] or 2016[395], proposed regulations were rejected "without prejudice" fairly commonly. In 2015, for instance, 5 proposed regulations were "approved in whole", 24 were "approved with technical corrections", 2 were "deemed approved by lack of committee action"; while 10 were "rejected without prejudice", and 4 were "withdrawn by agency".[396] In 2016, 4 proposed regulations were "approved in whole" and 28 were "approved with technical corrections"; while 11 were "rejected without prejudice" and 2 were "withdrawn by agency".[397] The withdrawal of a regulation by the proposing agency tends to occur when such regulation becomes unnecessary due to the passage of a new law or due to intra-agency disagreement over the usefulness of a proposed regulation (interview notes, 6/14/18).

Connecticut General Statutes 4-189i requires that agencies review existing regulations every seven years for various factors--including effectiveness, legality, and continued use; the results of such reviews are to be reported to an LRRC administrator and to the committee of cognizance, the latter of which is required to hold a public hearing on the report's findings.[398] In practice, however, neither such reviews nor subsequent public hearings occur with any regularity (interview notes, 6/14/18).

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[388] https://www.cga.ct.gov/rr/The%20Regulatory%20Process%209%2019%2016.pdf, accessed 6/15/18.
[389] https://www.lawserver.com/law/state/connecticut/ct-laws/connecticut_statutes_4-171, accessed 6/15/18.
[390] https://www.cga.ct.gov/rr/The%20Regulatory%20Process%209%2019%2016.pdf, accessed 6/15/18.
[391] https://www.lawserver.com/law/state/connecticut/ct-laws/connecticut_statutes_4-170, accessed 6/15/18.
[392] https://www.lawserver.com/law/state/connecticut/ct-laws/connecticut_statutes_4-171, accessed 6/15/18.
[393] https://www.cga.ct.gov/rr/The%20Emergency%20Regulation%20Process%209%2019%2016.pdf, accessed 6/15/18.
[394] https://www.cga.ct.gov/rr/2016%20Report%20of%20the%20Legislative%20Regulation%20Review%20Committee%20to%20the%20Connecticut%20General%20Assembly.pdf, accessed 6/15/18.
[395] https://www.cga.ct.gov/rr/2017%20Report%20of%20the%20Legislative%20Regulation%20Review%20Committee%20to%20the%20Connecticut%20General%20Assembly.pdf, accessed 6/15/18.
[396] https://www.cga.ct.gov/rr/regsbyyear.asp, accessed 6/15/18.
[397] https://www.cga.ct.gov/rr/regsbyyear.asp, accessed 6/15/18.
[398] https://www.lawserver.com/law/state/connecticut/ct-laws/connecticut_statutes_4-189i, accessed 6/15/18.

Oversight Through Advice and Consent

Connecticut General Statute, Chapter 46, Section 4-6 prescribes that department heads are appointed by the governor, "with the advice and consent of either chamber of the general assembly".[399] The state's 27 department heads are appointed by the governor, and require approval by either chamber of the general assembly.[400] Department heads serve four-year terms that run concurrently with that of the governor.[401] The lieutenant governor (in tandem with the governor), secretary of state, treasurer, comptroller, and attorney general are each directly elected.[402]

According to the general assembly website, "[a]ll executive and legislative nominations requiring action of either or both chambers, except judicial nominations, nominations of workers' compensation commissioners and nominations of members of the Board of Pardons and Paroles, shall be referred to the committee on executive and legislative nominations."[403] While there is a clearly delineated confirmation process through the Joint Executive and Legislative Nominations Committee,[404] it appears that the Committee is exceedingly deferential to the Governor regarding such confirmations. Of the 99 total nominations to come before the Committee in 2017,[405] and 2018,[406] all were approved, with the Committee unanimously supporting nearly all such approvals. Accordingly, we have not found evidence of either chamber of the general assembly rejecting any agency, commission, or board nominees in recent years.

Per Article V of the CT Constitution, judges are nominated by the governor, subject to confirmation by the general assembly.[407] Such nominations appear to receive more scrutiny than those considered by the Executive and Legislative Nominations Committee. For instance, Governor Dan Malloy's recent nomination of current CT Supreme Court Justice Andrew McDonald to replace the Court's retiring Chief Justice was controversially rejected by a 19-16 Senate vote.[408] Prior to the Senate vote, McDonald's nomination had passed the Joint Judiciary Committee on a 20-20 "unfavorable recommendation", following a 13-hour committee hearing, which ended at 1:00 AM.[409] McDonald was subsequently approved by a 75 to 74 vote in the state House,[410] prior to his ultimate rejection by the Senate.

Connecticut's governor issues very few executive orders: 5 by October of 2018 for the year, and 7 for 2017. The governor cannot use executive orders to reorganize government. The legislature has no power to oversee gubernatorial executive orders. The only requirement is that the governor files the orders with the secretary of state. The governor, however, does not appear currently to use executive orders to make policy. This might reflect one-party government in which it might be relatively easy to achieve policy goals by working with the legislative branch.

[399] https://www.cga.ct.gov/2015/pub/chap_046.htm, accessed 6/27/18.
[400] https://www.cga.ct.gov/current/pub/chap_046.htm#, accessed 6/27/18.
[401] https://www.cga.ct.gov/current/pub/chap_046.htm#sec_4-7, accessed 6/27/18.
[402] https://ballotpedia.org/File:Connecticut_exec_org_chart.png, accessed 6/27/18.
[403] https://www.cga.ct.gov/exn/, accessed 6/27/18.
[404] https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0031.pdf, accessed 6/27/18.
[405] https://www.cga.ct.gov/asp/menu/CommDocList.asp?comm_code=exn&doc_type=ts&doc_year=2017, accessed 6/27/18.
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[407] https://www.cga.ct.gov/asp/Content/constitutions/CTConstitution.htm, accessed 6/27/18.
[408] http://www.courant.com/politics/hc-pol-chief-justice-senate-vote-20180327-story.html, accessed 6/27/18.
[409] http://wshu.org/post/connecticut-unexpected-drama-chief-justices-nomination#stream/0, accessed 6/27/18.
[410] https://www.ctpost.com/news/article/Malloy-McDonald-vote-a-partisan-test-12746533.php, accessed 6/27/18.

Oversight Through Monitoring of State Contracts

The executive branch Office of Program Management's (OPM) Procurement Standards (2012)[411] delineate the process by which state agencies award and monitor public contracts. General assembly monitoring of state contracts is minimal, with some scattered examples, and, as we found in other states, it occurs in conjunction with audit reports. For instance, the three performance audits conducted in 2018 by the APA each pertain to oversight (or lack thereof) of state contracts by the State Board of Education (SBE) and local school boards.[412] Additionally, the state's "whistle-blower act" (General Statute § 4-61dd), stipulates that malfeasance involving state contracts exceeding $5 million may be referred to the APA.[413] Lastly, in 2014 the now-defunct PRI Committee produced a lengthy analysis of state agencies' use of "personal service contracts" in procurement. They concluded (p. i) that "Contractor evaluations, as currently utilized, are more perfunctory than meaningful."[414]

Oversight Through Automatic Mechanisms

There is a mandated review of administrative rules described earlier in the section on *Oversight Through Administrative Rules*. There is no other automatic mechanism to force oversight of board, commissions, programs or agencies to determine whether they should continue to operate. A prior sunset statute was repealed in 2017.[415]

Methods and Limitations

Although we requested interviews with 15 people about legislative oversight in Connecticut, we were only able to interview two of them. Fortunately, Connecticut's legislature, in collaboration with the Connecticut Network, provides archived recordings of committee hearings that are easily accessible and readily available.

[411] http://www.ct.gov/opm/lib/opm/PSA_POS_ProcurementStandards_FINAL_5-14-12.pdf, accessed 6/20/18.
[412] https://www.cga.ct.gov/apa/audit-performance.asp, accessed 6/20/18.
[413] http://www.ct.gov/chro/lib/chro/4-61dd_as_revised_2012.pdf, accessed 6/20/18.
[414] https://www.cga.ct.gov/pri/docs/2014/Final%20PSA%20Status%20Report%2012-18-14%20for%20mailing.pdf, accessed 6/20/18.
[415] https://www.cga.ct.gov/2018/sup/chap_028.htm, accessed 6/20/18.

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Legislative Oversight in Delaware

Capacity and Usage Assessment

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

Summary Assessment

Delaware appears to emphasize resolving agency performance problems rather than punishing or eliminating poorly performing programs. One element that may explain this solution-driven approach is the nature of Delaware's general assembly itself--a small legislature with no term limits. This allows legislators to serve for long periods of time and to become better acquainted with their counterparts across the aisle, producing a more collegial environment where partisan confrontation on every issue is not always desirable. We were told that there are "a lot of relationships in a small legislature, so it is better to pick your battles than to oppose every measure." (interview notes, 7/25/18).

Major Strengths

Delaware's legislature possesses several tools to conduct oversight, foremost among them the Joint Legislative Oversight and Sunset Committee (JLOSC). This committee works with staff to conduct a very thorough review of a small number of government entities. The committee rarely eliminates these entities, although it has the power to do so. Rather it tries to determine how to improve the entities' performance. Based on its recommendations for improvement, the committee staff and the entity help draft legislation to resolve performance problems. The emphasis the committee places on enacting legislation to resolve performance problems that it identifies ensures that oversight hearings are more than merely public scolding. It is more difficult to tell whether other committees adopt a similar approach given the lack of recordings, lack of posted minutes, and general dearth of available information. The budget documents posted by the Legislative Analysis Office list very detailed questions about agency performance as part of the budget process, suggesting that oversight through the appropriations process could be vigorous.

Challenges

Lack of staff resources for JLOSC hinders wider and more in-depth oversight. The Division of Research and Office of the Controller General conduct only a small number of in-depth fiscal reviews and performance audits. The relationship between the state auditor and the legislature does not appear to be close. Therefore, lack of funding and limited staffing of legislative analytic support agencies constrains the ability of the legislature to engage in oversight. The lengthy study sessions of interim committees that some part-time legislatures use to conduct oversight appear to be absent in Delaware. One state representative stated that when it came to issues with which he was unfamiliar instead of turning to legislative staff, he would approach fellow caucus members who had career experiences in that policy area (interview notes, 7/25/18). While the intimacy of a small legislature has its advantages in terms of creating social capital and a familiarity across the aisle, the lack of investment in professional staff, who can help legislators perform their duties more effectively, constrains Delaware's legislature.

Relevant Institutional Characteristics

The Delaware General Assembly consists of 41 representatives and 21 senators. Senators serve 4 year-terms and representatives serve a 2 year-term, with no term limits. The National Conference of State Legislatures (NCSL) classifies Delaware's legislature as a hybrid, where legislators spend approximately 2/3^{rds} of their time being legislators and are not in session all year.[416] Most other states with hybrid legislatures have medium-sized populations, intermediate staffing levels and salaries for legislators that would require a second income. In this regard, Delaware is an outlier. Delaware is one of the smallest states in terms of population, with less than a million residents. Legislators are paid a substantial $45,291 per year, but the staff resources for the legislature are low. Delaware has 158 legislative staffers, with only 79 of those permanent positions. Legislators have no dedicated personal staff, except for leadership positions.[417] The Delaware general assembly recent session met from January 9th thru July 1st. Special or extraordinary sessions can be called by either the governor or the legislature, but usually result from a joint call of the presiding officers of the legislature.[418] Unlike other part-time legislatures, Delaware does not regularly have special sessions and has not had a special session since 2011. Based on these and other factors, Squire (2017) ranked the Delaware General Assembly as the 27th most professional legislature in the country.[419]

The Delaware governor is considered a moderately strong executive. Ferguson (2015) ranks the Delaware governor as the 18th most powerful governor in the country.[420] Delaware's governors are limited to two 4 year terms, but while they are in office they have extensive veto and budgetary powers, including the line-item veto for all bills, not just the budget. A vote to override gubernatorial vetoes requires support from 2/3^{rds} of the legislators present. [421] The

[416] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#gray, accessed 7/22/18
[417] http://www.ncsl.org/research/about-state-legislatures/legislative-staff.aspx, accessed 7/22/18
[418] http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx, accessed 7/22/18
[419] Squire, Peverill. 2017. "A Squire Index Update." *State Politics and Policy Quarterly*. 17(4): pp 361-371
[420] Ferguson, Margaret. 2013. "The Governors and the Executive Branch." Chap. 7 in *Politics in the American States,* edited by Virginia Gray, Russel Hanson and Thad Kousser, 194-231.
[421] Beyle, T. 2008. The Council of State Governments. *The Book of States 2008*. Table 4-4.

governor has the sole responsibility for proposing the budget; legislature can only revise and edit this proposal. In addition, the governor has the power to reorganize state agencies and create advisory or investigative commissions.[422] Many other executive branch officials are separately elected: lt. governor, attorney general, auditor of accounts, treasurer, and insurance commissioner.

Political Context

Democrats dominate state government in Delaware. Democrats currently control the governorship and both chambers of the Delaware General Assembly. The last Republican governor of Delaware was Mike Castle in 1992. Democratic dominance also extends to the legislature where Democrats have controlled the Senate from 1992-2018 and the House of Representatives since 2009.[423] In presidential elections Delaware tends to outperform the overall Democratic U.S. vote percentages by roughly 5%.

Despite the dominance of the Democratic Party and the lack of special sessions, friction arises sometimes. The budget can trigger a standoff between the legislative and executive branches. As recently as 2015 Delaware had a budget shortfall of $600 million, which is a large amount for such a small state and forced painful budget cuts. [424] During the last legislative session the general assembly failed to pass its annual budget bill before the fiscal year expired for the first time in 40 years.[425] The problem was a projected $350 million budget surplus. After years of cutting spending, there were budget battles over how to appropriate the somewhat unexpected surplus.[426] Despite this budget battle, the Delaware General Assembly and its governor worked together on contentious issues like gun control[427] and banning the practice of "conversion therapy" on LGBTQ minors.[428] This generally cooperative approach is reflected within the chamber as well according to Shor and McCarty's (2015) assessment of polarization in both chambers. They rate the upper chamber among the 10 least polarized in the country (ranking it 41st) and the lower chamber is almost as low, ranking 37th.

[422] The Council of State Governments. 2014. *The Book of States 2014.* Table 4-5.
[423] http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx
[424] https://delawarebusinessnow.com/2015/09/no-easy-solutions-emerge-after-release-of-report-on-state-budget-gap/, accessed 7/23/18
[425] https://www.delawareonline.com/story/news/politics/2017/07/01/marijuana-transperfect-budget-addressed-final-legislative-day/442489001/, accessed 7/23/18
[426] https://delawarebusinessnow.com/2017/07/no-state-budget-deal-general-assembly-reconvene-sunday/, accessed 7/23/18
[427] http://thehill.com/homenews/state-watch/384829-delaware-lawmakers-unanimously-pass-new-gun-control-bill, accessed 7/23/18
[428] https://www.metroweekly.com/2018/06/delaware-lawmakers-approve-ban-conversion-therapy/, accessed 7/23/18

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The primary analytic bureaucracy is the Office of Auditor of Accounts (AOA), which is an independently elected office that serves as the primary fiscal watchdog for the state. The AOA conducts the comprehensive annual state audit and performs a variety of other fiscal audits, financial investigations, and inspections in an attempt to identify fraud or waste and improve the effectiveness and efficiency of state programs.[429] The state auditor position is not a term limited office and the current Auditor R. Thomas Wagner Jr. has served seven 4 year terms, giving the office a high level of independence from outside political pressures.

For FY15 the AOA office had an overall budget of $4.5 million and a staff of 20 full-time employees (NASACT 2015). In 2018 it conducted 5 investigations and 19 financial audits of various state agencies and revolving funds.[430] All performance audits are mandated by law rather than requested by the legislature, the governor, or chosen by the auditor. In addition to these investigations and audits, the AOA contracted out with accounting firms to conduct 23 attestation agreements, of which 16 focused on the school districts construction contracts, to ensure that the various agencies were in compliance with state and federal regulations. There is no evidence that the general assembly utilizes AOA reports or that AOA staff appear as witnesses before legislative committees.

The AOA reports are often publicized by the media, leading to changes in audited agencies. One of the AOA most recent reports focused on the Developmental Disabilities Council (DDC), specifically the actions of the executive director. In its report, the AOA found that contracts were awarded improperly and in some cases without the required matching funds from the vendor from 2015-2017 and that the DDC staff did not follow proper guidelines regarding travel paid by the state.[431] As a result of the report, the director was placed on administrative leave.[432] But this appears to involve internal monitoring with the executive branch rather than legislative oversight.

In addition to the state auditor, there are two other analytic support agencies that work more closely with the legislature: the Office of the Controller General (OCG) and the Division of Research (DoR). Both of these units report to the Legislative Council, which consists of 10 legislators, 5 from each chamber. The house speaker and the senate president pro tempore chair the committee. The other members consist of the top caucus leaders in each party for the two chambers. Therefore, currently the committee consists of six Democrats and four Republicans.[433]

The OCG performs financial analyses for the Joint Finance Committee and the Joint Legislative Committee on the Capital Improvement Program. Additionally, it staffs standing committees and participates in budget hearings, writes fiscal notes analyzing the economic impact of legislation, and represents the legislature on various state economic task forces and committees. The Controller, three legislative analysts, and three support

[429] https://auditor.delaware.gov/auditor-mission-statement/, accessed 7/23/18
[430] https://auditor.delaware.gov/reports/fiscal-year-2018/, accessed 7/23/18
[431] https://auditor.delaware.gov/wp-content/uploads/sites/40/2018/06/Developmental-Disabilities-Council-Special-Investigation.pdf, accessed 7/23/18
[432]https://delawarestatenews.net/news/developmental-disabilities-council-executive-director-placed-on-paid-leave-following-audit/, accessed 7/23/18
[433] https://legis.delaware.gov/Committee/LegislativeCouncil, accessed 10/9/18.

staff are responsible for this wide array of tasks.[434] It does not publish any reports or conduct any performance or fiscal audits and was appropriated $2.66 million for FY19.[435]

The OCG participates in the Delaware Economic and Financial Advisory Committee, which was created by executive order over 40 years ago and provides periodic financial and revenue forecasts. It is viewed as a model organization for budget projections[436] and is one reason Standard's and Poor have given Delaware a AAA bond rating.[437] DEFAC is a vital resource that legislators depend on for professional independent assessments of revenue. While DEFAC itself does not conduct audits or fiscal reviews, it does provide reliable forecasts for appropriators and allows key leaders the opportunity to collaborate on the budget.
The DoR, a nonpartisan confidential legislative agency, provides legislative staff support, legislative and legal research, bill drafting, and the development and distribution of public information concerning the general assembly.[438] The DoR works closely with the Joint Legislative Oversight and Sunset Committee (JLOSC). It has a staff of fourteen, and, in addition to supporting JLOSC, is responsible for publishing regulations and providing legal counsel for the legislature. The budget for the Division of Research for FY19 is $1.87 million.[439]

Oversight Through the Appropriations Process

Delaware's appropriation process involves three distinct and separate spending bills, the Budget Bill, the Bond Bill, and the Grants-in-Aid Bill. The Budget Bill is the general government spending bill for the annual fiscal year and for FY19 was $4.32 billion. This bill is under jurisdiction of the Joint Finance Committee (JFC). The Bond Bill sets spending for all capital improvement projects like roads, bridges, and school construction and is under the jurisdiction of the Joint Committee on Capital Improvements. For FY19, the Bond bill was $816 million, the highest in over 13 years.[440] The Grants-in-Aid Bill allocates funds to non-profit organizations that provide state services and is under the jurisdiction of the JFC.

For the first time in 40 years the legislature failed to pass all of the necessary spending bills by June 30th. The last session dealt with an unexpected additional $350 million in revenue as projected by the Delaware Economic and Financial Advisory Council (DEFAC).[441] Decisions about what to do with this additional $350 million embroiled the general assembly in a budget fight. Complicating the decisions Delaware has a legal requirement that all tax increases receive

[434] https://legis.delaware.gov/Offices/ControllerGeneral, accessed 10/9/18
[436] http://www.delawarebusinesstimes.com/can-defac-take-larger-role-fiscal-policy/, accessed 7/23/18
[437] https://finance.delaware.gov/publications/Bonds/sp_14.pdf, accessed 7/23/18
[438] https://legis.delaware.gov/Offices/DivisionOfResearch, accessed 7/23/18
[440] https://delawarestatenews.net/government/delaware-panel-oks-769m-bond-bill-highest-in-13-years/, accessed 7/24/18
[441] https://www.delawareonline.com/story/news/politics/2017/07/01/marijuana-transperfect-budget-addressed-final-legislative-day/442489001/, accessed 7/24/18

support from two third of all legislators.[442] In addition, the state can only spend up to 98% of projected revenues, essentially forcing the state to put money into the rainy day fund.[443] Democrats wanted to raise the minimum wage and restore funding to programs cut in previous budgets; Republicans wanted to prevent tax increases and change funding mechanisms. These competing agendas were not supported by two thirds of the general assembly, thus, June 30th arrived before legislators were able to craft a compromise. However, the impasse lasted only one day and an agreement was struck on the $4.3 billion budget and a one-time $49 million supplemental spending bill that provided for state worker salary increases and one-time bonuses.[444]

The lack of detailed minutes and audio/video archives of hearings make it is difficult to ascertain the use of the appropriations process to oversee executive branch agencies in Delaware. We did locate the annual written budget requests submitted to the legislature for the state agencies prepared by the Office of Management and Budget (OMB). There is a Budget Review for the Department of Health and Human Services.[445] This is a 135-page document with charts, tables, graphs, and a detailed description of the various programs in the department. There is also a Budget Review Summary for the Department of Health and Human Services. This is a document prepared by a OCG analyst with a series of questions that list page numbers by each question that correspond to the OMB Budget Review for DHHS.[446] These documents correspond to a date on which the JFC met. That is to say that the OCG Budget Review Summary for DHHS is dated 2/7/17 and the agenda for the JFC meeting held on 2/7/17 lists Health and Social Services – Base Budget Review on the agenda at 10:40 a.m. Moreover, it appears that the committee devoted approximately four hours to the review of this agency's budget, because the next agenda item is scheduled for 3:00. This indicates to us that these budget requests and OCG questions are supporting materials for legislators to use during a JFC meeting. Although we have no way to assess the quality of the questions asked by legislators, the questions in the OCG document include requests performance measures and outcomes associated with various programs.

The following text appears on page 7 of the Budget Review Summary and is typical of the questions asked about each program:

8. Developmental Screening (pg. 16)
    a. Is this funding associated with the other child development programs (for example Birth to Three)?
    b. Are fees paid by the providers to use this tool?
    c. What are the performance measures and outcomes associated with this screening?

These documents suggest that the JFC actively monitors state agency performance by asking about the uses that are made of public dollars. It is not clear what transpires in committee hearings nor can we link budget adjustments to these documents or the hearings. In

[442] https://www.delawareonline.com/story/news/politics/2017/07/01/marijuana-transperfect-budget-addressed-final-legislative-day/442489001/, accessed 7/24/18
[443] https://finance.delaware.gov/publications/defac/06_18/FY19_Appr_Limit.pdf, accessed 7/24/18
[444] http://delmarvapublicradio.net/post/delaware-lawmakers-pass-budget-just-time, accessed 7/24/18
[445] https://legis.delaware.gov/docs/default-source/JFCDocuments/FY1735DHSSBaseBudgetReview.pdf?sfvrsn=2, accessed 10/9/18.
[446] https://legis.delaware.gov/docs/default-source/JFCDocuments/FY1735DHSSBaseBudgetReviewSummary.pdf?sfvrsn=2, accessed 10/9/18.

conversations with people familiar with the budget process in Delaware, the procedure described above is a fairly representative example of how legislators approach budget reviews of state agencies (interview notes, 10/12/18). However, it is important to note that many legislators rely on input and expertise of fellow members for guidance on complex issues that may fall outside their career or background experience (interview notes, 7/25/18). In particular, one legislator noted the small collegial nature of the Delaware legislature lends itself to direct member to member contact and conversations about issues and policy domains that they are not familiar (interview notes, 7/25/18).

Oversight Through Committees

The most active committee regarding oversight is the JLOSC, which reviews agencies, boards, and commissions to determine if there is a need for the agency or whether the agency is performing effectively.[447] JLOSC is a comprised of 10 members equally divided between the house and senate, but the committee makeup is not equal in terms of partisanship with Democrats holding a 6-4 majority. In 2018, JLOSC met thirteen times and reviewed seven different boards and agencies. This committee is specifically tasked with both oversight and sunset reviews. Given the committee's hybrid mission of oversight and sunset reviews, we discuss its activities, based on its annual report here, but we return to it again in the section on *Automatic Mechanisms of Oversight*.

JLOSC's 2018 Final Report (206 pages long) was submitted to the legislature and the governor. We inferred the committee's activities from its annual report. It describes the committee's review and action during the year on seven different public entities that were reviewed. The JLOSC holds public hearings during the months of February and March, but there are no records, transcripts or minutes available. The committee's analyst works on these throughout the 10-12 month long investigation of these entities.[448] These investigations include the investigated entity's responses to a questionnaire, which form the basis for the analyst's report.

During 2018, the committee held public hearing on four of the entities under review: the Board of Occupation Therapy, the Child Protection Accountability Commission, the Council on Correction, and the Division of Waste and Hazardous Substance's Management of the Hazardous Substance Control Act Fund. Public hearings do not appear to have been held for the three other entities described in the report. Two entities, the Council on Correction and Division of Waste and Hazardous Substance's Management of the Hazardous Substance Control Act Fund, were not released from review and were held over until the 2019 legislative session for action.[449] One of these "holdovers" resulted from legislation that the JLOSC had recommended that the legislature pass, but that had not been enacted. Two other entities, the Board of Clinical Social Work Examiners and the State Board of Education, were released from review contingent on the legislature enacting legislation that JLOSC recommended. One entity was released contingent on its implementation of JLOSC recommendations and a report confirming implementation. Another entity, the Diamond State Port Corporation, was released based on its

[447] https://legis.delaware.gov/Committee/Sunset, accessed 7/24/18
[448] https://legis.delaware.gov/docs/default-source/JLOSCDocuments/JLOSC_FinalReports/2018FinalReport.pdf?sfvrsn=2, accessed 10/10/18.
[449] https://legis.delaware.gov/docs/default-source/JLOSCDocuments/JLOSC_FinalReports/2018FinalReport.pdf?sfvrsn=2, accessed 10/10/18

compliance with additional reporting requirements. The final entity of the seven reviewed, the Child Protection Accountability Commission, was released from review based on a letter of support from the JFC assuring it would fund the commission.

The final report suggests a great deal of committee involvement in the review process. For example, with respect to the legislation that the JLOSC wanted enacted before it released the Board of Occupational Therapy from review, the report states that, "[t]he Board and Committee staff worked together to draft legislation" (p. 7 JLOSC Final Report). In conversations with people familiar with JLOSC's proceedings, hearings were described as bipartisan, with legislators asking investigative questions and attempting to understand why an agency is not functioning effectively (interview notes, 7/25/18). The tenor of the report suggests solution-driven, evidence-based oversight. Legislative action is a commonly recommended solution.

Once again it is difficult to determine the level of oversight being done in the general assembly's other standing committees due to the lack of audio/video archives and detailed minutes. In fact, most committees do not have any posted minutes and those that do are brief summaries of hearings no more than 2-4 pages in length. In one case, a hearing of the Education Committee in the House of Representatives, a large committee with 17 members, reported out three bills in a meeting lasting no longer than 10 minutes.[450] This suggests that standing committees are not engaged in rigorous oversight.

Oversight Through the Administrative Rules Process

Delaware's regulatory review process is a stark contrast between the powers and mechanisms that are available and what happens in practice. The rule promulgation process is centered on public notices and comments as a potential check on agencies. The Division of Research, a legislative agency directed by the Legislative Council, manages and publishes administrative rules through the Registrar of Regulations.[451] These are lengthy documents published monthly. The announcement for October 2018 is 75-pages long and provides a list of each rule or rule change with a contract person so that interested parties can make their views known.[452] In addition to publishing proposed rules, Delaware has the Regulatory Flexibility Act of 1983, which in theory requires agencies to be aware of the compliance costs of the rule in relation to the size of the entity being regulated.[453] The purpose behind the act is to provide flexibility or exemptions to small businesses that may not be able to comply with the financial costs of the new rule. The main committee in the legislature tasked with administrative rule oversight is the Joint Legislative Oversight and Sunset Committee (JLOSC) whose role and duties were described above. As part of its review of entities, the JLOSC can recommend rule changes.

An examination of the JLOSC's activities demonstrated no hearings or reviews of administrative rules. According to Schwartz (2010), he could find no one at the Legislative Council who knew of any small business impact statements that had been prepared – ever. In

[450]file:///C:/Users/svbet/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/6.20.18%20Education%20Minutes%20(1).pdf, accessed 7/24/18

[451] http://legis.delaware.gov/Offices/DivisionOfResearch/RegistrarOfRegulations, accessed 7/26/18

[452] http://regulations.delaware.gov/services/current_issue.shtml, accessed 10/10/18.

[453]file:///E:/State%20Oversight%20Project/Resources%20for%20Summaries/52_Experiments_with_Regulatory_Review.pdf, p.190, accessed 7/26/18

other words, the people involved in the implementation of Delaware's administrative rule review process claim that it is not used. In short, the regulatory structure Delaware has created over the years simply is not utilized in any meaningful fashion,[454] despite a fairly robust regulatory process defined by various statutes.[455]

Overall, the role of legislature is primarily advisory and there are no real mechanisms to halt new rules, unless by chance the agency is among the small number of entities the JLOSC reviews annually.[456] Despite the legislature's limited engagement with rule review, the attorney general's office must sign off annually on all administrative rules, a task said to keep hundreds of deputy attorneys general busy (Schwartz 2010). So there is some rule review in the state, but it is not performed through legislative oversight of the executive branch.

Oversight Through Advice and Consent

The Delaware confirmation process is fairly straightforward, with the governor making nominations and the Senate confirming or rejecting his nominees on a simple majority vote. In Delaware the governor has fairly extensive appointment powers, with the ability to appoint individuals to a variety of commissions, advisory councils, agency heads, and judicial posts. From 2017 to 2018, the governor submitted 188 nominations for various positions ranging from adjutant general of the National Guard to local justices of the peace.[457]

The governor's office compiles a general biography of the potential nominees with their qualifications and submits it to the Senate Executive Committee. This committee is comprised of all the senate leadership positions and is responsible for the operations of the senate and assigning bills to their respective committees. The Delaware Senate does not assign nominees to the committee of jurisdiction for consideration, rather the Executive Committee reviews the candidates' qualifications and reports the nominations out to the full chamber just like any other bill (interview notes, 7/26/18). New appointees always receive a hearing, while re-nominations usually do not receive a hearing. Although the governor has the ability to withdraw submitted nominations, this rarely occurs. In 2018 there were only two withdrawals, and one of those was due to the death of the nominee prior to a hearing (interview notes, 7/26/18). Very few nominees are rejected outright by the senate. Experts could only recall two nominees being rejected by a full vote of the senate, and one of those was back in the 1990s during Gov. Castle's tenure (interview notes, 7/26/18). While this suggests the senate confirmations are routine and not controversial, in truth the governor's vetting process is thorough. The communication between the governor's staff and senate leadership, and the collegial nature of a small legislature is usually enough to prevent contentious institutional battles over nominees.

There is no legislative oversight or review of gubernatorial executive orders in Delaware. The governor does not appear to make excessive use of this tool to make policy outside the reach of the legislature. In the nearly two years since he took office in January 2017, Gov. Carney has issued 21 executive orders.[458] Despite one-party control of state government, the governor does

[454] file:///E:/State%20Oversight%20Project/Resources%20for%20Summaries/52_Experiments_with_Regulatory_Review.pdf, p.191, accessed 7/26/18

[455] http://regulations.delaware.gov/, accessed 7/28/18

[456] Council of State Governments. 2015. *Book of States*. Table 3.26

[457] https://legis.delaware.gov/Senate/Nominations, accessed 7/28/18

[458] https://governor.delaware.gov/executive-orders/, accessed 7/28/18

appear to make policy by executive order. For example, he established a uniform statewide anti-discrimination policy. Moreover, the governor can use executive orders to reorganize the executive branch. Many executive orders establish or renew commissions, advisory groups, councils, boards or similar entities. For example, Gov. Carney used executive order 14 to establish an advisory council on connected and autonomous vehicles. There was not, however, a massive restructuring of government agencies in the recent set of executive orders.

Oversight Through Monitoring of State Contracts

Delaware, unlike other states, separates funding for non-profit organizations that provide services to citizens from the normal appropriations process into a separate Grants-in-Aid Bill. This provides a legislative tool that could be used to monitor a subset of state contracts. Legislators from the Joint Finance Committee (JFC), with the support of the Controller General's office, review contract requests and make funding recommendations for this specific type of state contract.[459] However, there are no minutes on the JFC's website so it is difficult to determine if hearings were held to discuss the Grants-in-Aid bill in order to assess non-profits' requests and evaluate their past performance.[460] The Grants-in-Aid process holds the potential as a useful tool for monitoring state contracts, but currently it is unclear if the general assembly uses it as a mechanism for oversight. In correspondence with someone familiar with the process, it was stated that there are no audio or video recording of JFC's proceedings so it difficult to ascertain at what level legislators uses the Grants-in-Aid process for oversight purposes.[461]

Delaware does make all its contract awards public along with the all the supporting documents of the bid, making the award process extremely transparent.[462] Some executive agencies have the capacity to monitor state contracts, in particular the Office of Management and Budget, the Division of Accounting in the Finance Department, and the independently elected State Auditor of Accounts. However, there does not appear to be a central agency that vendors or other agencies are required to report contracts issued over a specific amount. And the legislature appears to have no mechanisms, outside of the Grants-in-Aid bill, to assess the effectiveness or failures of state contracts. The independent legislative agencies, the DoR and OCG, do not assess state contract performance.

Oversight Through Automatic Mechanisms

As stated previously, Delaware has comprehensive sunset provisions and the Joint Legislative Oversight and Sunset Committee (JLOSC) utilizes the Division of Research to conduct reviews of selected agencies and commissions. JLOSC's annual report and its recommendations are often adopted by the legislature. However, JLOSC is flexible with agencies in terms of adopting those recommendations or delaying the review. JLOSC will often

[459] http://legis.delaware.gov/GrantInAid/Information, accessed 7/27/18
[460] http://legis.delaware.gov/Committee/JointFinance, accessed 7/27/18
[461] Correspondence notes 10/16/18; for a detailed explanation of the Grants-in-Aid process go to www.gia.delaware.gov, accessed 10/17/18
[462] http://contracts.delaware.gov/, accessed 7/26/18

hold over reviews into the next session to allow the agency or commission time to prepare for review (interview notes, 7/26/18).

The process for selecting an agency for review is usually left to the discretion of JLOSC, with input from house and senate leadership in collaboration with the governor. The governor usually has staff in place to communicate the governor's wishes and this helps to facilitate cooperation from the executive agency and prevent institutional pushback. One person familiar with the process discussed the challenges JLOSC often faces. A big challenge is how to rein in agencies or commissions that are overstepping their scope and charter (interview notes, 7/25/18). Delaware's sunset provisions are comprehensive, and JLOSC is a fairly active committee. Its non-partisan approach to determining program and agency effectiveness or ineffectiveness is in stark contrast to other states with comprehensive sunset provisions. Delaware's approach to sunset review is one of general assembly's best assets when conducting oversight.

Recently, discussions of ways to improve oversight in Delaware make a case for increasing staff resources for legislators and the Division of Research to enhance the sunset review efforts.[463] Currently there is only one staff assigned to JLOSC. More staff could increase the depth of the review reports and expand the number of entities reviewed. The compressed schedule of the legislature and the tendency to avoid special sessions further constrains the capacity of the JLOSC. In discussions with people familiar with JLOSC, it is evident that there was no plan currently to increase staffing levels or to increase the scope of JLOSC's sunset reviews (interview notes, 7/25/18).

The overall impact of JLOSC differs from states that have committees that focus on sunset procedures rather than assessing performance. For instance, since 1977 Texas has eliminated or consolidated 79 agencies and routinely transfers or consolidates agency responsibilities into other agencies.[464] In contrast, Delaware has only abolished one agency in the last six years (interview notes, 7/25/18). The approach JLOSC and legislators take is to determine why a particular agency is not functioning properly and provide recommendations to the general assembly that aim to improve the agency, not abolish it (interview notes, 7/25/18). These differences could be attributed in part to the differing political context of Delaware and Texas, where Democratic dominance in Delaware is not as likely to produce a scaling back of government programs. If the purpose of Delaware's sunset laws is to consolidate duplicative agencies or abolish ineffective obsolete agencies, then Delaware is failing to take advantage of its comprehensive sunset provisions. It is rare for entities to be eliminated. If on the other hand, the purpose of the sunset review is to enhance the performance of existing agencies, the JLOSC is in effect drafting legislation and making improvement-oriented changes. This sounds like a solid example of solution-oriented, evidence-based, bipartisan oversight.

Methods and Limitations

Of the ten people that we asked for interviews, three responded. We had to rely heavily on their information because there are no recordings of committee hearings either live or archived. Moreover, there are not archived recordings of legislative floor sessions. Delaware has the lowest level of video or audio recordings for any of the 50 states.[465]

[463] https://delawarestatenews.net/opinion/commentary-delaware-sunset-committee-needs-more-support/, accessed 7/26/18

[464] https://www.sunset.texas.gov/about-us

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Legislative Oversight in Florida

Capacity and Usage Assessment

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

Summary Assessment

Although there are extensive resources available for legislative oversight of the executive branch, the Office of the Auditor General (OAG) and the Joint Legislative Auditing Committee (JLAC) focus much of their attention on auditing local governments, school districts, special districts, boards, and commissions. Quasi-public corporations, private contracts, and outsourcing complicate the task of monitoring government funded programs and services in Florida. In that context, the emphasis placed on monitoring these entities is an important oversight responsibility of the legislative branch. But this focus seems to have distracted Florida's legislature from overseeing executive branch agencies.

Major Strengths

Florida has one of the best funded OAG in the country, and it uses these resources to produce large numbers of performance audits. Beyond that Florida has several other analytic bureaucracies that support legislative oversight. Chief among these is Office of Program Policy Analysis and Government Accountability (OPPAGA), a support unit specifically tasked with program policy analysis and government accountability. Florida made one of the most extensive efforts among the states to implement performance-based budgeting. Florida is among the few states that allow legislators to play a role, albeit a limited one, in monitoring state contracts. Florida's governor makes hundreds of appointments to boards and commissions in addition to a few agency directors. The Senate must vote affirmatively on each of these to confirm the nomination and has rejected substantial numbers of nominees.

Challenges

Two decades of one-party government in Florida seem to have drained the vitality of the state's reform agenda. Performance-based budgeting, which motivated performance auditing through OPPAGA, was repealed. The information and time demands of that form of budgeting proved to be too costly. Without the needs for performance assessment—the basis of performance-based budgeting—no one seemed to recognize the general value of assessing executive agency performance. Consequently, OPPAGA was cut to half its size. Requirements for sunset reviews were also repealed. The legislature gave away much of its rule review authority. Many of these changes occur shortly after the adoption of moderately stringent term limits, which increased legislative turnover reducing the knowledge and capacity of legislators. Florida exhibits declining oversight potential.

Relevant Institutional Characteristics

Florida has the nation's 15th most professional state legislature, despite being a hybrid legislature with short sessions, modest salaries ($29,697 plus a per diem of $152 for each session day) and term limits (Squire, 2017). Florida's State Constitution[466] specifies that regular legislative sessions, which begin in March, last 60 days annually. The legislature can extend the regular session by a three-fifths vote in each chamber. Additionally either the governor or the Senate president and House speaker, via joint proclamation, may call the legislature into special session. Special sessions are limited to 20 days and must address business specified in a proclamation by the governor or introduced by a two-thirds vote in the legislature. Special sessions may be extended for longer than 20 days by a three-fifths vote in each chamber (Florida State Constitution, Article 3, Section 3). It is, therefore, possible for Florida's legislature to meet about a month longer than the official 60 day legislative session. Difficult budget negotiations triggered extensions in 2017[467] and in 2018.[468]

In addition to these legislative sessions, Florida's legislators meet in county delegation meetings.[469] These consist of legislators from both parties attending a town hall-style meeting in which citizens have an opportunity to voice their concerns about state issues and to make requests directly to state legislators.[470] Moreover, committee sessions begin in September to provide legislators with an opportunity to develop bills that can be passed during the brief regular legislative session. Committee minutes indicate that teleconferencing is used to conduct interim committee meetings when the chamber is not in session and legislators are in their home districts.

Florida has both legislative and gubernatorial term limits. These limits, however, are not lifetime bans, but rather a restriction on the number of consecutive terms of service for these elected officials. Legislators can serve no more than eight consecutive years in the House and eight more consecutive years in the Senate. This means that legislators can run for the same

[466] http://www.leg.state.fl.us/statutes/index.cfm?submenu=3#A3S03, accessed 1/11/2018.
[467] https://www.naplesnews.com/story/news/politics/2017/05/02/florida-legislative-leaders-consider-extending-session-one-day/101197760/, accessed 7/1/18.
[468] https://www.mypalmbeachpost.com/news/state--regional-govt--politics/florida-legislature-oks-billion-budget-end-2018-session/MiQ4tFQODcsIjOhYcHgoAO/, accessed 7/1/18.
[469] https://www.flsenate.gov/Media/PressRelease/Show/2594, accessed 1/18/2018.
[470] https://www.ccfj.net/HOAREFBILLLEGDEL3.html, accessed 1/18/2018.

office again after sitting out for two years. Therefore, it is possible that legislators could amass some experience, although it is not typical (DePalo, 2015, p. 83).

The Florida Constitution creates a weak governor, whose institutional powers rank as 34th in the nation (Ferguson, 2013). The state is described as having a plural executive. The other three members of this Cabinet, elected separately, are the Attorney General, Agriculture Commissioner, and Chief Financial Officer. Each casts a vote when executive decision making occurs. The governor also casts one vote. In the case of a two-to-two tie, the side on which the governor votes wins. But, if the other three cabinet members are united against the governor, then the governor loses. A recent delay in the decision on hiring the head of the Office of Financial Regulation[471] indicates that, even when the cabinet members all hail from the same political party, they do not always agree on specific actions.

The governor and the three cabinet members who form the plural executive are all elected and all are term-limited. Governors and other cabinet members can serve for two consecutive terms. After sitting out of a specific office for two years, they are eligible to run again for the same office. Despite the constitutional restrictions on gubernatorial power, some observers argue that legislative term limits have strengthened the executive branch, concentrating policy making in the executive branch in recent years (DePalo, 2015). Additionally, effective in 2003, the Cabinet membership shrank from six members to three as the result of a constitutional ballot initiative. Consequently, historical assessments of gubernatorial power in Florida are likely to underestimate the ability of the executive branch to influence policy.

Political Context

Historically, Democrats controlled the Florida state government. But, with the realignment of southern conservatives from the Democratic to the Republican Party, Republicans now dominate Florida's state politics. Currently, Republicans control both legislative chambers and the executive branch. State Senate membership consists of 15 Democrats and 25 Republicans. Current House membership consists of 41 Democrats and 79 Republicans. Gov. Rick Scott and his three fellow cabinet members are also Republicans. Despite this Republican dominance, Gov. Scott won his most recent election by about a 1% margin of victory. So, the voters of the state are not overwhelmingly Republican. The northern parts of the state are highly conservative while the Miami region and other areas that attract retirees, immigrants, and newcomers from other states tend to be more liberal. These regional political party affiliations mean that legislative districts can be drawn to ensure partisan advantage in the legislature in a state this is closely divided politically in the population at large—a purple state for candidates who run state-wide.

Florida's House is somewhat polarized, ranking 15th most polarized lower legislative chamber in the nation. Its Senate is less polarized—24th among the 50 states. These rankings are based on differences between median roll call votes for each party in each chamber (Shor and McCarthy, 2015).

Dimensions of Oversight

[471] http://floridapolitics.com/archives/267412-rick-scott-cabinet-ofr-head, accessed 7/1/18.

Oversight Through Analytic Bureaucracies

Florida has several analytic bureaucracies that can provide information to the public and to the legislature about government programs. These include the Office of the Auditor General (OAG), the Office of Program Policy Analysis and Government Accountability (OPPAGA), the Office of Economic and Demographic Research (EDR), and to a lesser extent, the Commission on Ethics—which offer offers opinions on potential conflicts of interest in agency contracts. The EDR and OPPAGA are directed by the majority party leadership. They prioritize and report on matters that they are directed to examine by the leadership or else by statute (Interview Notes, 2018). However, the activity of the OAG is directed by the 13-member Joint Legislative Auditing Committee.[472]

The OAG is constitutionally established in Article III, Sections 2 and 11.42 of Florida's Constitution. Florida provides extensive financial support for its OAG, appropriating $36 Million in FY 2015 to support their work (NASACT, 2015). The OAG has a staff of 328 employees, of which 188 are CPAs. Only 22 are administrative and clerical support staff.

Florida's auditor general is appointed by the Joint Legislative Auditing Committee (JLAC) and confirmed by both legislative chambers[473] and assigned four primary duties: (a) conducting financial audits of state agencies, state universities and colleges, school boards, (b) establishing audit standards for CPAs in the state, (c) conducting audits of and review audits done by local government entities including public schools, charter schools and career centers, and (d) conducting operational and performance audits of public records and information technology systems. From July 2016 to June 2017, the OAG's office conducted slightly more than 200 financial and operational audit reports. Of these, 28 conducted during 2017 were audits of state agencies that appear to address program performance and operations. These are posted on its website under the categories "quality assessment reviews" and "operational audits."[474] The OAG's reports are distributed to the House speaker, president of the Senate, and the JLAC, which is a joint chamber committee.

The composition of the JLAC was originally established by chamber rule in 2014. It is described in the Joint Chamber Rule in 2016-2018[475] in section 4, which describes all of the legislature's Joint Committees. There are seven house members and six senators. The majority party has more members, currently seven Republicans and four Democrats. The committee website reports that there were five meetings in 2017—all in January and February.[476] The Legislative Auditing Committee (based on meeting information on its website)[477] votes on whether to accept the audit reports or not after a hearing on the audit report.

While the OAG is generally responsible for determining whether agency practices are compliant with statute, and that agencies are appropriately directing program resources, the Office of Economic and Demographic Research (EDR) is responsible for forecasting the future

[472] http://www.oppaga.state.fl.us/government/storgchart.aspx, accessed 1/11/2018
[473] https://flauditor.gov/, accessed 7/25/17
[474] https://flauditor.gov/pages/Reports.aspx, accessed 2/2/19.
[475] https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/JointRules.pdf, accessed 1/11/2018.
[476] http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=index_css.html&Directory=committees/joint/Jcla/&Tab=committees&CFID=218654492&CFTOKEN=ef103c75c3541542-062DB228-AFB0-F94A-3D3E01F89F7DE078, accessed 1/11/2018.
[477] http://www.leg.state.fl.us/Data/Committees/Joint/JCLA/Meetingsummaries/022317.pdf, accessed 1/11/2018.

costs and revenues generated by programs. These forecasts include expected demographic changes as well as changes in agency workload. According to comments from senior staff with an appropriations committee, EDR reports are vital for and frequently used by partisan staff and members of the appropriations committees when drafting new appropriations bills as these reports allow the legislature to adjust program budgets to reflect shifting needs (Interview, 2018).

The Office of Program Policy Analysis and Government Accountability (OPPAGA), the state's final "major" analytic bureaucracy, was created in 1994. It derives its authority from a Joint Rule adopted by the Legislature on November 20, 2012.[478] The OPPAGA reports to the legislative chamber leaders directly, but the distribution of its reports includes members of the JLAC. Its staff consists of 42 professionals, primarily legislative analysts.[479] Currently the OPPAGA produces Policy Notes,[480] which is a free weekly newsletter with policy analysis and recommendations, gives presentations to the JLAC (according to the OPPAGA website), provides public access to these reports on its website, and provides podcasts for the public summarizing policy reports. It reports on programs in all areas of state government, focusing on program performance and the agency's general policy mission rather than financial auditing or revenue generation. It produced 14 reports on state agency performance during 2017.[481]Its website lists reports on the activities of state government that were presented to the legislature between December 2016 and April 2017. These presentations at committee meetings correspond to reports produced by the OPPAGA. PowerPoint slides that summarize these presentations are posted on the OPPAGA website.[482]

The OPPAGA was initially created with intention that the agency would, with the assistance of the fiscal committees, annually review and analyze performance data from all of Florida's executive agencies in accordance with the state's "Performance Based Budgeting" (PB2) initiative. The OPPAGA would then determine whether agencies were setting appropriate outcome/output goals, and then report whether agencies were achieving those goals to the legislature. To accomplish this weighty task, the OPPAGA had a relatively large staff of approximately 90 people in 2001 (Liner, et al. 2001). However, despite this capacity, the legislature was soon inundated with complicated data from state agencies, which legislators struggled to comprehend. Additionally, data gathered by agencies was often poorly suited for use as outcome/output measures for budget decisions and was generally gathered by agencies for other internal purposes (Interview, 2018). As a result, legislators quickly became frustrated with the PB2 performance metrics, and just three years after implementing PB2 they amended the law to no longer require direct legislative input on performance metrics. Since then, the legislature has continued to repeal pieces of the PB2 policy. Today, appropriations committees are not required to give performance measures any consideration at all, although the OPPAGA reports and performance metrics are occasionally, but not commonly, cited by legislators in appropriations committees (Interview, 2018). Additionally, comments from appropriations staff suggest that appropriations committees tend to rely predominantly on reports from the EDR rather than the OPPAGA, in part because of the relevance of EDR to the appropriations committees but also in part because these committees have a strong relationship with the EDR, particularly the EDR bureau chief who is well respected by committee staff (Interview, 2018).

[478] http://www.oppaga.state.fl.us/, accessed 1/11/2018.
[479] http://www.oppaga.state.fl.us/shell.aspx?pagepath=staff/alpha.htm, accessed 1/11/2018.
[480] http://www.oppaga.state.fl.us/shell.aspx?pagepath=PolicyNotes/PolicyNotes.htm, accessed 1/11/2018.
[481] http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=29, accessed 2/2/19
[482] http://www.oppaga.state.fl.us/Presentations.aspx, accessed 1/11/2018.

The OPPAGA has continued to shift its own agency focus since the gradual rollback of PB2. Prior to the elimination in 2011 of the sunset review process, the OPPAGA also produced reports to support the legislature's efforts on this front.[483] Prior to 2014, the OPPAGA reviewed county school districts and provided reports describing the "Best Financial Management Practices" of school districts.[484] These reports were distributed to key members of the legislature, (i.e., the president of the Senate, the speaker of the House and the members of the JLAC), as well as the governor, commissioner of education, and the State Board of Education. However, the Florida legislature repealed the relevant statutes in both cases effectively terminating both the school district best practices reports and the sunset reviews. This change in the OPPAGA's jurisdiction underscores the potential impact of constitutional versus statutory authority with respect to oversight.

Today, the OPPAGA continues to act under the direction of legislative leadership to evaluate the five-year plans created by executive agencies, which are required to include broad performance outcome goals, and which are required to be in line with and reference the state-wide plan. Additionally, the OPPAGA performs ad-hoc evaluations of different programs when directed to by the legislature. These ad-hoc policy evaluations often require the OPPAGA to work closely and in concert with the other legislative support agencies, the OAG and the EDR, as was the case in 2018 when the OPPAGA completed reviews of the state lottery and the state's economic development initiatives (Interview, 2018). In 2017, the OPPAGA published 14 such reports. The OPPAGA's increasingly diminished role has meant that since 2001, the agency has had more than a 50% reduction in staff, from over 90 to a 42. It is interesting to note that in Liner et al. (2001), the authors argue that the then exceptional institutional capacity of the OPPAGA meant that Florida was better positioned to implement a highly effective PB2 program. That capacity no longer exists.

Lastly, the Florida Commission on Ethics, created in the 1974 constitutional reform, is an independent commission that also provides information to the legislature on financial disclosure laws, ethics laws, and executive branch lobbyists' registration, among other topics.[485] This commission oversees state contracts as well as monitors ethical conduct of public employees, such as following financial disclosure laws and the rules governing gifts, honoraria, and reporting and registration requirements for executive branch lobbyists.

The commission is a nine-member board of private citizens empowered to interpret and apply Florida's ethics laws. The governor appoints five of the nine members, with no more than three chosen from the same political party. The speaker of the House and the president of the Senate each appoint two members, one from each political party. None of the members can hold any public office, although one member must be a former local government official. Terms last two years, and no member can serve succeeding terms. A 25-person staff of professionals assists the commission with its duties.

During 2016, the commission handled 220 complaints, determining that 132 of these complaints warranted investigations. The commission reports annually to the legislature. As part of this report,[486] the commission recommends legislative action to clarify and improve ethics laws in the state. For example, the commission recommended in 2016 that the legislature extend

[483] http://www.oppaga.state.fl.us/shell.aspx?pagepath=sunset.htm, accessed 1/11/2018.
[484] http://www.oppaga.state.fl.us/districtreviews.aspx, accessed 1/11/2018.
[485] http://www.ethics.state.fl.us/AboutUs/History.aspx, accessed 1/11/2018.
[486] http://www.ethics.state.fl.us/Documents/Publications/2016%20Annual%20Report.pdf?cp=2018111, accessed 1/11/2018.

conflict of interest laws to employees and officers of private or non-profit organizations performing public functions, such as foster care services or community mental health services.

Oversight Through the Appropriations Process

The appropriations process in the Florida Legislature includes a standing joint committee, the Florida Budget Commission and an appropriations committee in each chamber, with subcommittees attached. The state is required, as are most states to pass a balanced budget, which is called the General Appropriations Act (GAA). The governor initiates the process by presenting a budget to the legislature 30 days prior to the beginning of the legislative session. Appropriations committees meet during the interim to prepare for the budget process. During these interim hearings, agencies testify about their budget requests. Some budget hearings do not illustrate strong oversight, however.

The Senate Subcommittee Health & Human Services 12/12/18 held a one-hour hearing on December 12th, 2018,[487] in preparation for the governor's budget, which would be presented to the legislature in February. This subcommittee hearing appeared to be primarily a way to provide information to senators new to the subcommittee. All of the key agency heads of the departments under the jurisdiction of the committee presented reports on what they do. The chairman of the committee specifically referred to the oversight role the committee has and how the committee conducts that oversight. With over 42% of the state budget falling under the jurisdiction of the committee, Health & Human Services, he pointed out that oversight is a huge responsibility for the committee. The presentations encompassed things as simple as the agency's previous budget and changes the legislature had made to their programs and services. Senators throughout the hearing asked specific and pointed questions of agency heads regarding those changes. In particular the head of the state's Medicaid program was asked several questions about reimbursement rates and the overall growth and sustainability of the program. Senators were engaged and asking questions beyond the simplistic "What does your agency do?" type questions. Overall the hearing was an interesting "introductory course" to what the subcommittee does, with new and experienced senators asking insightful and penetrating questions of the all the key agency heads under the subcommittee's purview. Based on this committee hearing, it appears that Florida's senators recognize the need for them to conduct oversight through the appropriations process via subcommittee hearings.

Another example of oversight activity in hearings is the Agriculture and Natural Resources Appropriations Subcommittee hearing on October 11th, 2017, in which staff from the Florida Fish and Wildlife Conservation Commission (FWCC) were asked by legislators about their nuisance gator bounties (1 hour 13 minute mark).[488] A bounty of $30 has been paid by FWCC to contractors responding to citizen's nuisance gator complaints. There were approximately 9000 bounties paid in 2016. Legislators wanted to know whether the bounty was appropriate given the price a gator's skin and meat could fetch on the market and they wanted to

[487] https://thefloridachannel.org/videos/12-12-18-senate-appropriations-subcommittee-on-health-and-human-services/, accessed 1/1/19

[488] http://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2017101102 accessed 10/17/18

know where the money came from to pay the bounties, since only enough was appropriated for 7000 of the 9000 total bounties. Staff answered that they did not know the answer to either question, but would create a report showing the sizes of the nuisance gators, which would give an indication of the gators value, and provide the accounting for the paid bounties.

The Florida Budget Commission, which consists of 14 legislators—seven from each chamber, meets during the interim to make any necessary adjustments to the state's budget. Party affiliation of the members reflects the proportion of seats each political party holds in the chamber. A list of prior commission meetings indicates that there are typically two meetings per year, generally during the summer.

At the July 19th, 2018[489] meeting, the commission approved 12 budget amendments for eight state agencies. The commission has the support of four staff members, who prepare 2 to 3 page fiscal summaries of the agencies' requests for additional funds. These documents for this meeting indicated that the governor recommended approval of all the requests. All the requests were approved by the commission. We did not find an archived recording of the commission, so it is not possible to determine the level of oversight exercised by the commission, but it appears that there is some interest in witnesses testifying and it does not appear that the commission merely rubber stamps these requests. The list of witnesses testifying includes primarily state agency staff and a few lobbyists—a total of 10, eight of whom appeared at the request of the chair of the commission.

Florida famously used a performance-based program budgeting system called PB2 that was adopted in 1994 through the Government Performance and Accountability Act. PB2, in its original form, required that requests for executive agency budgets by the governor include performance measures and standards. Approval of the output and outcome measures provides the legislature with an opportunity to exercise oversight through the budget process. Executive agencies are responsible for identifying reasonable performance measurements which the legislature can use to aid budget decisions. In addition to the strategies and objectives laid out in the agencies strategic plan these should include general performance measures, financial measures, program outputs, and program outcome measures (*§216.0235)*. Currently, state agencies notify the governor and the legislature annually by the end of September that they have posted their long-range (five year) strategic plans on their website. Plans are required to include the program or agency's purpose, its strategy, its goals and objectives, and to link back to the state-wide strategic plan. Officially, this plan is the basis for the agency's budget request.

However, since PB2 was initially implemented, legislative approval of outcome measures is no longer required, and outcome/output measures utilized in the five-year strategic plans are generally broad. They are not specific enough to bind an agency or to foment partisan controversy (Interview, 2018). Additionally, in 2006, the Legislature created §216.1827 of the Florida Statutes, which separated budget appropriations and legislative approval of performance measures and standards. As such, legislators today tend to not fight over specific performance measures like they did when PB2 was first implemented between 1994 and 1997. Today, the legislature still utilizes a base-budget approach to appropriations where particularly salient programs or new programs are more likely to receive substantial appropriation increases regardless of performance metrics or long-term strategic plans (Interview, 2018). Expertise is crucial during appropriations committee meetings as the appropriation committee tends to be

[489] http://www.leg.state.fl.us/Data/Committees/Joint/JLBC/Actions/071918.pdf, accessed 1/6/19

comprised of the senior members most of whom serve in key position on the standing committees (interview, 2018). But with term limits, legislators' expertise is not as extensive as it once was.

Oversight Through Committees

The Florida Constitution empowers all legislative committees conducting an investigation to compel witnesses to testify and produce any requested documents (Florida State Constitution, Article 3, Section 5). Penalties for subpoenaed individuals who fail to comply include jail time. Despite dramatic media coverage[490] of a court battle regarding a legislative subpoena served to a TV personality who was alleged to have misused state tourism funds, a search of committee hearings did not uncover any legislative intervention. Comments from committee staff suggest that standing committees are involved in oversight, in that committee members develop significant substantive expertise during a long tenure on a committee (Interview, 2018). However, we have found no specific references to oversight in the substantive committee meeting minutes that we have examined.

On the other hand, the Senate Appropriations Committee is a standing committee, and it appears to conduct oversight outside of the appropriations process. The following hearing of the full Senate Appropriations Committee, held on January 18th, 2018,[491] demonstrates senators' willingness to engage in oversight. This hearing lasted nearly 2 hours and discussed the progress of the South Florida Water Management District's (SFWMD) on an Everglades restoration project. The project goals are to build canals and a 240,000 acre-feet of water in a southern reservoir to help manage discharge from Lake Okeechobee, prevent toxic algae blooms, move water through the drying Everglades, and build a water treatment plant to help remove nutrients from northern estuaries that help feed the algae blooms.[492]This project is estimated to cost $1.6 billion. This project is enormously complex, expensive, and involves cooperation between state agencies like the SFWMD, and Department of Environmental Quality and federal agencies like the EPA & Army Corps of Engineers. The appropriations committee was actively overseeing the SFWMD's progress. In particular, the Senate committee heard testimony from the director of the SFWMD, Ernie Marks about the progress towards establishing reservoirs to handle the water flow through the Everglades.

The hearing focused on issues related to the efforts to acquire the necessary land to construct the reservoir and the timeline for construction. Senators asked fairly detailed questions about the models and the science behind those models the SFWMD used when constructing their reservoir plans. Also, issues of the time needed to get all the interconnected plans into place were raised. Director Marks lamented that he had been unable to engage the federal government, specifically the Army Corps of Engineers, when constructing the plans for the restoration, prior to the statutorily required review period by the Corps. While this would not delay the implementation of the plans, earlier involvement by the Corps could prevent delays further down the line when the Corps reviews and either approves the plans or demands changes to the plans, resulting in further delays. Senators asked several questions about the potential to speed up the

[490] http://www.nwitimes.com/news/national/emeril-tv-producer-fighting-subpoena-from-florida-house/article_413272e5-2133-571b-892f-b609346edd50.html, accessed 1/18/2018.

[491] https://thefloridachannel.org/videos/1-18-18-senate-appropriations-committee/accessed 1/2/19

[492] http://www.wlrn.org/post/preparations-begin-new-everglades-reservoir-project, accessed 1/2/19

process, since Florida has been working on restoration of the Everglades for nearly 2 decades. Senators expressed concerns over the project potentially taking over a decade to complete and many wanted to see the process implemented sooner.

This reservoir project is enormously complex and expensive and most senators asked questions beyond the "explain this to me" type line of questioning. Interestingly, there was no mention or questions relating to the cost of the project. Since this was an appropriations committee hearing, one might have assumed that the fiscal costs of this project would be raised. But the actions of the committee can be termed as oversight of a previously funded project. The focus was on monitoring the management and implementation of the project in all components, not just the fiscal components. This hearing occurred during the interim and indicates that the appropriations committee engages in oversight of state projects, not just hearings to produce a budget bill.

The JLAC considers audit reports and findings as well as receiving information about non-compliance with audit recommendations. The report on entities that did not comply with audit recommendations consists entirely of school districts, special districts, local governments, and boards. The report lists actions that the JLAC can take if it is not satisfied that the entity is trying to comply with the recommendations, including the power to "[d]irect the Department of Financial Services and the Department of Revenue to withhold selected state revenue." [493] The OAG also provided the committee with the number of repeat audit findings for each of these entities to aid the committee in its decision about taking action. JLAC meetings also include approval of requests for audits from members of the legislature and assignments given by the committee to the OPPAGA to examine the performance of public entities. The most interesting feature of these committee meeting summaries[494] is the extent to which oversight and monitoring are directed toward local governments, special districts, boards, commissions, and other entities rather than state executive branch agencies. So, although the JLAC appears to be actively monitoring the finances and performance of state government writ large, its efforts to overseeing the executive branch appear limited.

An example of this type of local government oversight occurred during the December 7th, 2017 JLAC hearing in which legislators adopted a motion to further monitor the town of Caryville for non-compliance in failing to provide financial records (44 minute mark).[495] The town of 293 people and a yearly budget of approximately $150,000 has been non-compliant repeatedly and has already lost $38,000 in state funds as a result. The town is severely distressed, having moved after being destroyed by a 1994 hurricane and subsequently been investigated by FEMA for misallocation of funds. Legislators debated next steps, including loaning money to the town to pay for the creation of the financial report, providing the town with more assistance, or dissolving the town. Audit staff answered legislators questions about what would help ensure compliance and also informed the process procedurally, in particular stating that it was out of the JLAC's scope to pass a motion dissolving the town. No one from the town attended the hearing. Ultimately the motion to further monitor the town with deadlines to produce the financial reports passed with 8 ayes and 3 nays.

Although JLAC is contributing to general accountability in the State of Florida by monitoring these local entities, it does not appear that the committee focuses as much attention

[493] http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=AuditsNot.cfm&Directory=committees/joint/Jcla/&Tab=committees, accessed 7/1/18.
[494] http://www.leg.state.fl.us/Data/Committees/Joint/JCLA/Meetingsummaries/120717.pdf, accessed 7/1/18.
[495] https://thefloridachannel.org/videos/12-7-17-joint-legislative-auditing-committee/ accessed 10/17/18

on the performance of state agencies. Additionally, the substantive standing committees have no direct control over any legislative analytic bureaucracies, or agencies in general, and so are prevented from acquiring audits of state agencies under their jurisdiction without first coordinating with the chamber leaders or the JLAC. As such, the substantive standing committees in Florida do not appear to engage in oversight beyond their regular bill-passing authority. An inspection of the expanded agenda for 10 meetings of the Senate Committee on Governmental Oversight and Accountability for the 2017-18 session found no evidence that this committee used, mentioned, or discussed any audit reports or reports from other analytic support agencies. Most of the oversight we found for standing committees appears to involve the appropriations committees' work outside the budget process. These committees appear to do more than just pass a budget, and they appear to play an important role in legislative oversight.

Oversight Through the Administrative Rules Process

Florida uses a single legislative oversight process to oversee both the promulgation of new rules as well as the continued review of existing rules. The task of reviewing agency rules and procedures falls to the Joint Administrative Procedures Committee (JAPC). The primary focus is to prevent executive branch agencies from exceeding the authority delegated to them by the legislature. The JAPC is a joint standing committee of the legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature[496] that implement Chapter 12 of the Florida Statutes, the Administrative Procedures Act. To maintain consistency between laws and administrative rules, the JAPC is charged with "the continuous review of agency rules." In keeping with this mission, the JAPC performs an annual review of all changes in legislation and determines what rules may be affected by said changes. In this capacity, the JAPC is tasked with regularly consulting with, and making recommendations to, the standing legislative committees with jurisdiction over the rules proposed by executive branch agencies. The JAPC may object to an existing agency rule as a result of new legislation, or to a new rule that is not compliant with an existing statute.

Additionally, individual citizens have the power to initiate a formal challenge to a rule. The Administrative Procedures Act specifies that "[t]he Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section."[497] Although this seems like it enhances government responsiveness, the opportunities for objections from individual citizens could serve as a mechanism for special interests to apply continued pressure against regulation through regular challenges; not just to the promulgation of new rules, but even long existing rules in addition to providing uncommon opportunities for special interests to intervene in rulemaking

If the JAPC objects to an agency rule, the agency must modify or withdraw the rule. If it does not, the JAPC can, through the President of the Senate and the House speaker, submit legislation to resolve its objection to the rule. Additionally, with consent from the president of the Senate and the House speaker, the JAPC can request judicial review of an administration

[496] http://www.flsenate.gov/Session/Bill/2016O/0002O/BillText/er/PDF.
[497] http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0120/0120.html Section 120.536, Item 3, accessed 8/2/17.

rule. The constraints on agency rulemaking are extensive and provide JAPC with many opportunities to object to a rule. For example, agencies are required to demonstrate that their rules and proposed rules do not unduly burden small businesses, small cities, and small counties. Moreover, the cost of regulatory rules on business competitiveness and economic development must be assessed. If these costs are too high, the agency must modify or rescind the rule.

The majority Republican legislature recently sided with Gov. Rick Scott in his effort to "sign executive orders to freeze job-killing regulations," and effectively sided against the State Supreme Court, which ruled in *Whiley v. Scott* that the governor could not unilaterally "suspend" existing rules and procedures that have been previously approved by the state legislature, thus protecting the legislatures institutional interests. This odd concession of institutional power came in 2010 when, in an attempt to fulfill a popular campaign promise, newly-elected Gov. Scott issued executive orders which temporarily prevented any executive agencies from enacting any new rules and formed the Office of Fiscal Accountability and Regulatory Reform (OFARR). The OFARR was then tasked with approving all new rule changes and with suspending existing "job killing regulations" (with a specific emphasis on the campaign trail on insurance regulations). However, the State Supreme Court, in *Whiley v. Scott*, dealt a blow to the governor by ruling that he and OFARR could not suspend existing regulations. It may not be in the legislature's interests not to have rules it has previously approved unceremoniously stricken from the books in favor of rules which have not yet received legislative approval. Yet, the majority Republican legislature sided with the Republican governor in the wake of *Whiley* by passing HB 7055 in 2012, which effectively rewrote chapter law, further centralizing rulemaking authority around the governor and allowing for the unilateral suspension of agency rules.[498]

Oversight Through Advice and Consent

Florida requires Senate confirmation of numerous appointments to boards and commissions. Confirmation requires a vote by a majority of senators. Failure to act on an appointment means that the appointee is not confirmed. Rosenthal and Moakley (1984) note that some boards and commissions delegate governing autonomy to agribusiness or tourism, among other special interests. For example, they describe the Florida Citrus Board, whose members are appointed by the governor subject to Senate confirmation, as "self-governing, self-taxing, and self-regulating," based on a statute that created it.

During 2017, there were 206 appointments that required Senate confirmation. Of these, 23 appointees failed to receive confirmation. Examples of some of the positions for which nominees were rejected include the State Retirement Commission, the Secretary of Business and Professional Regulation, the Barber's Board (two of three failed), governing boards of various regional water management districts (nine of twelve appointments were not confirmed), and the Florida Building Commission (one of two failed). In 2016, even more appointments—357 in total—required Senate confirmation, of which the Senate failed to confirm 40. Similar, but less common than gubernatorial appointments, are gubernatorial suspensions—the removal of an appointed officer from office—which are initiated via executive order and require the consent of the state Senate.

[498] http://www.forc.org/Public/Journals/2012/Articles/Summer/Vol23Ed2Article3.aspx.

Florida's senators, more than many other states' legislators, appear to take their advice and consent power over gubernatorial appointments seriously. That said, they also have many more opportunities to exercise this power given the hundreds of appointees in the state.

The Florida legislature plays a mixed role in the oversight of gubernatorial executive orders. Much of the discussion of executive orders involves emergencies such as the Zika outbreak or hurricane evacuations. Here, the legislature also plays little or no role in oversight. The legislature does, however, play a role in agency reorganization and the continuing existence of boards and commissions. But its role remains secondary to the executive branch.

The governor has the authority to create agencies, boards, and commissions as he or she sees fit without confirmation by the legislature, and may reorganize the executive branch by simple executive order (Perkins, 2017). The legislature is tasked with reviewing agency performance and the continuing need for boards and commissions with a mission to "sunset" these entities when needs change. However, the executive branch appears to have even wider latitude in consolidating and eliminating agencies, boards, and commissions.

Oversight Through Monitoring of State Contracts

Authority to oversee agency procurement is largely centralized within the executive branch. In most cases, agencies are required to undergo a competitive procurement process which is overseen by the Department of Management Services, an executive agency that reports to the governor. The legislature has very limited tools by which it may monitor agency contracts. One such available tool is the financial audit.

As noted earlier, the Commission on Ethics oversees state contracts. This commission reports to the legislature and makes recommendations. However, its authority appears to be limited to conflicts of interest. Despite this, comments from appropriations staff suggest that there may at least be some "informal" mechanism of oversight, at least in the cases of extreme and apparent procurement maleficence, as appropriations staff routinely discusses these issues during budget deliberations (Interview, 2018).

Oversight Through Automatic Mechanisms

Florida, in 1976, was one of the first states to implement a comprehensive sunset law; a law which required the legislature to review all its laws after a period of time. The Office of Program, Policy Analysis and Government Accountability (OPPAGA) was responsible for performing regular reviews of existing law and providing a detailed report to the full chambers of the legislature, which then chooses whether or not to renew the law. However, as was the case with the other comprehensive good government reforms, the state legislature chafed under the added demands (interview, 2018), and in 2011 the legislature repealed its sunset provisions (Baugus and Bose, 2015). While Florida no longer has a sunset mechanism, it does, as previously mentioned, have an extensive sunrise mechanism in place for administrative rules, which invites substantial input from special interests.

Oversight Unique to the State or Uncommon Across States

The involvement of the legislature in oversight appears to be a reaction to the power of special interests in the state. Yet, the major career paths of state legislators indicate that many of them hail from the construction industry and real estate, so they may have close ties to these industries. While many state legislatures are dominated by members of the legal profession, 63% of Florida's state legislators in the 1980s had backgrounds in business. Consequently, Florida has adopted financial disclosure regulations to try to monitor its state legislators. But, it appears there is a major battle between special interests and the public interest.

Sometimes oversight by Florida's state legislature appears to empower dominant industries in the state to block government action on behalf of citizens. For example, the power of the legislature to force repeal of administrative rules that are deemed too costly for economic development and business competitiveness provides a mechanism to weaken statutes intended to preserve the ecosystem, the water system, the air or other public goods. Some of this occurs when individual citizens, who are empowered to trigger rule review hearings, protest the effect of a rule. At first glance, this appears like democracy in action, but this also provides a forum for individual citizens with corporate connections to launch the challenge.

A different example is provided by Rosenthal and Moakley (1984) who emphasize the power of special interests and lobbying in Florida government. These authors describe efforts by the tourist industry in the 1970s to bring Disney World to Florida. The legislature and executive branches collaborated in the creation of a special, self-governing district covering tens of thousands of acres of land across three counties. Each landowner gets to vote on district decisions based on the number of acres he or she holds—1 vote per acre. The Disney Corporation owns 95% of the land in the district, allowing the Disney Corporation to do whatever it wants with the land. The nature of this, and other special districts, may explain the heavy emphasis in the JLAC on audits of the boards and commissions.

Methods and Limitations

We were able to interview four of the 10 people that we contacted for interviews. Florida does not have easily accessible archived recordings of its committee hearings. Although some hearings are available on the legislature's website, many of the recordings are only available through The Florida Channel, a public access stations that includes numerous broadcasts of information of interest to Florida citizens. This makes it very difficult to find a specific hearing on a specific date. It was, therefore, hard to follow lines of oversight inquiry. This made it difficult for us to verify the extent to which Florida legislators use their power to conduct oversight.

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Legislative Oversight in Georgia

Capacity and Usage Assessment

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

Summary Assessment

Georgia's legislature has exceptionally strong oversight powers in a few key areas (especially administrative rules review), but it appears to make very limited use of some of these powers. Moreover, Georgia's legislature lacks several prerogatives that most other states possess, such as confirmation of gubernatorial appointees. We found evidence that oversight through the appropriations process is robust, but evidence of oversight through standing committees is far more limited.

Major Strengths

The Georgia Department of Audits and Accounts appears to conduct high quality performance audits, despite recent budget cuts and staff reductions. It has a separate Performance Audit Division. Moreover, the appropriations committees appear to make effective use of this information. Legislators have an opportunity to request audits. Therefore, they are often eager to hear about and use the findings. The legislature has some sunset review prerogatives through standing committees, but these do not appear to be used extensively.

Challenges

There is no committee specifically responsible for audit reports or linked with the audit division. Consequently, outside of the appropriations process, there does not appear to be much committee time or attention paid to these audits. Despite having a short legislative session, Georgia does not appear to have a well-developed interim committee system, which we found to be active in oversight in many western states that have similarly short legislative sessions. Therefore, the time available for legislators to probe the performance of state agencies is more limited than it is in other part-time legislatures. Similarly, there is no dedicated committee responsible for administrative rules review, which is quite common in other states (e.g., Joint Committee of Administrative Rules or other similar committee). This may contribute to the apparent limited use of the legislature's prerogatives in this area. The legislature lacks the power

to oversee gubernatorial appointments given that there is no requirement for senate confirmation for the vast majority of department heads and other top executive branch officials. Likewise, the governor can reorganize government without legislative input.

Relevant Institutional Characteristics

The Georgia Legislature consists of 56 senators and 180 representatives.[499] The National Conference of State Legislatures (NCSL, 2017b) classifies Georgia's legislature as a hybrid—the job takes more than two-thirds the time of a full-time job, but the pay typically requires a second job. The Squire Index, which measures professionalism using some of the aforementioned variables and other considerations, ranks the Georgia Legislature 42nd (Squire, 2017). Therefore, he judges Georgia's legislature to be among the 10 weakest in the nation.

The salary for a legislator is$17,342, and when the legislature is in session, there is a per diem of $173 set by the Legislative Services Committee.[500] Georgia's legislature is in session for 40 legislative days as stipulated in the constitution (NCSL, 2010). Therefore, legislators earn approximately $24,000 per year for the regular session. The legislature was in session from January 8, 2018, through March 29, 2018, and the previous session was from January 9, 2017, through March 31, 2017.[501] The Georgia Legislature has the ability to call a special session (Richards, 2016)[502] if three-fifths of the members of each house sign a petition to the governor and copy the secretary of state.[503] The legislature has 742 staff members, 511 of which are permanent (NCSL, 2018). There are no limits on the number of terms, consecutive or otherwise, a legislator may hold.

The institutional power of Georgia's governor also is rated below average, 36th nationally (Ferguson, 2015). The governor is granted very few powers to make appointments in major functional areas, such as K-12, with many of these appointments being done by someone other than the governor and not requiring the governor's approval or confirmation. It is important to note that the legislature is also out of the loop on these appointments, lacking any power to confirm or reject these appointees. The governor's overall institutional powers are somewhat buoyed by the significant powers in creating the budget. Georgia is one of seventeen states that give the governor full responsibility for creating the budget, and the legislature may not increase the governor's overall revenue estimates if it makes any modifications to the proposed budget. The governor has a line-item veto authority. Moreover, the legislature must muster a two-thirds vote to override a gubernatorial veto.

Georgia's state and local government employees make up 11.9% of total employment in the state. Although this has only slightly higher proportion of state and local government employees than the national figure of 11.3%, it is higher 32 other states. It is the education sector that produces Georgia's higher proportion of state and local government employment; 6.8% for Georgia compared to 6.1% nationally. The remaining proportions are nearly identical to the

[499] https://ballotpedia.org/Georgia_General_Assembly accessed 8/29/18.
[500] https://ballotpedia.org/Comparison_of_state_legislative_salaries, accessed 11/20/18.
[501] https://ballotpedia.org/Georgia_General_Assembly accessed 8/29/18.
[502] https://www.11alive.com/article/news/lawmakers-no-special-session-for-veto-override-please/112544490, accessed 8/29/18.
[503] http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx, accessed 8/29/18.

national proportions: 1.8% is employed in public safety, 1.5% in welfare, 1.2% in general services, and .7% in other sectors (Edwards, 2006).

Political Context

In the last 50 years, Georgia's legislature experienced a long period of Democratic control followed by divided government beginning in 2002 and then, starting in 2004, Republican control of both chambers (NCSL, 2017a). The governor's party mirrors the partisan control found in the legislature with the election of Republican Governor Sunny Purdue in 2003, marking a shift from Democratic control that had lasted over fifty years (NGA, 2017). Georgia has been a Republican trifecta (control of both houses and governorship by the same party) since 2005.[504] The house is currently comprised of 64 Democrats, 115 Republicans, with one vacancy[505] while the senate is comprised of 19 Democrats and 37 Republicans.[506] According to Shor and McCarty (2015), Georgia's house is the 16th most polarized in the country, while its senate is the 12th most polarized.

Formal Mechanisms of Oversight

Oversight Through Analytic Bureaucracies

The primary legislative analytic bureaucracy in Georgia is the Department of Audits and Accounts (DOAA). The head of DOAA is the state auditor, a statutory position (Georgia Code, 50-6-1). Although the state auditor is formally considered an executive branch official, he or she serves at the pleasure of the legislature.[507] The Georgia State Auditor is chosen by the Georgia General Assembly from among the qualified candidates nominated by members of the legislature with a majority vote of both chambers needed for confirmation (Georgia Code, 50-6-1). Qualifications for the position include at least five years of experience in government auditing. In the event that the state auditor resigns while the legislature is not in session, the governor appoints a state auditor until the legislature reconvenes, a situation that occurred in 2012.[508] The governor's appointee was confirmed by the legislature in the following session. We were told that, although the process for removal of the state auditor is not specified in statute, and the legislature has not yet attempted to remove a sitting state auditor, the assumption is that the legislature would simply appoint a successor to replace the sitting state auditor (interview notes 2018).

DOAA offers a variety of work products and services to the legislature. The Performance Audit Division (PAD) is a unit within DOAA chiefly responsible for performance audits. In 2018, DOAA listed a total of 18 professional contacts on their website, including four

[504] https://ballotpedia.org/Party_control_of_Georgia_state_government, accessed 8/29/18.
[505] https://ballotpedia.org/Georgia_House_of_Representatives, accessed 8/29/18.
[506] https://ballotpedia.org/Georgia_State_Senate, accessed 8/29/18.
[507] https://ballotpedia.org/Georgia_State_Auditor, accessed 8/29/18.
[508] http://www.audits.ga.gov/AdminDiv/BioGregGriffin.html, accessed 8/29/18.

professional staff contacts for PAD.[509] A staff of twenty-six is allocated to performance audit (NASACT, 2015), a decrease of five from the 31 PAD positions listed in the DOAA annual report for 2012, the last annual report posted on the website.[510] NCSL survey data indicate that the PAD dedicates 100% of their activity to performance audits, program evaluations, and policy analyses (NCSL Survey Retrieved from Database).[511] PAD describes its work as "focusing on holding government accountable by determining whether goals are met, measurable outcomes achieved, and ensuring government is complying with applicable rules."[512] Its staff considers itself management analysts rather than financial auditors (PAD).[513] PAD produced 10 performance audits in 2017.[514] This is a substantial decline from the 20 performance audits PAD completed in 2012, the last year for which an annual report is posted on its website.[515] It would appear that resources for PAD have been reduced during the past several years. Indeed, the DOAA reported major budget cuts for several years in response to a survey question about recent changes experienced (NASACT, 2015).

DOAA provides audits of financial statements, statewide federal single audits, attestation engagements, compliance only audits, economy and efficiency audits, program audits, IT audits, Accounting and Review Services, and desk reviews (NASACT, 2015). In addition to PAD, DOAA has three other divisions: Audit and Assurance Services, Equalized Property Tax Digest, and Internal Operations. The DOAA provides the legislature with services often provided by a separate fiscal analysis agency, including fiscal notes on bills and state retirement account information. The DOAA "issue[s] approximately 150 retirement certifications and 50 summaries of actuarial investigations."[516]

The 2015 NASACT report, *Auditing in the States,* indicates that DOAA audits are selected by law or rule, by the governor, legislators, agency management, or by the state auditor. However, according to PAD's website, they decide whether to conduct a performance audit or evaluation based on request from key figures:

> We select topics from a variety of sources. The programs and activities to be audited are selected by the State Auditor and reviews may be requested by individual legislators, the Governor, or agency management. Our reports cover a wide array of programs and activities encompassing any program or activity that receives state funding (Performance Audit Division).[517]

The key word here is "select." Audits that are not legally mandated sometimes have a requesting source, but it is not necessary for the DOAA to respond to these requests. Thus, ultimately, the state auditor decides which of these audits to schedule (interview notes, 2018). In addition, audits are published only at the state auditor's discretion (interview notes, 2018). Neither the DOAA nor PAD is attached to a single legislative committee. Each state audit report includes an explanation of its origin, often citing a legislative committee request or a governor's

[509] http://www.audits.ga.gov/Contacts/contact.html, accessed 8/29/18.
[510] http://www.audits.ga.gov/files/2012_Annual_Report.pdf, accessed 11/23/18.
[511] ncsl.org/Portals/1/Documents/nlpes/NLPESEnsuringThePublicTrust2015_3.pdf, accessed 8/29/18.
[512] http://www.audits.ga.gov/PAO/PAOdivision.html, accessed 1/14/19.
[513] http://www.audits.ga.gov/PAO/PAOdivision.html, accessed 1/14/19.
[514] https://www.audits.ga.gov/rsaAudits/viewMain.aud accessed 8/16/18.
[515] http://www.audits.ga.gov/files/2012_Annual_Report.pdf, accessed 11/23/18.
[516] http://www.audits.ga.gov/legislativeServices.html, accessed 8/29/18.
[517] http://www.audits.ga.gov/PAO/PAOdivision.html, accessed 1/14/19.

office request. For example, the 2017 *State Workers' Compensation* audit was requested by the Senate Appropriations Committee.[518]

Implementing audit recommendations is the responsibility of the legislature or of the audited agency. In the case of the former, the main transmission belt from DOAA or PAD is the report itself. We are told that legislative money committees or subject matter jurisdiction committees may or may not hold hearings on an audit (interview notes, 2018). For example, the performance audit titled, *Math and Science Salary Incentives for Teachers,*[519] was discussed at the House Education Committee and Senate Education and Youth Committee (interview notes, 2018). We found many cases of DOAA reports being used during legislative oversight through the appropriations process, which will be discussed further in that section. Agencies often voluntarily adopt recommendations. These adoptions typically take on the form of changes in policy through discussion with PAD, and these proposed actions are typically described in the audits themselves. Follow-up reviews by PAD are common, accounting for three of the 10 audit reports created in 2017.[520] These reviews include a comparison of the PAD recommendation to agency's corrective action along with comments from the agency.[521] For recommendations in financial audits, the corrective action plan[522] produced by the agency is also filed with the state accounting office.[523]

In addition to DOAA, each chamber has offices to assist with the budget and research: House Budget and Research Office[524] (17 staff),[525] Senate Budget and Evaluation Office[526] (eight staff),[527] and the Senate Research Office[528] (seven staff).[529] These offices provide the legislature with research capacity,[530] committee staffing, bill summaries, and capacity[531] to develop the annual budget.[532] Each of these offices attempts to provide the legislature with the capacity to be data and information driven in their approach to the budget and policy.

Oversight Through the Appropriations Process

Georgia produces an annual budget. The budget process is initiated by the governor, who works with the state economist and the Office of Planning and Budget (OPB) to determine an estimate for revenues and budget needs. This estimate determines the budget instructions that are communicated to agencies, usually in July.[533] These agencies produce budget requests based on the instructions and submit them to the OPB, House Budget and Research Office, and the Senate

[518] https://www.audits.ga.gov/rsaAudits/download/20763, accessed 8/29/18.
[519] http://www.open.georgia.gov/openga/report/downloadFile?rid=18643, accessed 1/14/19.
[520] https://www.audits.ga.gov/rsaAudits/viewMain.aud, accessed 1/14/19.
[521] http://www.open.georgia.gov/openga/report/downloadFile?rid=21362, accessed.
[522] http://www.audits.ga.gov/Resources/stateGovResources.html, accessed 1/14/19.
[523] https://sao.georgia.gov/federal-compliance-reporting#sar-audit, accessed 1/14/19.
[524] http://www.house.ga.gov/budget/en-US/default.aspx, accessed 8/29/18.
[525] http://www.house.ga.gov/budget/en-US/hbroStaff.aspx, accessed 8/29/18.
[526] http://www.senate.ga.gov/sbeo/en-US/Home.aspx, accessed 8/29/18.
[527] http://www.senate.ga.gov/sbeo/en-US/StaffListing.aspx, accessed 8/29/18.
[528] http://www.senate.ga.gov/SRO/en-US/Home.aspx, accessed 8/29/18.
[529] http://www.senate.ga.gov/sro/en-US/SenateResearchStaff.aspx, accessed 8/29/18.
[530] http://www.senate.ga.gov/sro/en-US/Home.aspx, accessed 8/29/18.
[531] http://www.house.ga.gov/budget/en-US/default.aspx, accessed 8/29/18.
[532] http://www.senate.ga.gov/sbeo/en-US/Home.aspx, accessed 8/29/18.
[533] https://georgia.gov/blog/2014-02-10/how-does-georgia%E2%80%99s-budget-work, accessed 8/29/18.

Budget and Evaluation Office by September 1.[534] According to the Georgia Constitution, The governor's budget must be submitted to the legislature within five days of the Georgia General Assembly convening in January (Digby, 2018).[535]

Once the budget is submitted to the legislature, committees review the budget and agency budget requests with the assistance of the House Budget and Research Office, the Senate Research Office, and the Senate Budget and Evaluation Office. The House Appropriations Committee[536] and the Senate Appropriations Committee[537] perform these activities separately with each committee relying on a substantial number of subcommittees.[538] Archival video recordings of the House Appropriations Committee[539] demonstrate that hearings are held frequently and include testimony from the public[540] and from agency staff and officials.[541] Legislators occasionally engage the officials with questions. The 2017 house archive shows that during the regular session, subcommittees held 47 hearings.[542] The full House Appropriations Committee held eight hearings in 2017. The 2017 archive shows that there were also pre-session meetings by six house appropriations subcommittees, each meeting lasting one or two hours long. For example, the House Appropriations Economic Development Subcommittee held two pre-session hearings on January 4, 2017, each lasting two and a half hours in which officials from a variety of agencies made presentations including, but not limited to, the Georgia Department of Economic Development, Georgia Ports Authority, Georgia World Congress Center Authority, Georgia Agricultural Exposition Authority, Georgia Soil and Water Conservation Commission, State Road and Tollway Authority, and the Regional Transportation Authority.[543,544] Most of time spent in these two sessions was consumed by presentations by leaders from the agencies or authorities. Legislators asked very few questions during these hearings, with a notable exception being questions directed at the official from the Georgia Regional Transportation Authority about specific operating costs, the relationship between usage of express bus coaches and road congestion, and the expansion/maintenance of the express bus coaches (two hour and 10-minute mark).[545]

The Georgia House of Representatives is responsible for introducing any appropriations bills that amend the governor's budget, but these appropriations bills may not exceed the governor's estimated revenues. Each chamber passes an amended and general fiscal year budget that is reconciled in conference committee before it is sent to the governor. There were three conference committee hearings to resolve differences in appropriations bills passed by the house

[534] http://www.house.ga.gov/budget/Documents/GABudgetCycle.pdf, accessed 8/29/18.
[535] https://www.georgiaencyclopedia.org/articles/government-politics/state-budgeting, accessed 8/29/18.
[536] http://www.house.ga.gov/Committees/en-US/committee.aspx?Committee=88&Session=25, accessed 8/16/18.
[537] http://www.senate.ga.gov/sbeo/en-US/AppropriationsCommittee.aspx, accessed 8/16/18.
[538] Senate Subcommittees: Agriculture and Natural Resources, Community Health, Criminal Justice and Public Safety, Economic Development, Education, Fiscal Management and General Government, Higher Education, Human Development, Insurance, Judicial, Transportation
House Subcommittees: Economic Development, Education, General Government, Health, Higher Education, Human Resources, Public Safety, and Transportation.
[539] http://www.house.ga.gov/Committees/en-US/CommitteeArchives88.aspx, accessed 8/16/18.
[540] https://livestream.com/accounts/19771891/events/6811947/videos/150225205, accessed 8/16/18.
[541] https://www.youtube.com/watch?v=m-clQ0cLTTc&feature=youtu.be, accessed 8/16/18.
[542] http://www.house.ga.gov/Committees/en-US/CommitteeArchives88.aspx, accessed 8/16/18.
[543] https://livestream.com/accounts/19771755/events/6810993/videos/145840412, accessed 8/16/18.
[544] https://livestream.com/accounts/19771755/events/6810993/videos/145852694, accessed 8/16/18.
[545] https://livestream.com/accounts/19771755/events/6810993/videos/145852694, accessed 8/16/18.

and senate in 2017.[546] Once the budget is passed by the legislature, the governor has 40 days after the legislative session ends to review the budget and may exercise line-item vetoes.

While the legislature has the ability to override gubernatorial vetoes and even call a special session to address appropriations vetoes, this kind of activity has not occurred in the last two years, despite plenty of opportunities. In 2018, the governor vetoed 21 bills on the last possible day to sign or veto legislation passed in the 2018 session (Campbell, 2018).[547] The current governor has exercised line-item veto authority. For example, in 2016, he used his line-item veto on $809,900 of funds for the construction of seawall on land that his office determined was not owned by the state. The state was thus "prohibited from using general obligation debt to finance the project."[548]

While the annual budget provides opportunities for the legislature to assert its priorities, a closer look at state spending on college tuition scholarships reveals a complex oversight environment informed by Performance Audit Division audits, legislation considered routinely by committees, and individual legislators fulfilling major campaign promises. In the past few years, there have been three story threads that have developed into an emerging issue frame as the result of PAD reports: Georgia Lottery Corporation (GLC) bonuses to its employees, Georgia Lottery Corporation business practices resulting in diminished funding for pre-kindergarten and post-secondary degree scholarships-- known as HOPE scholarships or Zell Miller scholarships, and overall cost shifting of higher education over the last decade from the public to individual students. In each case, varying degrees of legislative action have been taken. These threads taken together-- decline in lottery revenues earmarked for higher education scholarships and the increasing student-borne cost of higher education-- are shaping public debate most clearly in the 2018 Democratic Party's candidate for the governorship.

The first story deals with Georgia Lottery Corporation business practices that were flagged by PAD and corrected by legislative action. In 2010, the legislature learned $1.9 million in bonuses were paid out to Georgia Lottery Corporation employees. In response, the legislature passed a law limiting the amount that could be paid in bonuses and as a result, bonuses were $712,344 in 2016 (Shearer, 2017).[549]

The second story is written by State Senator Jack Hill and deals with follow-up audits on the Georgia Lottery Corporation (GLC) that found questionable business practices. The audits, produced by PAD at the request of at least the Senate Appropriations Committee, found that while the lottery legislation sets a goal that 35% of lottery proceeds would go to education, in 2016, only 25.5% went to education (Hill, 2017b).[550] Second, GLC relied on dubious market research to suggest that every one percent increase in payout would result in $13.5 million in additional revenue. The audit found that the research lacked "statistically significant findings," omitted key variables, and was performed by a GLC subcontract, which "could be seen as a conflict of interest" (Hill, 2017a).[551] Third, while the law only mandates a payout of 45% of proceeds, payout was 65% in 2015. Fourth, the audit notes that subcontracting for marketing and

[546] http://www.house.ga.gov/Committees/en-US/CommitteeArchives88.aspx, accessed 8/16/18.
[547] http://times-herald.com/news/2018/05/governors-veto-pen-gets-a-workout, accessed 8/16/18.
[548] https://gov.georgia.gov/press-releases/2015-05-11/deal-signs-2016-budget, accessed 8/16/18.
[549] http://onlineathens.com/local-news/2017-01-02/state-audit-questions-georgia-lottery-corporation-business-practices, accessed 1/11/19.
[550] http://www.savannahnow.com/effingham-now/2017-09-12/notes-senate-georgia-lottery-further-look, accessed 8/29/18.
[551] https://www.savannahnow.com/effingham-now/2017-09-06/notes-senate-georgia-lottery-further-look, accessed 11/28/18.

market research equaled $90 million and these contracts have not been rebid since 2002 (Hill, 2017a). Legislative action was considered in the form of SB 5,[552] which would require at least 26% of the net proceeds by 2018 and at least 30% by 2020 be transferred to the Lottery for Education Account. While ultimately the bill did not pass, it demonstrates legislative interest in audit findings. The conference committee hearing shows the floor debate and attempts by Senator Bill Cowsert to persuade the house to include the added language requiring the percentage targets, but the overwhelming concerns about technical difficulties, worries about over limiting the discretion of administrators, and calls for discussion in conference committee held the day.[553]

It is possible that GLC may experience increased monitoring in coming years in order to increase HOPE and Zell Miller scholarships. These reports are taking on new life by dove tailing with other reports out of PAD, which focus entirely on the costs of higher education. PAD stated that "historically, state appropriations were set to fund 75 percent of instruction costs and tuition rates were set at levels to fund the remaining 25 percent of the cost of instruction" (Trabrizi, 2017).[554] By 2011, the state appropriations were funding only 55% of instruction costs, leaving students to pick up the remaining 45%. In addition, non-instructional costs are ballooning. For example, fees for dining have grown at a rate double that of inflation (Downey, 2017).[555] The audit suggests the university system take measures to curb these costs, but the greatest overall contributor to the rising costs for students is the decline in state appropriations mostly in the form shrinking HOPE scholarships (Downey, 2017).[556] A local paper described a legislator's approach as follows:

> Fran Miller views the coming college affordability study as a possible first step on the road to need-based aid. He says creating such a program in a state where 17 percent of the population lives in poverty is vital for Georgia's economic future. 'I don't think anybody's against it,' Millar said. 'It's just a question of where we're going to come up with money. We have to look at our priorities. I think we'll get there eventually,' he added, but said that any need-based program would likely have some kind of academic requirement, such as students needing to keep at least a 2.0 GPA (Butrymowicz & Kolodner, 2017).[557]

The creation of these audits has motivated some legislative action, but more effort will be needed to pass legislation or alter GLC practices. Legislative oversight of the GLC appears to be an important part of this effort, and it indicates that Georgia's legislators do on occasion use audit information to oversee state programs through the appropriations process. Overall, however, the limited questioning of agencies by legislators during appropriations hearings indicates that routine oversight of state agencies through the appropriations process lacks rigor.

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[552] http://www.legis.ga.gov/Legislation/en-US/display/20172018/SB/5, accessed 8/29/18.
[553] https://www.youtube.com/watch?v=9C1dR253V44, accessed 8/29/18.
[554] http://georgiastatesignal.com/georgia-students-pay-high-fees-public-colleges-funding-cuts/, accessed 8/16/18.
[555] https://www.ajc.com/news/local-education/georgia-still-grappling-with-college-cost-quandary/15q3kP8euhZerGoeHA48SM/, accessed 11/28/18.
[556] http://www.ajc.com/news/local-education/georgia-still-grappling-with-college-cost-quandary/15q3kP8euhZerGoeHA48SM/, accessed 8/16/18.
[557] http://www.myajc.com/news/affording-college-georgia-getting-tougher/EqxLCn7GSX7rxF9lXoRypI/, accessed 8/30/18.

Oversight Through Committees

No single committee is charged with general oversight of the executive and not one single joint committee or one single committee in either chamber is charged with reviewing all performance audits (interview notes, 2018). Rather, subject matter jurisdiction committees are responsible for oversight in their area, and money committees are responsible for oversight of expenditures. A review of the committee roster[558] identified three committees that appeared to have some special role in oversight: Senate Government Oversight Committee, House Governmental Affairs, and House Budget and Fiscal Oversight. A closer inspection revealed that these committees were not engaged very actively in legislative oversight of the executive and do not appear to have the resources and capacity to do so.

The Senate Government Oversight Committee[559] has key topic areas that include state purchasing and government programs.[560] The Senate Government Oversight Committee met three times in 2017: February 10, 2017 (three minutes), February 24, 2017 (13 minutes), and March 13, 2017 (32 minutes).[561] The issues discussed: changes to committee rules, an amendment to the Georgia Constitution that would allow faith based organization to receive public aid,[562] and a bill that would decrease the penalties for drivers who roll through a stop sign which included testimony from a Georgia Sheriff in support of the bill.

House Governmental Affairs is charged with overseeing operations of state, county, and municipal government. This committee met seven times in 2017.[563] The average meeting lasted for less than a half hour and most focused on election laws and cybersecurity. Most of the time in these was consumed by legislators presenting bills. We found only two examples of government officials presenting on pending legislation in 2017. House Governmental Affairs was responsible for HB 899, signed into law in 2018, which changed bidding requirements, making it possible for bidders to apply for a contract even if they lacked experience with the delivery method.[564] This would appear to weaken rather than strengthen requirements to ensure good performance by state agencies and programs.

The House Budget and Fiscal Oversight met three times in 2017.[565] The first meeting dealt with organizational issues and voting on committee rules (22 minutes and 49 seconds).[566] The second meeting looked at alternative mechanisms for funding the state employees' defined benefit retirement system. This included two presentations, each from a governmental official: a staffer from the Employees Retirement System of Georgia and the Executive Director of the Teachers Retirement System of Georgia (one hour, six minutes, and four seconds).[567] Legislators questioned the presenters about the options and stated some of their policy preferences. The third meeting examined unfunded mandates. Information provided included an internal report by the legislature on unfunded mandates, which lacked specific numbers, and another report on

[558] http://www.senate.ga.gov/COMMITTEES/en-US/Home.aspx, accessed 8/16/18.
[559] http://www.senate.ga.gov/committees/en-US/committee.aspx?Committee=130&Session=25, accessed 8/16/18.
[560] http://www.senate.ga.gov/SiteCollectionImages/Gove130.jpg, accessed 8/16/18.
[561] http://www.senate.ga.gov/committees/Documents/2017Minutes130.pdf, accessed 8/16/18.
[562] http://www.legis.ga.gov/Legislation/en-US/display/20172018/SR/105, accessed 8/16/18.
[563] http://www.house.ga.gov/Committees/en-US/CommitteeArchives92.aspx, accessed 8/16/18.
[564] http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/899, accessed 8/16/18.
[565] http://www.house.ga.gov/Committees/en-US/CommitteeArchives126.aspx, accessed 8/16/18.
[566] https://livestream.com/accounts/19771738/events/6811894/videos/147684643, accessed 8/16/18.
[567] https://livestream.com/accounts/19771738/events/6811894/videos/150067918, accessed 8/16/18.

unfunded mandates from NCSL (45 minutes and 41 seconds).[568] This third meeting focused on developing a list of unfunded mandates that would to be sent to the Georgia Speaker of the House with the ultimate goal of contacting the U.S. Congress about these programs.

Not only did we find instances of limited or weak oversight, we found evidence of failed oversight. A 2015 audit report showed that the Georgia Environmental Protection Division (EPD) and the Georgia Department of Natural Resources (DNR) were not effectively monitoring the disposal of old tires, despite the fact that its citizens pay a one-dollar disposal fee for every new tire they buy. A 2018 follow-up report showed that the problems had persisted.[569] The follow-up report about the tire disposal program mentions the need for the general assembly to "revise state law to move the fee payment from retailers to wholesalers"[570] Moreover, the audit report indicates that the fees collected for tire disposal are deposited in the state's general fund, but then were to be allocated to the Solid Waste Trust Fund (SWTF). The legislature, however, failed to appropriate all of the money to SWTF. Therefore, the money was and continues to be used for other purposes[571] because the legislature failed to appropriate the available funds to SWTF. Meanwhile, positions needed to monitor tire disposal compliance are vacant, and the agencies report a lack of funds to carry out this mission (Salzer, 2015).[572] Despite this ongoing problem, the Natural Resources and Environment Committee never mentioned the issue during any of its six hearings in 2018. Moreover, the agencies involved never testified at any of the six committee hearings held in 2018. Archives for the Georgia House Special Study Committees, which extend back to 2014, do not reveal any study committees on this topic.[573]

The Natural Resources and Environment Committee's initial meeting was informational with presentations about the overall process of waste disposal, county landfills, and coal ash disposal. There were only a few questions from legislators because the committee did not have time available for questions. None of the presenters were from state agencies, although, one represented county landfills. The only state agency staff making any presentations during all six hearings was from the director of the state's Forestry Commission (minute five from the February 8, 2018, hearing).[574] Legislators' questions to the director were not probing questions that exhibited deep knowledge about forestry in the state. The exchanges would be best described as information seeking. The four other meetings held during 2018 focused exclusively on bills. Subcommittees appear to examine the bills in depth and then make a brief report to the committee followed by an explanation from the bill's sponsor. Committee members ask questions of the bill's sponsor. There is no agency testimony on any of these bills.

Even though the standing committee with jurisdiction over tire disposal did not appear to take action on this issue, there was some legislative effort to resolve problems with the tire disposal fees. It appears that Rep. Jay Powell has made repeated efforts to dedicate taxes and fees to their specific purposes (Salzer, 2017).[575] In 2017, working through the committee he chairs,

[568] https://livestream.com/accounts/19771738/events/6811894/videos/151266584, accessed 8/16/18.
[569] www.open.georgia.gov/openga/report/downloadFile?rid=21222, accessed 1/14/18.
[570] www.open.georgia.gov/openga/report/downloadFile?rid=21222, accessed 1/14/18.
[571] https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/swtf_050318.pdf, p. 2, accessed 11/24/18.
[572] https://politics.myajc.com/news/state--regional-govt--politics/audit-questions-georgia-need-for-full-scrap-tire-fee/XyyMzMAoSAC90jlVy3CmPJ/, accessed 11/24/18.
[573] http://www.house.ga.gov/Committees/en-US/StudyCommittees.aspx, accessed 11/24/18.
[574] https://livestream.com/accounts/19771805/events/7993495/videos/169943565, accessed 11/24/18.
[575] https://politics.myajc.com/news/state--regional-govt--politics/georgia-house-pushing-truth-fees-constitutional-amendment/HgY93YDQq92uO4N7D5CqPJ/, accessed 11/24/18.

the House Ways and Means Committee, he succeeded in gaining house approval for a bill to do this. The bill died in the senate. In 2018, he attempted to get an amendment, the Trust Fund Honesty amendment, to this effect on the November 2018 ballot.[576] That would have addressed the broader issue of diverting funds, such as a traffic fine add-on that was supposed to fund high school driver education programs. That effort failed in the legislature. This approach is markedly different from the oversight based approach we found in Oregon when their emergency management agency lacked the resources needed to fund its work. In that case, the chair of the committee of substantive jurisdiction promised agency leaders that he would work with the appropriations committee chair to increase the money available for the agency to meet its responsibilities. In Georgia, we found no evidence of hearings, let alone, a targeted approach to working on impediments to agency performance. Indeed, necessary legislative action was blocked in the Senate.

Oversight Through the Administrative Rules Process

On paper, Georgia's legislature possesses formidable powers to oversee the promulgation of new administrative rules. A two-thirds vote of both chambers can block any administrative rule. In practice, this power appears to be used very rarely, leading Schwartz (2010) to describe it as a "sledgehammer collecting cob webs." Schwartz also reports that there is no review of existing administrative rules.

When agencies want to create a new rule, they must inform the legislative counsel of their intent at least 30 days before adopting the rule. This notification must include an exact copy of the rule, a synopsis, and the authority the rule is based upon (GA Code 50-13-4).[577] The rule is then referred to the standing committees in each chamber with jurisdiction over the agency. Either of these committees can ask the agency to conduct a public hearing, and either can object to the rule. If the agency adopts the rule over a committee's objection, then that committee can introduce a resolution to override the rule within the first 30 days of the next regular session of the general assembly (Wall, 2010).[578] If two-thirds of the committee's members vote to block the rule, it is presented to that chamber's entire legislative body. If two-thirds of the members of that chamber vote for the resolution to override the rule, a vote in the opposite chamber is held within five days (GA Code 50-13-4-f(2)). If the resolution receives less than two-thirds but more than half in each chamber, then the governor must sign the resolution for it to have the force of law. If the resolution is supported by a two-thirds vote in both chambers, then the governor's signature is not needed (Berry, 2017). If both committees vote by a two-thirds majority to oppose the rule, the proposed rule shall be held in abeyance until both chambers of the general assembly have time to vote for suspension (GA Code 50-13-4-f(2)).

Despite this power, the rule review process does not appear to be systematic or evidence-based (Schwartz, 2010). Moreover, the required impact statements focus only on economic impacts to business, without any consideration of impacts to the public. Even the business impact criterion is assessed without consistent qualitative or quantitative evidence. Benefits and costs

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576 https://ballotpedia.org/Georgia_Legislature_Authorized_to_Dedicate_Revenue_from_Taxes_and_Fees_to_Specific_Purposes_Amendment_(2018), accessed 11/24/18.

577 https://law.justia.com/codes/georgia/2010/title-50/chapter-13/article-1/50-13-4/, accessed 8/13/18.

578 http://knowledgecenter.csg.org/kc/system/files/Table_3.26.pdf, accessed 8/13/18.

are not considered at all. Moreover, Schwartz (2010) judges the committee review of the rules to be idiosyncratic, reflecting the chair's personal interests rather than uniform standards.

During 2017, the Georgia State Board of Education promulgated 17 new rules.[579] These rules took effect during the interim between regular legislative sessions. Therefore, the education committee in each chamber could have objected to these rules by passing a resolution during the first 30 days of the 2018 legislative session. The agendas for education committee meetings in either chamber for the month of January (senate education committee -- two meetings, joint education committee-- one meeting, and house education committee -- two meetings) do not indicate any discussion of these rules. Indeed, one meeting was canceled in the senate, the joint chamber meeting was canceled, and one meeting in the house was canceled. There does not appear to have been any use of the legislative administrative rule review process. It is possible that all 17 rules were viewed favorably by both chambers' education committees, but it seems like this is a lot of new rules for there to be no objections or issues to discuss. There is no indication of any discussion of these rules on any of these committee agendas. This supports the assessment that the Georgia Legislature makes limited use of its power to review administrative rules.

Yet there are instances in which the legislature has blocked administrative rules. For example, a November 27, 2017, meeting of the House Ways and Means Committee and the Senate Finance Committee[580] led to the delay of a rule promulgated by the Department of Revenue (proposed rule 560-6-2). This rule was intended to implement a newly passed law, HB 337. The rule created a single index for liens, rather than the 159 indices that existed previously in each county. The intent of the law was to simplify the process of looking up property liens in the state system by taking information that was in 159 counties and centralizing it in one place to streamline the process. The chair of the hearing said that the Department of Revenue interpreted the law with 560-6-2 in a way that was inconsistent with legislative intent. He was particularly concerned with the part of the rule that would require a "certificate of clearance" before any deed could be recorded, which he said would give "the department veto power over the recording of deeds of transfer." The action by the committees provided the legislature with the opportunity to "get back [into session] and make some modifications to the state and clarify" the intent (interview notes, 2018).

Despite this example of legislative review of an administrative rule, we were told that it is indeed uncommon for administrative rules, both proposed and existing, to be blocked by legislators (interview notes, 2018). This appraisal appears consistent with our observations and with Schwartz's (2010) assessment.

Oversight Through Advice and Consent

Georgia's legislature has very limited authority over gubernatorial appointments to the executive branch positions described in the *Book of the States* (Wall, 2014). Only two executive agency heads, that is of Revenue and personnel, require senatorial confirmation. Georgia also has a wide array of boards and commissions whose members are typically appointed by the

[579] http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/Pages/PEABoardRules.aspx, accessed 11/24/18.
[580] https://livestream.com/accounts/19771794/events/6811961/videos/166493489, accessed 12/16/18.

governor. In a list of 15 of these, senatorial confirmation is mentioned for only one of these boards, the Board of Human Resources (Saunders, 2013).[581]

Georgia's governor may issue executive orders without any apparent restrictions (Wall, 2014). The source of authority for the executive is statutory, implied, and implied from the constitution (Wall, 2014). Executive orders are subject to filing and publication procedures, but they are not subject to an administrative procedures act or subject to legislative review. Many of these are not controversial. For example, an executive order in 2017 declared a state of emergency for 28 counties due to a coming winter storm, a more consequential event in a southern state that lack snow removal capacity (Haney, 2018).[582] Others involved lowering flags to half-staff.[583] But the governor makes extensive use of these orders (412 issued in 2017), and some indicate the broad power of the executive branch in Georgia. For example, many of the executive orders issued in 2017 dealt with the appointment of judges. Others dealt with the authorization of the demolition and removal of a building from the Walton Fish Hatchery,[584]

The governor also can reorganize government through executive orders without legislative intervention. Former U.S. President Jimmy Carter infamously overhauled Georgia's government in the 1970s to the dismay of state legislators (Rosenbaum, 1976).[585] The legislature could reorganize government, with the governor's approval, by exercising its power to write a bill and pass a law or joint resolution through normal means. But, if the governor objects, then this approach to government reorganization is difficult, given the two-thirds vote needed to override a gubernatorial veto.

Oversight Through Monitoring of State Contracts

The DOAA Audit and Assurance Services is responsible for reviewing "the financial statements of about 500 nonprofit organizations that contract with the state."[586] In addition, DOAA's Performance Audit Division (PAD) has included commentary in their performance reports about best practices when contracting. PAD also produced an entire report in 2003, titled, *Components of an Effective Contract Monitoring System*.[587] However, most oversight is done by the executive branch State Purchasing Division.[588]

[581] https://www.georgiaencyclopedia.org/articles/government-politics/statutory-and-executive-boards-and-commissions, accessed 11/27/18.
[582] http://www.13wmaz.com/news/state-of-emergency-issued-for-28-georgia-counties-ahead-of-winter-storm/504300408, accessed 1/14/19.
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[585] https://www.nytimes.com/1976/10/19/archives/4-years-later-carters-reorganization-of-georgia-government-is.html, accessed 11/27/18.
[586] http://www.audits.ga.gov/auditAssuranceServices.html, accessed 8/16/18.
[587] https://sao.georgia.gov/sites/sao.georgia.gov/files/imported/vgn/images/portal/cit_1210/44/61/140551558Best%20Practices_Contract%20Monitoring.pdf, accessed 8/16/18.
[588] http://doas.ga.gov/state-purchasing, accessed 8/16/18.

Oversight Through Automatic Mechanisms

Georgia has both sunset and sunrise reviews, but the former apply only to regulations and the latter focuses on occupational licensing requirements (Baugus & Bose, 2015). It does not appear that Georgia's current sunset procedures apply automatically to entire agencies or boards and commissions. According to the Council of State Governments (2014), the DOAA conducts performance reviews that include measures to assess the need for regulations or boards and commissions or other government entities to continue. Standing committees can request these audits. Thus, it is possible for the legislature to terminate both regulations and government entities, but this is not automatic or systematic. Its use relies on the vigor of standing committees to pursue oversight.

With respect to sunrise reviews, Georgia is one of three states that reply on special councils or boards rather than the legislature to conduct these reviews. The reviews focus on licensing requirements for occupations. In Georgia, the Occupational Regulation Review Council is responsible for sunrise reviews. Its membership is dominated by the executive branch (seven gubernatorial appointees plus the Director of the Office of Planning and Budget), but the legislature has some representation (two legislators are members).[589] Yet, this does not appear to be a forum for legislative oversight of the executive.

Methods and Limitations

For Georgia, we contacted eight people requesting information about oversight, but we were able to interview only five of them. Georgia provides good access to archival information about committee hearings. Agendas, minutes, video,[590] and audio (interview notes, 2019) are available for senate committee meetings. Minutes and video are available for house committee meetings. Minutes are archived on committee websites and with the Georgia Archives (interview notes, 2019). Neither chamber has transcripts of committee meetings (interview notes, 2019).

[589] https://static1.squarespace.com/static/545815dce4b0d75692c341a8/t/58923a44cd0f6884a009b2af/1485978181624/Sunrise+Provisions+for+Occupational+Licensing+DRAFT+11.15.16+%281%29.pdf, accessed 11/27/18.

[590] https://livestream.com/accounts/25225487/events/7946935/videos/172003633, accessed 1/16/19.

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406 CLOB. (2017). *Appropriations: Economic Development 010417 pt. 2*. Retrieved from https://livestream.com/accounts/19771755/events/6810993/videos/145852694

406 CLOB. (2017). *Appropriations: Economic Development pt. 1.* Retrieved from https://livestream.com/accounts/19771755/events/6810993/videos/145840412

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Legislative Oversight in Hawaii

Capacity and Usage Assessment

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

Summary Assessment

Hawaii has multiple analytic support agencies that aid the legislature with its oversight responsibilities. The system stresses transparency and public accessibility of audit reports. Audit reports are used regularly in committee hearings. Sunrise and sunset reviews provide a mechanism for legislators to influence state agencies. Analytic bureaucracies aid in these reviews. Audits also provide a mechanism to oversee contracts despite the fact that the executive branch is primarily empowered[591] to review and monitor contracts.

Major Strengths

Audit reports are well publicized and summaries are prepared with the intent to promote public understanding and accessibility to Hawaii's citizens. The auditor's office provides one-page follow-up reports that describe actions taken in response to its reports. Moreover, the audit reports themselves address whether the legislature and agencies acted on audit recommendations. Audits provide a mechanism that the legislature uses to oversee contracts even though the executive branch is solely empowered to monitor contracts. Audits are used in making budget decisions and standing committees attempt to pass legislation based on audit findings.

Challenges

The governor has strong appointment powers and can thus exert a lot of control over state government. However, despite ongoing Democratic control of both branches of state government, Hawaii's legislators take their advice and consent responsibilities seriously with the legislature at least occasionally challenging gubernatorial appointees. Additionally, it is not clear how effective the legislature is at passing bills introduced in response to audit findings, which is somewhat surprising given the overwhelming single party control of state government. Also, Hawaii's legislature lacks the authority to participate in the promulgation of administrative rules,

[591] http://spo.hawaii.gov/procurement-wizard/manual/contract-management/, accessed 9/5/18.

which means that it cannot easily assert itself if it feels that agencies are formulating rules that conflict with legislative intent. On balance, however, Hawaii's legislature has the resources it needs to conduct meaningful oversight, and it appears to take this responsibility seriously.

Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL) (2017) classifies the Hawaii Legislature as a full-time lite legislature, meaning that the job takes 80% or more of a full-time job and the pay typically does not require a second job. The base salary is $62,604 plus a daily rate of $225 when the legislature is in session (NCSL, 2018).[592] This aligns with its Squire Index ranking of being the 7th most professional legislature. This assessment means that the legislature in Hawaii is closer in professionalism to the U.S. Congress than 43 other states (Squire, 2017). The legislature has 707 staff members, 307 of which are permanent (NCSL, 2015). There are no limits on the number of terms, consecutive or otherwise, that a legislator may hold. Hawaii's legislature is constitutionally limited to a 60 day session (NCSL, 2010) with the potential for a 15-day extension either by gubernatorial request or a two-thirds vote by both legislative chambers.[593] Similar options exist for the governor or legislature to call a special session, which is limited to 30 days but can also be extended by 15 days.[594] This means that Hawaii's legislative session could last 120 days, which substantially exceeds the actual session days for states that do not restrict session length (Squire, 2017).

Hawaii has a relatively small legislative body with a total of 76 members, with 51 members in the house and 25 in the senate. Representatives and senators are elected for two-year and four-year terms, respectively, and the members of the legislature are not bound by term limits. The combination of the high level of professionalism and lack of term limits allows legislators to gain substantial experience in their roles.

The power and structure of the executive branch is established in Article V of the Hawaii Constitution (HI art. V). Hawaii is one of a handful of states that does not separately elect any top executive level positions, such as attorney general (Council of State Governments, 2014). The only exception is that Hawaii is one of 17 states that hold separate elections for lieutenant governor.[595] In these states, the lieutenant governor can be from a different party than the governor. The lieutenant governor in Hawaii is one of three, including Utah and Alaska, whose duties include those typically performed by a secretary of state. Although the governor has the power to appoint the heads of 20 departments, these appointments require the consent of the senate (HI art. V, sec. 6). The governor shares budget making power with the legislature but has the option of a line-item veto for all bills, including the legislative budget. Although the legislature is not required to pass a balanced budget, the governor is required, constitutionally and by statute, to propose and maintain a balanced budget (HI art. VII, sec. 5; HI stat. title 5, sec. 37-74). The governor also has broad authority to use executive orders, including to reorganize government. However, these executive orders are constrained by the state Administrative Procedures Act and are subject to legislative review. Therefore, Hawaii's governor has just an

[592] http://www.ncsl.org/research/about-state-legislatures/legislator-compensation-2018.aspx, accessed 6/30/18.
[593] https://ballotpedia.org/Hawaii_State_Legislature, accessed 6/30/18.
[594] https://ballotpedia.org/Hawaii_State_Legislature, accessed 6/30/18.
[595] http://www.nlga.us/lt-governors/office-of-lieutenant-governor/methods-of-election/, accessed 6/30/18.

average amount of institutional power overall and is rated 23rd on the power scale by Ferguson (2015).

Hawaii has a higher than average share of local and state government employees as a percentage of the state workforce, 12.0%. The national average is 11.3%, according to the CATO Institute (2006).

Political Context

In the last 50 years, Hawaii's legislature has been controlled by the Democratic Party (NCSL, 2017). During the same period, Hawaii has consistently had a Democratic governor, with the exception of 2002-2010, when a Republican governor served two consecutive terms (NGA, n.d.). In 2011, the Democratic Party gained control of both houses and the governorship (a trifecta), making it one of eight state governments under Democratic Party control.[596] The Democratic Party has a veto-proof majority or supermajority in the legislature, which means that the Democratic Party in Hawaii has a margin large enough to override a gubernatorial veto without any votes from the Republican Party. In 2017, the state's senate had no Republican members and only six Republicans served in the lower chamber. This long history of Democratic dominance in the state means that intra-party conflict is more important than conflict between the two major political parties (Shor & McCarty, 2015; Haider-Markel, 2008). The progressive culture of the state results in political action that "prioritizes equity, inclusion, and collective action through public institutions" (Haider-Markel, 2008). But given the lack of partisan competition, the party organizations have limited control over candidates and elected officials, who are relatively free to consider their own and their constituents interests rather than accepting party positions (Haider-Markel, 2008).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are several legislative service agencies that provide non-partisan support to Hawaii's legislature. These agencies include the Office of the Auditor (OA), the Legislative Advisory Committee (LAC), the Office of the Legislative Reference Bureau (LRB), the ombudsman, and the Office of the Legislative Analyst (OLA). The OA is the primary legislative analytic bureaucracy that conducts oversight activities. The LAC falls under the auspices of the OA organizationally (HRS BB23-61 to 23-67; Act 165 SLH 1989). Although the LAC does analysis and provides advice to the legislature, it does not assist with oversight. It provides information and resources on legislation that allows the legislature to make decisions on technical matters and will not be discussed further. The OLA provides fiscal analysis. The ombudsman provides oversight over executive agencies and will be discussed in this section below. The LRB, discussed further in this section, provides support to the legislature for oversight activities.

[596] https://ballotpedia.org/Party_control_of_Hawaii_state_government, accessed 6/30/18.

The Hawaii State Constitution establishes the position of auditor (HI const. art. VII, sec. 10). The auditor is appointed by a majority vote in a joint session of the house and senate and serves for an eight-year term. The auditor can be removed for cause by a two-thirds vote in a joint session. The duties of the auditor include post-audits of transactions, accounts, programs, and performance of all departments, offices, and agencies of the state and its political subdivisions. The Hawaii State Constitution also authorizes investigations as directed by the legislature including powers to examine all books, records, files, papers, and documents, to summon persons to produce records and answer questions under oath, and to hold working papers confidential.[597] The auditor helps "eliminate waste and inefficiency in government, provide the legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent."[598] Staffing of the OA, in addition to the auditor, consists of a deputy auditor, four managers, 13 analysts, and six information technology and office services staff for a total of 25 staff. The auditor often contracts out a majority of the state's financial statement audits and uses outside consultants. The agency is well funded with a 2017 appropriation of approximately $6.2 million from a state budget of $10.7 billion. Audits are required every two years after the close of the fiscal year but also occur as necessary or directed by the legislature. The OA produces annual reports that provide one-page summaries on the performance audits conducted through the year with follow-up reports on previous performance audits. The follow-up reports assess whether any of the audit recommendations were adopted or any improvements found.

From these reports, it is clear the OA spends a considerable amount of time producing performance audits and publicizing their findings in non-technical language for public consumption. For example, in 2012, the OA produced a report on the National Energy Laboratory of Hawaii (NELHA), making 28 audit recommendations such as improving board member training. Audit findings include conflicts of interest that may violate the State Ethics Code and violations of the Sunshine Law, which requires timely public access to minutes.[599] This report was picked up by various media outlets in Hawaii (Jensen, 2012) within a month of its publication and the stories generally demonstrated a willingness on the part of NELHA to adopt the OA's recommendations (Cocke, 2012). In 2015, the OA produced a report following up on their 2012 performance review of NELHA, finding that of OA's 28 recommendations, NELHA had addressed all but five.[600] In 2017, the OA produced 38 reports that include "performance audits of state agencies, studies of the impacts of proposed legislation, and reviews of special, revolving, and trust funds."[601] Of these eight consisted of state agency and program audits or audit follow up reports and five were reports on trust funds or revolving funds or similar funds. It also contracted with CPA firms for 19 financial audits of 2016 spending. Two of these were the Comprehensive Annual Financial Reports and the state's Single Audit Report.

The Office of the Legislative Analyst (OLA) and the Joint Legislative Budget Committee (JLBC) were established in Act 347, Session Laws of Hawaii 1990, for the purpose of expanding the technical capabilities of the legislature to analyze fiscal data for the state (also HRS 21F). The JLBC is composed of five members of each chamber of the legislature and members from the majority and minority parties selected by the senate president and the house speaker. JLBC is

[597] http://auditor.hawaii.gov/about-us/, accessed 6/30/18.
[598] http://files.hawaii.gov/auditor/Reports/2018/2017AnnualReport.pdf, accessed 6/30/18.
[599] http://files.hawaii.gov/auditor/Reports/2012/12-03.pdf, accessed 6/30/18.
[600] http://files.hawaii.gov/auditor/Reports/2015/15-04.pdf, accessed 6/30/18.
[601] http://files.hawaii.gov/auditor/Reports/2018/2017AnnualReport.pdf, accessed 6/30/18.

co-chaired by the chairs of the Senate Ways and Means Committee and House Finance Committee. The legislative analyst is appointed by the JLBC for a four-year term and the OLA reports to the JLBC. The OLA provides research and analysis of the state budget, revenues and expenditures, organizations, and functions to the JLBC. The JLBC then transmits this information to the entire legislature.

The Legislative Reference Bureau (LRB) was initially established as a research organization at the University of Hawaii. In 1972, authority for the LRB was transferred to the legislature (HRS BB23G-1 to 23G-20). The director of the agency is appointed to a six-year term by the majority vote of each house of the legislature in a joint session. Removal of the director must be for neglect, misconduct, or disability and requires a two-thirds vote of the legislature. The agency functions full-time and has professional staff including legal, research, library, computer, and clerical personnel (Hawaii Legislators' Handbook chap. 10).[602] Their purpose is to "provide impartial research, consultation, and document drafting services, maintaining a research library, statutes revision, and publication, operating a computerized legislative information system, and providing resources to enhance public participation in the legislative process."[603] The LRB assists in facilitating the work of the aforementioned agencies.

Hawaii has an ombudsman. The position "accepts and investigates complaints by the public about any action or inaction by any officer or employee of an executive agency or the state or county government."[604] The ombudsman is appointed by the legislature to perform the following duties (section 96-8, HRS):

> [investigate] administrative acts that might be: (1) contrary to law; (2) unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law; (3) based on a mistake of fact; (4) based on improper or irrelevant grounds; (5) unaccompanied by an adequate statement of reasons; (6) performed in an inefficient manner; or (7) otherwise erroneous.

The ombudsman is not empowered to make any administrative change. From the *Guide to Government in Hawaii*, "central to the classical principle of the ombudsman institution is that the office has no actual power to change administrative decisions or actions; instead it must rely on reasoned persuasion to convince agencies to resolve justified complaints."

There are other analytic bureaucracies in the state that operate outside of the auspices of legislative authority. One such entity is the Department of Accounting and General Services, which conducts audits of the various state agencies and operates at the direction of the state comptroller. The state comptroller is appointed by the governor as an executive branch oversight mechanism.

Oversight Through the Appropriations Process

As stated earlier, the governor and the legislature have shared budget powers. The governor is responsible for preparing the budget, and the legislature is responsible for approving

[602] http://lrbhawaii.org/hndbook/hbk10.html, accessed 6/30/18.
[603] http://lrbhawaii.org/hndbook/hbk10.html, accessed 6/30/18.
[604] http://lrbhawaii.org/gd/gdgovhi.pdf, accessed 5/17/18.

the budget and appropriating the funds. There are several agencies that are controlled in whole or part by the legislature that have mechanisms for oversight over the budget and appropriation process. One mechanism that constrains the governor and the legislature in the budget process is the Council on Revenues (HRS chap. 37 Part VI; Act 278 SLH 1980). The Council on Revenues is comprised of seven members, three of which are appointed by the governor for a four-year term with two each appointed for two-year terms by the president of the senate and the speaker of the house. The council prepares revenue estimates for use by the governor and the legislature to prepare and approve the budget. Both branches are constrained by the estimates. If either approves expenditures above the revenue estimates, it must be publicly disclosed with an explanation.

The legislature has control over expenditures; no public money shall be expended except as appropriated by law (HI Const. art. VII sec. 7). Although the governor does initiate the budget process by submitting his budget, it is the legislature who must approve or amend the budget prior to any funds being appropriated. The governor can veto the budget bill. The governor has line-item veto power for most expenditures but must veto the legislative or judicial budgets as a whole (HRS chap. 37). If the governor fails to sign or return an appropriations bill within 10 days, it will become law. Only unanticipated federal and trust funds and certain special and revolving funds may be expended without legislative authority. These funds are monitored by the auditor, who is required to analyze all bills proposing to establish new special or revolving funds, report to the legislature on these funds, and make recommendations for legislative action on any funds that are not necessary or fulfilling the intended purpose (HRS 23-11). As we noted earlier, during 2017 the auditor reported on five of these funds.

The Hawaii State Senate Ways and Means Committee provides oversight through the appropriations process. An example of this is the recent committee passage of the bailout of the rail project in Honolulu by a vote of six to five. The bill would generate $2.37 billion from a 1% increase in the statewide hotel room tax for 13 years and extend the half-percent general excise tax surcharge on the island of Oahu for another three years. During the five-hour public hearing on the bill, senators on the Ways and Means Committee ask officials why the costs were so high (Kalani, 2017). The website for the Senate Ways and Means Committee showed the committee was active in publicizing such hearings and taking action to address problems. The House Finance Committee performs the same role in the house as the Ways and Means Committee does for the senate.

The demise of two appropriations bills, HB 1883 and SB 3087, shows how a carrot and stick approach to oversight backfired. A pilot program to stop agriculture theft had been going well by all accounts, but a cash-strapped Department of Agriculture was worried about whether it could continue the pilot program without cutting other operations. Therefore, the department sought additional funds from the legislature.[605] Another program through the Agribusiness Development Corporation (ADC) was trying to develop a papaya that could be exported. This program also needed funding from the legislature.[606] A legislative maneuver tied additional financing for both programs to an audit. In the end, legislators who wanted to appropriate the money but did not want the audit killed the bill (Dible, 2018a). One of these legislators cited the difficulty involved in auditing such a large and complicated agency. Other legislators commented that the substance of the bill was good for Hawaii, but the Committees on Finance

[605] https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=1883, accessed 5/17/18.
[606] https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=3087, accessed 5/17/18.

and on Ways and Means would not provide the funding, because the papaya research included an audit of ADC (Dible, 2018b).

Oversight Through Committees

Hawaii's Office of the Auditor (OA), discussed above, is, by design, directed by its appointed head and is not under direct control of any one committee, which generally insulates auditors from pressure from individual legislators. The House Finance Committee and Senate Ways and Means Committee are both standing committees with special oversight responsibility. Any of the committees in the house and senate, 36 in total, may request the OA to conduct investigations or studies. We are told that the OA audit schedule is determined by the Office of the State Auditor and that while committees, concurrent resolutions, or single-chamber resolutions often make requests for audits, it is ultimately the OA that determines which audits to conduct (interview notes, 2018). Due to the close relationship between the OA and the legislature, performance audits can be requested by legislators. Therefore, committees initiate the oversight process and audits focus on topics that legislators want to pursue.

Vignette: Standing Committee on Oversight of the Hawaii Emergency Management Agency

On January 13, 2018, the Hawaii Emergency Management Agency alerted the public to an incoming missile attack including a push alert consisting of the following message (all caps in original alert):

> *BALLISTIC MISSILE THREAT INBOUND TO HAWAII. SEEK IMMEDIATE SHELTER. THIS IS NOT A DRILL (Peterkin, 2018).*

The false missile alert occurred on the heels of North Korea missile tests and saber rattling. The alert sent citizens for cover and was a focusing event for legislative oversight of executive branch agencies responsible for emergency management. Several issues became the focus of legislative oversight: the cause of the false alarm, citizens being refused shelter immediately following the false alarm, and the lack of disaster planning/preparedness by state agencies charged with emergency management. Oversight consisted of an initial information briefing in a joint hearing which was followed by bill drafting including a series of hearings featuring emergency management staff. While none of the legislation has passed, there has been a change in leadership at the agency responsible for the false alert. Legislative oversight in this case is best described as legislators performing a cop-on-the-beat policing of executive agencies.

On January 19, six days after the false alert, in a joint session of the legislature, the House Committee on Public Safety, House Committee on Veterans, Military, and International Affairs, and Culture and the Arts, Senate Committee on Public Safety, Intergovernmental, and Military Affairs, and the Senate Committee and Governmental Operations held a joint informational briefing into the false missile alert. The video is available for the informational briefing[607] and the hearing we feature below.[608] The Chair of the House Public Safety Committee,

[607] http://olelo.granicus.com/MediaPlayer.php?view_id=13&clip_id=64582#, accessed 10/11/18.
[608] http://olelo.granicus.com/MediaPlayer.php?view_id=31&clip_id=64879, accessed 10/11/18.

Representative Gregg Takayama, chaired the informational briefing. The meeting lasted two hours and 21 minutes. At the introduction of the meeting, Representative Gregg Takayama stated the purpose of the meeting:

> *Six days ago, Hawaii came face-to-face with the prospect of a nuclear catastrophe. People reacted with panic and prayers followed after too many minutes with relief and anger. I hope this briefing will help answer any remaining questions over how this huge error occurred, why it took so long for state officials to announce it was a false alarm, why some cell phones never received any alerts, and what's changed to make sure this never happens again. And I hope we will take positive steps to enact the many lessons learned. For our part as legislators, I myself believe we should hold ourselves accountable to make sure . . . when we send people to government buildings to seek refuge that these safe shelters really do provide safe shelter from catastrophe from anywhere from a nuclear attack to a hurricane.*

The governor and the Hawaii Emergency Management Agency Administrator and various military officials participated in the informational briefing. No public testimony was taken at this informational briefing. The governor made a brief statement and took questions for approximately 30 minutes. After the governor answered questions, he left and officials from the Hawaii Emergency Management Agency and some military officials made a brief statement and answered questions. Legislators sought answers from officials with several key themes emerging: official timeline and cause of the false alert; who or what was to blame and what sort of punishment has been meted out to this point and guardrails put in place to prevent a future occurrence; past efforts at preparedness, the gaps in preparedness exposed by the false alert, and what kinds of plans are being prepared to increase preparedness; failures in the alert system, such as areas that lack sirens, areas with poor cell reception, and the lack of a universally understood alert (hearing impaired, non-native language speaker, etc.); legal exposure to the state for any harm done by the false alert, and; there were questions focused on the internal operations of the Emergency Management Agency, such as staffing, civil service exempt staff, and budget needs. A complaint echoed by many legislators was that the governor left the briefing early and the lack of accountability for the Emergency Management Agency's poor performance, both for the false alert and the lack of preparedness or policy recommendations moving forward. The governor and officials asked for time to let an investigation proceed. Legislators were prepared with follow-up questions or rephrasing questions to get at issues. Legislators often cited constituents and local news broadcasts when asking questions or making a statement.

On January 30, 2018, the administrative head of the Emergency Management Agency and official present for questions at the informational briefing resigned (Star-Advertiser, 2018). Bills were drafted and would go through the legislative process following the incident. Although none would go on to become law, bill drafting and hearings did include Emergency Management Agency officials. The first such hearing would occur on February 1, 19 days after the false alert, in a joint hearing by the House Committee on Public Safety and House Committee on Veterans Military International Affairs Culture and Arts. Four bills were considered and voted out of

committee: HB[609]2645, HB[610]2673, [611] HB[612]2693, [613] and HB[614]2675.[615] Collectively, the bills dealt with preparedness, reporting of emergency plans by the Emergency Management Agency to the legislature, liability for business and homeowners who gave shelter during a disaster, provided penalties for private establishments for turning people away during disasters, price gouging during disasters, and providing closed captioning for televised disaster alerts. Emergency Management Agency officials opposed legislation that included penalties, stating they would not enforce it. Rather, they argued most people are good and would let shelter-seekers in, and rather than focusing on penalties, the legislature should look to eliminating barriers to taking in shelter-seekers, such as liability. Legislators would often point to the problem of expectations, specifically, the Emergency Management Agencies failure to adequately communicate those expectations to the public. The business community's representatives echoed this concern, stating that Hawaii's stores are not designed for a war-zone but want to be good members of the community and are willing to work with the Emergency Management Agency on developing training and protocols. Emergency Management Agency staff acknowledged the challenges they continue to face while they attempt to educate the public on what to do during a disaster.

Tracing the movement of HB 2693, which requires the Emergency Management Agency to produce a plan and legislative report, shows a process typical for all the bills discussed. It was introduced January 24 and referred to House Committee on Public Safety, House Committee on Veterans, Military, and International Affairs, and Culture and the Arts, House Committee on the Judiciary, and House Committee on Finance, where they were passed with amendment and referred to the Senate Committee on Public Safety, Intergovernmental and Military Affairs and the Senate Committee on the Judiciary on March 8, 2018, where it currently sits.[616]

The committee information briefing and the hearing demonstrates that Hawaii has the legislative capacity to hold executive branch agencies accountable for performance. Even though no bills became law at this time, the legislature has the capacity to take input from citizens and news sources and use it to hold agencies accountable for their performance.

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[609] Clarifies that a civil liability exemption for providing emergency access during a disaster applies to facilities receiving compensation and to owners who sell commodities to people seeking emergency access shelter on the owner's property; provided that the owner does not engage in price gouging.

[610] Prohibits places of public accommodation from denying shelter to any person when the State, or any portion thereof, is the subject of an emergency alert that advises the public to immediately seek shelter. Provides for an unspecified civil penalty for each violation. Provides immunity from civil liability, with certain exceptions.

[611] https://www.capitol.hawaii.gov/session2018/hearingnotices/HEARING_PBS-VMI_02-01-18_.HTM, accessed 9/14/18.

[612] Requires businesses and homeowners to provide shelter upon missile threat alert. Provides immunity to businesses and homeowners. Requires the Hawaii Advisory Council on Emergency management to develop a plan for emergency and disaster response. Requires legislative report. Appropriates moneys.

[613] https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=2693&year=2018, accessed 9/14/18.

[614] https://www.capitol.hawaii.gov/session2018/bills/HB2675_.HTM, accessed 10/11/18.

[615] Requires the Hawaii Emergency Management Agency to amend the state emergency alert system and state emergency management plans as necessary to conform to all current federal laws and regulations that ensure the accessibility of video programming that provides emergency information.

[616] https://legiscan.com/HI/bill/HB2693/2018, accessed 9/14/18.

Oversight Through the Administrative Rules Process

According to Tharp, the governor - not the legislature - has the power to review rules, and the governor may only review with the power to veto proposed rules (2001). Therefore, legislative action in the rule making process must occur through normal, statutory means. The Legislative Reference Bureau (LRB) helps agencies with the formatting of rules, but in no way does this challenge or alter the status of a rule (Schwartz, 2010). All other review is done by the executive branch either by the Department of Budget and Finance or the Small Business Regulatory Review Board.

Oversight Through Advice and Consent

As noted earlier, Hawaii's governor has extraordinary appointment powers, but the senate can block some key gubernatorial appointments, such as attorney general, treasurer, adjutant general, comptroller, and the head of the Department of Agriculture. As recently as 2014, senators challenged two appointments. Although both nominees "sailed" through confirmation hearings in committee, other senators raised questions prior to the floor vote. The Chair of the Senate Agriculture Committee questioned the honesty of the appointee to lead the Office of Environmental Quality Control. He also disagreed with her position on genetically modified organisms. At the time, this appointee was the sitting Chair of the House Agriculture Committee (Blair, 2014). Another appointee did not receive a unanimous vote during committee confirmation hearings due to potential conflicts of interest. He was appointed to the Hawaii Community Development Authority, but senators said that being a developer, he did not adequately represent small business. These challenges are surprising for a couple of reasons. First, it is very rare for the senate to reject gubernatorial nominees because the executive and legislative branches are controlled by Democrats. Second, one of the challenged appointees was a sitting Democratic senator. It is not unheard of, however, for the governor to withdraw a nominee when senators express reservations. This occurred with the previous gubernatorial choice for the Environmental Quality Commission, after environmental groups objected to a nominee (Blair, 2014).

There are formal provisions for the executive branch to implement reorganization plans and agency creation (Council of State Governments, 2014). Interviewees said that some reorganizations require statutes while others do not. We were told that some statutory changes result in an office moving from one department to another and empowering a board (interview notes, 2018). Also, that section 26-4 of the HRS[617] lists the various departments and this list could only be changed by legislative action. Furthermore, that HRS 26-41 grants the executive the authority to establish temporary boards and commissions and HRS 127 and 128 allow for executive orders for emergency provisions. Regarding legislative review of unilateral agency reorganization, while the *Book of the States* indicates the existence of review, our sources say they are not familiar with any sort of general legislative review of executive orders (interview notes, 2018). Nonetheless, there is indication of limited review authority for a very specific kind of order, discussed more below.

[617] https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/HRS0026/HRS_0026-0004.htm, accessed 9/20/18.

Hawaii's governor has three sources of authority for making executive orders: constitutional, statutory, and common practice (Council of State Governments, 2014). These executive orders must, however, follow filing and publication procedures and comply with the Administrative Procedures Act. These are additionally subject to legislative review (Council of State Governments, 2014), however, as mentioned before, our sources could not verify the existence of actual legislative review of executive orders.

In 2017, there were a total of 24 executive orders: 13 dealt with the setting aside of public lands for a specific purpose (five were for agriculture, two were for an armory, one was for elderly affordable housing, one was for the Division of Forestry, one was for the Housing Finance and Development Corporation, and three were for public purposes), four dealt with the withdrawal or cancellation of lands that were set aside, five dealt with the wages, hours, and working conditions of certain, non-collective bargaining employees, including those who are appointed or elected, one dealt with certain administrative matters in the Department of Transportation,[618] including a special designation to receive federal funds, and one dealt with connected autonomous vehicles (CAV) by creating a contact in the governor's office and directing several departments to work with companies seeking to test CAVs.[619] In reading the executive orders, all orders dealing with lands include the following plank explicitly referring to legislative review:

> SUBJECT to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular or special session next following the date of this executive order.[620]

No examples could be found of the legislature exercising this form of legislative review and none of our sources mentioned it. We are told by one source that they are not aware of the legislature having used their authority to block an order, but they are fairly certain that it has probably been used at some point (interview notes, 2018).

Oversight Through Monitoring of State Contracts

The Department of Accounting and General Services (DAGS) is an important executive branch agency involved in the monitoring of state contracts. The head of DAGS is the state comptroller, an appointee of the governor that requires senatorial confirmation.[621] The State Procurement Office (SPO) is attached to DAGS for administrative purposes. The SPO is responsible for both assisting agencies with procurement and overseeing agency procurement to ensure compliance with procurement rules. The SPO acts to assist, advise, and guide agencies statewide regarding procurement, including ensuring compliance with procurement rules and

[618] https://governor.hawaii.gov/wp-content/uploads/2017/08/EO_17-04.pdf, accessed 10/11/18.
[619] https://governor.hawaii.gov/wp-content/uploads/2017/11/EO-17-07.pdf, accessed 10/11/18.
[620] https://governor.hawaii.gov/wp-content/uploads/2017/11/LEO_4540.pdf, accessed 10/11/18.
[621] https://governor.hawaii.gov/newsroom/governors-office-news-release-governor-ige-appoints-roderick-becker-to-head-department-of-accounting-and-general-services/, accessed 9/5/18.

oversight[622] "of the purchase of health and human services by state agencies."[623][624] The chief procurement officer, who heads the SPO, is appointed by the governor with advice and consent from the senate. The Procurement Policy Board (PPB) is also attached to DAGS for administrative purposes. The PPB is in place to "adopt, amend, or repeal administrative rules to carry out and effectuate the purpose and provisions" for state purchasing (Procurement Policy Board).[625] The PPB has seven members, each appointed by the governor with advice and consent from the senate. Both the state comptroller who heads DAGS and the OA have oversight capacity through the audit function. As described earlier, the audit process[626] is the only input Hawaii's legislature has in contract oversight. The Accounting Division and Audit Division are organizational units of DAGS and together provide the capacity to generate reports and conduct audits.[627]

Vignette: Committee on Finance Overseeing Both Department of Taxation and $60 Million IT Contract to AdvanTech

AdvanTech has a $60 million contract for IT modernization of Hawaii's tax system. AdvanTech claims officials from the Department of Taxation told them to make changes to a monitoring report that is meant to keep the public and the legislature abreast of the project's development. The previous six reports indicated the project was on schedule, but the most recent report in October 2017 identified problems. It is alleged that officials from the Department of Taxation told AdvanTech to make changes that would suggest the project was doing better than it was. In December 2017, the Chair of the House Committee on Finance seized on the alleged impropriety, saying publicly that the credibility of past reports produced by AdvanTech and the Department of Taxation were called into question (U.S. News, 2017). Following the revelations, the head of the Department of Taxation resigned, although she stated that her resignation had nothing to do with the IT modernization contract with AdvanTech (Dayton, 2017b; Dayton, 2017a). In January 2018, the Department of Taxation terminated its contract with AdvanTech (Dayton, 2018). The Department of Taxation has a history of mismanagement that the IT contract was expected to address, but the recent scandal has department officials worried the additional $16 million needed from the legislature to finish the IT modernization might be in jeopardy (Richardson, 2017). On April 3, A joint hearing of the Senate Committee on Government Operations and Senate Committee on Ways and Means was held on Senate Concurrent Resolution 62, directing the Office of the Auditor to conduct an audit of the Department of Taxation contract in question, and officials from both the Department of Taxation and Office of the Auditor were questioned (Richardson, 2018). Video of the hearing is available.[628] The hearing itself involved repeated questioning by the chair of the new head of the Department of Taxation, who had a tremendous familiarity with both the history and details of the issues. The chair would frequently ask a series of probing questions and then follow-up with detailed questions that would contradict the answers given to the probing questions. The following example is a typical exchange:

[622] http://spo.hawaii.gov/wp-content/uploads/2013/12/2003-06-amend-2.pdf, accessed 9/5/18.
[623] http://lrbhawaii.org/gd/dags.pdf, accessed 9/5/18.
[624] http://spo.hawaii.gov/procurement-wizard/manual/contract-management/, accessed 9/5/18.
[625] http://spo.hawaii.gov/procurement-policy-board/, accessed 6/30/18.
[626] http://files.hawaii.gov/auditor/Reports/2015/15-09.pdf, accessed 9/5/18.
[627] http://lrbhawaii.org/gd/dags.pdf, accessed 9/5/18.
[628] http://olelo.granicus.com/MediaPlayer.php?view_id=13&clip_id=65927, accessed 9/20/18.

Department of Taxation official: The practices of the past are not necessarily what we are using going forward. It's a very different culture and a different protocol that we are employing at the department these days . . .
Chair: I'm sorry I can't necessarily rest everything on that because as long as I've been here with CGI with the tax department and then CGI with health connector and the problems there and the same problems I raised two years ago when we launched this whole project and yet we seem to have similar concerns. The project changed over in July 2017, and this report came out after that, and this report reflects the new changes.

This exchange proceeded and included very detailed personnel issues, including the naming of individuals, field grievances, title changes, FTE allocations, qualifications, etc. The chair would often cite reports and prior audits in her questioning. Occasionally, the Department of Taxation official would indicate discomfort in going on record, stating, "we should have that conversation off-line." The chair raised questions about contracting with vendors that the state has historically had issues, stating:

Chair: can we disqualify a contract based on performance like this?
Department of Taxation Official: Yes.
Chair: This feels like Déjà vu, why does this keep happening? Same poor performer keeps getting contracts . . . We want a singular audit [of this contract] and we want to get this done before we enter into any other contracts to make sure that this project is moving along because we keep hearing, every time a new entity comes on board, that it's moving along just fine and then it turns out it's not.

In addition to the audit request, the chair made frequent information requests of the Department of Taxation in the hearing, which the officials agreed to and took notes on the details of the requests, promising to provide the information in the future.

There were occasions where the Office of the Auditor staff went on record at the same hearing, stating it would be very unusual to conduct an audit of a project that is ongoing. The Chair of the Senate Committee on Government Operations responded that previous audits have been conducted on specific contracts, citing a CGI contract. The official from the OA agreed that they could help with this, but the State Procurement Office might help them more quickly. The Senate Concurrent Resolution (SCR) 62[629] made it out of committee with the addition that the Office of the Auditor work with the State Procurement Office on the audit, and it is currently in the House Committee on Finance.[630] The resolution is requesting that the state auditor work with the State Procurement Office to conduct a financial and performance audit of the tax system modernization project with a special emphasis on the project's contracts.[631] SCR 62 has not been passed,[632] *but the hearing, the information generated at the hearing, the reports cited at the hearing, and the reports that triggered the hearing in the first place demonstrate that reporting*

[629] https://legiscan.com/HI/bill/SCR62/2018, accessed 9/5/18.
[630] https://legiscan.com/HI/bill/SCR62/2018, accessed 5/17/18.
[631] https://www.capitol.hawaii.gov/session2010/Bills/SCR62_.pdf, accessed 5/17/18.
[632] https://legiscan.com/HI/bill/SCR62/2018 accessed 9/20/18.

is an important feature of oversight in Hawaii. This example of oversight shows the Hawaii Legislature has the capacity to generate useful oversight of state contracts and use it to hold agencies accountable.

Oversight Through Automatic Mechanisms

Hawaii has sunset review (regulatory) and sunrise review. According to Baugus and Bose, "A regulatory review state requires only licensing and regulatory boards to undergo sunset reviews" (2015). The Hawaii Regulatory Licensing Reform (HRS chap. 26 H), commonly known as the sunset law, grants the authority to sunset boards and commissions.[633] The Hawaii Regulatory Licensing Act (HRLA) granted authority to regulate occupational licensing of 38 professions. In 1979, the OA was given the authority to evaluate these licensing programs. Through sunset review of these regulations, the HRLA now regulates only two professions: athletic trainers and behavior analysts.

Subsequent sunset provisions for other boards, commissions, and regulations have been put into place. The most recent provisions came in the form of two laws enacted in 2016 that require the OA to periodically review several tax exemptions, deductions, and benefits to determine if they should be retained without modification, amended, or repealed (Act 245; Act 261; *Department*).[634] Hawaii has sunset provisions that empower the legislature to establish the period an agency may exist before a sunset review.

The OA performs sunrise and sunset analyses in statute and of regulations (interview notes, 2018) that the relevant committee is responsible for reviewing (Baugus & Bose, 2015). The OA performs both sunrise and sunset analyses to determine whether proposed or existing regulations are necessary, their probable effect(s), and whether they should be promulgated or terminated, and the OA provides recommendations for modifications, if necessary (*State of Hawaii Office of the Auditor 2015 Annual Report*). These OA analyses are considered a preliminary evaluation and form the basis for further action by the senate and house, which are empowered to review rules and executive orders.

Proposed new regulatory measures regarding professions must be referred to the OA for sunrise analysis. The purpose of this analysis is to assess whether the legislature needs to "regulate an as yet unregulated profession or occupation in order to protect the health, safety, or welfare of the public."[635] Despite having this authority, sunrise reviews are rare. The OA conducted one sunrise review in each of 2018 and 2017.[636]

[633] http://lrbhawaii.org/hndbook/hbk10.html, accessed 9/5/18.
[634] http://files.hawaii.gov/tax/news/announce/ann16-07.pdf, accessed 6/30/18.
[635] http://lrbhawaii.org/reports/legrpts/lrb/rpts02/sunview.pdf, accessed 6/30/18.
[636] http://auditor.hawaii.gov/reports/, accessed 6/30/18.

Methods and Limitations

Six people were interviewed out of the 11 people that were contacted for Hawaii. Hawaii's house and senate have agendas available online, although, they do not have meeting minutes (however, there is a separate report made whenever a bill is passed out of committee) (interview notes, 2018). For the house, archived video exists for some hearings that were broadcasted on television. This is also true of the senate, although, recently, the senate has been additionally piloting a project to upload more hearings. An interviewee said that, although the senate does not post all hearings, they post most hearings. There are no transcripts for either chamber (interview notes, 2018).

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Legislative Oversight in Idaho

Capacity and Usage Assessment

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

Summary Assessment

The Idaho Legislature has some effective oversight mechanisms at its disposal including rules review, capacity to conduct detailed performance audits and evaluations, and opportunities to engage in oversight through the appropriations process. The use of these tools, however, raises questions about the motivation for oversight, especially through administrative rules review. Special interests appear to be empowered to exert substantial influence over rules. The legislature added to its oversight capacity of contracts in 2016, but it is too soon to tell how well they are utilizing these new reports.

Major Strengths

Idaho has a legislative audit division within its Legislative Service Office and an award-winning program evaluation unit. The reports these agencies produce, especially the program evaluations, are notably thorough. These reports appear to trigger legislative attention, follow up reports, and the passage of needed legislation to fix the problems identified in the reports. But reviewing only three or four programs per year is limited, albeit thorough, oversight. Idaho is one of only a few states with balanced partisan membership on its oversight committee. This probably contributes to its effective use of traditional mechanisms of oversight—committee hearings on audit reports. Contract monitoring by the legislature includes an annual review of contracts at the start of the legislative session starting in 2017, but this is too soon to assess whether this yields more than other state legislatures.

Challenges

The legislature has an especially powerful administrative rules review process. Knowledgeable observers in the state raise questions about the ability of special interests to dominate the legislative rules review process. Furthermore, rules appear to be rejected without negotiation between the agency and the legislature, a practice that we find in many other states when the legislature objects to a rule. The legislature rarely uses its power to oversee the

qualifications of gubernatorial appointees. And when it does, it appears to focus on gender and personal characteristics of appointees rather than their qualifications for the position. Oversight of the budget consists of days of unanimous consent to the proposed budget items. The effect of one party government may be an important factor in the way these oversight resources are used.

Relevant Institutional Characteristics

When compared to other states, Idaho ranks fairly low at 35th on legislative professionalism (Squire, 2017). The National Conference of State Legislatures (NCSL, 2017) classifies Idaho's legislature as part-time due to its low pay and small staff. The legislature meets annually. Idaho is one of only 11 states in the nation that do not limit session length,[637] but even so, the sessions tend to be relatively short. The 2018 Regular Session lasted approximately 58 days from the date they convened on January 8 to the date they adjourned on March 28 (Idaho Legislature, 2018). Constitutionally, only the governor can call a special session.[638]

The Idaho Legislature may also hold a special (sometimes known as extraordinary) session, which may only be called by the governor (NCSL, 2009). Since 2010, the Idaho Legislature has convened for one of these special sessions -- in 2015 (LegiScan, 2018).

Legislators are paid $17,017 annually, plus a $129 per diem if they establish a second residence in Boise or $49/day if no second residence is established. Plus they receive up to $25/day travel expenses. During 2015, the legislature had 136 staff members, 76 of whom are permanent. There are currently no term limits for Idaho legislators (NCSL, 2017).

According to the information provided by Ferguson (2015), Idaho's governor is tied for the 17th most powerful among the 50 states. According to Beyle (2008), Idaho's governor holds full responsibility over the budget making powers in the state. Furthermore, the governor may use a line-item veto on all bills, with a two-thirds majority vote of legislators required to override such veto (Beyle, 2008).

The size of Idaho's bureaucracy is about average when compared to the sizes of other state bureaucracies across the country. Approximately 11.7% of those employed in Idaho work in state and local government. Of these state and local government workers, 6.4% work in education, while roughly 1% work in safety, 2% in welfare, 1% in services, and 1% in other areas (Edwards, 2006).

Political Context

The Republican Party in 2018 controled Idaho's governorship, as well as both chambers of its legislature. The governor's office has been occupied by a Republican since 1995. The Idaho House of Representatives has been controlled by the Republicans since 1960, and Republicans currently hold a 59-to-11 majority. Idaho's senate has also been held by the Republicans since 1960, with the exception of 1991-92, in which the chamber was evenly split.

[637] http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx, accessed 11/24/18.
[638] https://ballotpedia.org/Article_III,_Idaho_Constitution, accessed 11/24/18.

Republicans currently hold a 29-to-6 majority in the senate.

According to Shor and McCarty's (2015) criteria, Idaho has the 7th most politically polarized senate in the country, and the 11th-most polarized house. Idaho Senate and House Republicans are the 15th and 10th most conservative in the country, respectively. Senate and house Democrats are the 34th and 25th most liberal, respectively.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Idaho's analytic bureaucracy consists of the Legislative Services Office and the Office of Performance Evaluations. The Legislative Services Office's authority is described in Idaho Statutes 67-701 through 67-704. According to these statutes, the Legislative Council, a committee comprised of 14 legislators,[639] is responsible for appointing the director of the Legislative Services Office (LSO) and for overseeing the office's operations. The LSO consists of a staff of approximately 70 professionals divided into the following four divisions: The Legislative Audit Division, the Budget & Policy Analysis Division, the Research and Legislation Division, and the Information Technology Division (LSO Website-Organizational Chart). The first three of these units provide analytic support to legislators, while the fourth division, Information Technology, maintains computer equipment for the legislature.

The Legislative Audit Division is the largest of the LSO units with 27 staff members (LSO-Audit Staff) and a 2015 state appropriation of $1.2 million (NASACT, 2015). It "audit[s] the State of Idaho's Comprehensive Annual Financial Report (CAFR), perform[s] the Statewide Single Audit for federal funds expended, and perform[s] management reviews of each executive department of state government at least once in a three-year period" (LSO-Audit). There are roughly 200-300 total agency specific reports available on the Idaho Legislature's website, some of which are nearly a decade old. During 2017, the Legislative Audit Division produced eight products described as audits and management reviews.

The Budget and Policy Analysis Division assists legislators in the budget process. Furthermore, they are responsible for four documents published annually: The Legislative Budget Book, the Legislative Fiscal Report, the Fiscal Source Book, and Idaho Fiscal Facts. The Budget and Policy Analysis Division has 11 staff members (LSO-BPA Staff).

The fourth division, Research and Legislation, "conducts research for legislators, drafts legislation, staffs legislative study committees, reviews administrative agency rules, and provides information on the legislative process and legislative history to the public and other state agencies" (LSO-Research). It has 13 staff members.

The other Idaho analytic bureaucracy, the Office of Performance Evaluations (OPE), is a "nonpartisan, independent office of the Legislature," that evaluates "whether state government programs and agencies are operating efficiently and cost-effectively and are achieving intended

[639] These are the Speaker of the House, the President Pro Tempore of the Senate, the majority and minority leaders of both chambers and four Senators and four Representatives, two from each political party.

results" (Idaho Legislature-Office of Performance Evaluations). The OPE bases its work on the standards of the American Evaluation Association and the National Legislative Program Evaluation Society of the NCSL, and tends to create reports that would be better described as program evaluations rather than audits (interview notes, 2018; Risley, 2008). The OPE receives its authority and direction from the Joint Legislative Oversight Committee (JLOC), which is described in more detail in the section on Idaho's "Oversight Through Committees." The OPE is currently staffed by eight individuals with backgrounds in the social sciences: political science, economics, and psychology (Idaho Legislature-Office of Program Evaluations). In 2017, OPE produced two new performance evaluations plus two follow-up reviews of previously reviewed departments.[640] In addition to its reports, OPE names bills passed as a result of an evaluation and produces short, graphic infused highlight sheets for each report. These highlight sheets are direct and easy to read. As an indication of the quality of its work, OPE received the Outstanding Evaluation Award in 2016 from the American Evaluation Association for its evaluation of ISEE and Schoolnet.[641]

Interviewees stated that the reason that the OPE and Legislative Audit are located in separate parts of the legislature is because the former is perceived to meet a higher standard of independence while the latter need only be non-partisan (interview notes, 2018). OPE has a process for creating evaluations that embodies this higher standard of independence. Any legislator can request that OPE produce an evaluation, but that request must be made to the JLOC. The committee gathers the requests and votes on which requested evaluations OPE will conduct. Although OPE has the authority to determine the scope of the audit, staff often engages in non-binding consultation with the Joint Legislative Oversight Committee to reduce the chance of a misunderstanding about this. Once the scope is set, the OPE works confidentially on the evaluation. Upon completion of the evaluation, the OPE sends an advance copy for review to the JLOC so that members have a chance to read and review the findings before a meeting at which the JLOC votes on whether to release the report. Practitioners state that reports have always been released. But legislators with advance copies of the report have tried to convince OPE to reconsider or change findings before the meeting. These requests have all been rejected by the OPE (interview notes, 2018).

In contrast, the process for the legislative audit division requires greater ongoing collaboration with legislators. In addition, the audit division unlike OPE is working with the legislature as a whole, not just a single committee. Interviewees state that the OPE and Legislative Audit Division have never collaborated on a report, but occasionally the OPE will ask the Audit Division about one of their reports if it is relevant to an evaluation (interview notes, 2018).

Oversight Through the Appropriations Process

Idaho's appropriations process is initiated by the governor, who makes budget recommendations during the first five days of the legislative session. Next the Joint Finance and Appropriations Committee (JFAC) amends the gubernatorial recommendations and prepares appropriation bills for submission to both legislative chambers. This committee consists of 20

[640] https://legislature.idaho.gov/ope/reports/, accessed 11/24/18.
[641] https://www.eval.org/p/cm/ld/fid=57#Outstanding%20Eval, accessed 8/27/18.

legislators, 10 from each chamber based on their membership on the Senate Finance Committee and the House Appropriations Committee. Consequently, the partisan composition of the committee reflects the supermajority held by Republicans in both chambers. Currently 16 Republicans and four Democrats serve on the JFAC. Appropriations bills require only a simple majority vote by both houses of the legislature to pass (Idaho Constitution Article IV Sections 10 and 11, LSO-Comprehensive Annual Financial Report, 2017, p. 118).

The JFAC's authority is described in Idaho Statues 67-432 through 67-440. The most important of these is the power to, "review the executive budget and the budget requests of each state department, agency and institution," and the power to, "conduct such hearings as it may deem necessary and proper" (Idaho Statute 67-435).

Based on the exceptionally detailed meeting minutes of the JFAC, it is clear that meetings include presentations by agencies, their staff analysts, occasional questions from committee members, and votes on whether to recommend that the legislature approve each line item in the budget. The committee met 34 times during the month of January, 38 times in February, and 18 times in March during 2018, generally with two sessions per day. These meeting minutes also reveal that the committee refers to the agency reports of the LSO's Legislative Audit Division. LSO staff often made presentations on items in the budget. However, despite what appears at first glance to be effective oversight during the appropriations process, there were only a few recurring issues that triggered multiple substitute motions. For example, these include: wolf control, opening new liquor stores and expanding Sunday hours for liquor stores, carry-over funds for opioid prevention until federal funds were disbursed, and cybersecurity updates. But there were dozens and dozens of items without any Nay votes or only one or two objections. The document with all of the 2018 minutes for these discussions and votes is 319 pages long.[642] Each vote and related discussion is approximately one page of text. We estimate that there were more than 250 votes with unanimous support (LSO-Joint Finance and Appropriations Committee Website).

As an example of these hearings, the January 11, 2018 hearing[643] consisted of 15 "agency presentations" (generally staff analysts made these presentation) on specific budget line items. The presentations were summarized in one or two paragraphs in the meeting minutes. There were questions asked by committee members after only four of these 15 presentations. When questions were asked, it appears that the committee member sought clarification about information in the presentation. One example was a presentation by an analyst of information on the budget request from the Department of Agriculture to hire two additional organic inspectors using funds generated by fees. In response to a committee member's question the analyst clarified that these are fees dedicated for organic producers and the amount in the fund is based on the yields from prior year—it is not general inspection funds. The motion then passed unanimously. This is a typical example of oversight in these hearings, with the exception of the rare line item that generated "nay" votes. Therefore, while there is oversight, it is not an in-depth probing of the pros and cons of a program nor is it an assessment of a program's effectiveness or performance. The entire hearing lasted one hour and 15 minutes, which included the time to call roll and perform other routine committee administrative procedures. This means that each line item received about 10 minutes of the committee's time.

[642] https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/jfacmin.pdf, accessed 5/9/18.

[643] https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180111_jfac_0800AM-Minutes.pdf, accessed 9/21/18.

Therefore, it is not clear how much oversight is being exercised. Our review of media reports has not revealed any notable examples of budget-related oversight. This level of agreement on the budget could reflect the one-party dominance of state government. Republicans have a supermajority on the committee (16 R to four D), and the Republicans control of the executive branch.

Oversight Through Committees[644]

The Idaho Legislature has standing committees for each chamber as well as a few (five in 2018) joint standing committees. One of these joint committees, the Joint Legislative Oversight Committee (JLOC) is established and its functions delineated by Idaho Statutes 67-457 through 67-464. Committee members are appointed by the Legislative Council, with an equal number of members from each party and each chamber of the legislature. Additionally, the two co-chairs of the committee represent each chamber and each political party. The committee's "purpose [is] conducting performance audits or evaluations, and reviewing all records related thereto, of any state agency at any time as the committee deems necessary" (ID Statute 67-457). In their attempt to realize this purpose, the committee has the authority to appoint a director of legislative performance evaluations (67-457). Currently, this appointee heads the OPE. Also worth noting are the subpoena powers granted to the committee's co-chairpersons (67-460). Furthermore, performance evaluations conducted under the authority of the committee are made available to the agency under evaluation, the governor, and all members of the legislature (67-461).

The committee has tasked the OPE with eight reports (six performance evaluations and two "follow-up reports") over 2017 and '18. These are extensive reports of 100 pages or more. One of the reports conducted in 2017 received the Notable Documents Award given by the Legislative Research Librarians, a staff section of the National Conference of State Legislatures. The release of the reports involves a committee hearing with discussion of the contents of the report and directions from committee members for follow-up reports. The reports we examined included a list of consultants (three for each report) that included an academic from an Idaho university and professionals with advanced degrees in a field related to the report (Idaho Legislature-Office of Program Evaluations-Reports).

The JLOC met seven times in the last two years (2017 and 2018). Meeting minutes are very detailed, describing the various reports and follow-up reports that the committee commissioned. It appears that the state agencies that were reviewed have made some progress implementing committee recommendations (Idaho Legislature-Office of Program Evaluations-Oversight Committee Minutes).

The legislature also relies on the creation of interim committees to study issues it endeavors to address., Two examples demonstrate this use of interim committees: The Interim Purchasing Laws Committee and the Interim Foster Care Committee. The former will be discussed in detail in the section

[644] The Idaho legislature has a range of committee types: standing, joint standing, interim, special, compensation (employee and legislative), and the legislative council. https://legislature.idaho.gov/committees/; The "Idaho State Senate Policy Manual, Procedures and General Information" provides a glossary of terms defining standing committee: "regular committees of the legislature set up to perform certain legislative function." In addition to this definition, the document list all 10 standing committees of the Senate and 14 of the House (pg. 43) https://legislature.idaho.gov/wp-content/uploads/PoliciesAndProcedures.pdf, accessed 11/22/18.

titled "Oversight Through Monitoring of State Contracts." The latter was an evaluation, initiated in 2016, of the state's foster care system. Two years later in 2018, the committee recommended the state should do more to keep siblings together in foster care, improve services, and create a citizen review panel to look at cases that are more than 120 days old (Rydalch, 2018). In that same year, the legislature passed most of these recommendations in the Child Protective Act by providing more review and oversight of the foster care system.[645] Creating and charging interim committees with developing oversight recommendations and passing them into law is an important mechanism of oversight in Idaho. Interviewees have said that these interim committees are not always for legitimate oversight, rather sometimes they are there to generate interest in an issue or for purely partisan reasons. However, interviewees were clear that sometimes these committees are for legitimate oversight, stating:

> Interim committees allow [legislators] to get into the weeds on a sticky issue. Occasionally one of [the Office of Performance Evaluation's] findings results in an interim committee and there are times that an interim committee results in [OPE] doing an evaluation. Interim committees are a common and important feature in the accountability environment because we have very few full time legislative staff, so germane committees just don't typically have the resources to tackle a bigger issue for too long. The interim committees give a specialized focus and can tailor staffing needs accordingly . . . [Interim Committees] can be a tool used for accountability (interview notes, 2018).

Oversight Through the Administrative Rules Process

Per Idaho Statute 67-5291, standing committees may review any administrative rule, whether new or existing, temporary or permanent. A rule may be rejected by concurrent resolution, if the review finds that the rule is inconsistent with the law or its intent. Idaho is unusual in that the State Supreme Court has upheld the legislature's right to reject a rule, stating that a rule does not "rise to the level of statutory law."[646] Most rejected rules are on the basis that they violate legislative intent. Other scholars as well as interviewees say that legislative intent is often used for the purpose of blanket rejections with a dim resemblance to the actual legislative intent that enabled the regulation (Schwartz, 2010, interview notes, 2018). An interviewee estimated that in the case of 99% of rejected rules, the agency does have the authority to make the rule, but the legislature can block any rule for any reason (interview notes, 2018). "[T]he legislature has no trouble shoehorning any policy objection into its 'legislative intent' criterion, and no standards govern the unofficial executive branch review" (Schwartz, 2010). Most agencies use negotiated rulemaking and carefully solicit stakeholder input. Another source asserts that agencies negotiate rules with the legislature because anyone can come forward at a legislative rules hearing—including the affected industry—and get a rule rejected (interview notes, 2018). A separate source believes that the practice continues because no organized interest has stepped forward to finance a legal challenge on the grounds that a rejected rule is in fact consistent with the initial legislative intent (interview notes, 2018).

[645] https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/2018_Key_Actions.pdf, accessed 11/22/18.
[646] https://www.courtlistener.com/opinion/1234158/mead-v-arnell/, accessed 11/22/18.

In recent years, both the Idaho House and Senate each introduced several concurrent resolutions rejecting administrative rules. For example, during 2017, the house of representatives introduced 12 concurrent resolutions involving administrative rules, five of which resulted in the rejection of an administrative rule by both houses of the legislature.[647] Also during 2017, the senate introduced eight concurrent resolutions involving administrative rules, four of which resulted in the rejection of an administrative rule by both houses of the legislature.[648] Schwartz (2010) reports that "the legislature only rejects rules, and rarely uses its power to modify or calibrate rules." Therefore, the legislature appears to effectively block executive branch efforts to promulgate rules.

In Idaho, all rules are given a sunset each and every year. In 2018, HB666 was the bill dealing with the continuation of all administrative rules and was passed on a 54-14-2 vote. Practitioners state that this bill regularly has 10-15 "nays" from Republican leadership in the house. According to sources, their votes are understood to mean "we don't want your stinkin' rules!" (interview notes, 2018). The rules sunset, the relative ease of rejecting a rule, the lack of sustained agency pushback to assert rule making authority, and the courts' acquiescence tilt the balance of power in rulemaking heavily toward the Idaho Legislature. Moreover, this legislative oversight appears highly susceptible to influence from special interests (interview notes, 2018; Schwartz, 2010).

Oversight Through Advice and Consent

Various executive branch appointments require senatorial approval (Council of State Governments, 2017). Idaho news media indicates that the senate occasionally rejects gubernatorial appointments. During 2013, the senate rejected a Fish and Game Commission appointee (Associated Press, 2013), citing concerns over her hunting and fishing experience that some said left her ill-prepared to set policy governing Idaho's wildlife on the seven-member commission" (Oregonian, 2013). The article also notes that this was the first time a gubernatorial appointee was rejected in decades. More recently, during 2018, the senate "declined to confirm a woman to the state Board of Medicine because of an online comment she made about the LGBTQ community" (Idaho Statesman, 2018).

The governor has statutory authority to enact executive orders (Council of State Governments, 2017). Most of these powers are implied rather than specified in statute. There is no formal provision that grants the governor the power to reorganize the executive branch. Executive orders are not subject to legislative review nor are they governed by the state's administrative procedures act, according to the Book of the States. Idaho's current governor issued 13 executive orders in 2017. Some address administrative changes to meet a fuel shortage—an emergency. Other executive orders make policy, however. An example of the latter is order 2018-07, "Establishing a Policy for Nuclear Energy Production and Manufacturing in Idaho."[649] Despite the potential for an issue involving nuclear energy production to generate public concern and legislative debate, the legislature lacks any resources to oversee gubernatorial orders such as this.

[647] https://legislature.idaho.gov/sessioninfo/2017/legislation/minidata/, accessed 11/22/18.
[648] https://legislature.idaho.gov/sessioninfo/2017/legislation/minidata/, accessed 11/22/18.
[649] https://gov.idaho.gov/mediacenter/execorders/eo2018/EO%202018-07.pdf, accessed 8/27/18.

Oversight Through Monitoring of State Contracts

State contracts are monitored by both the Department of Purchasing and the issuing agency. Recent scandals have prompted direct legislative action. An illegally awarded broadband contract (Richert, 2014) for schools cost the state approximately $40 million (Boone, 2017, Richert, 2016) after the plaintiff—a rival broadband company who did not receive the contract—sued and won, alleging the contract was illegally awarded to higher-cost vendors. The costs were connected to a variety of sources: unutilized and underutilized sunk costs; local schools contracting for service in the interim, which were found to be at "prices far cheaper than what the state was paying;" court costs (the legal battle took place over seven years); payments awarded to the plaintiff; and payments to the FCC for failing to follow grant requirements (Boone, 2017). The judge was particularly critical of the Department of Administration, stating "DOA refuses to acknowledge that its bid process in this case was and remains fatally flawed" (The Spokesman, 2014a). The DOA head resigned shortly thereafter (Associated Press, 2015). The scandal served as a focusing event for the legislature to take action. They took a two-pronged approach: (1) create an interim committee to revise the state's purchasing and procurement laws, and; (2) direct the Office of Performance Evaluation to conduct a performance evaluation. These activities resulted in legislation that increased agency internal control mechanisms and initiated reporting to the legislature. Overall, the procedures for contracting have been improved, and the added layer of reporting has increased the capacity for legislative oversight in this area.

In 2013, The Office of Performance Evaluations produced a report "Strengthening Contract Management in Idaho"[650] which identified key deficiencies: three quarters of contracting staff had not been trained through the Division of Purchasing; and a lack of monitoring both in terms of written guidelines at the Division of Purchasing and monitoring activities by the agencies engaged in contracting.[651] A hearing was held on the report in which the Director of the Department of Administration said additional staffing would be necessary to adopt the recommendations, and the committee asked OPE to perform a follow up review in six months.[652] The legislature acted by passing four bills: removed the higher education exemption from procurement rules, directed the Department of Administration to address findings in the OPE report, appropriated funds to DOA to increase monitoring, and specified to the Division of Purchasing that they are to create rules regarding purchasing.[653] In a hearing on the follow-up report lawmakers expressed surprise that contracts amounted to such a large sum—$2.6 billion—and many of those contracts were entered into by state officials who are exempt from purchasing rules, including the legislature, the judiciary, and the offices of statewide elected officials like the state superintendent (The Spokesman, 2014b).

The Interim Purchasing Laws Committee received the benefit of the OPE reports and a mandate to review the "antiquated" purchasing laws on the books that date to the 70s (Richert, 2015). Their work resulted in the passage of HB 538[654] that updated the state purchasing and procurement laws[655] including but not limited to: new training for all state officers and

[650] https://legislature.idaho.gov/ope/reports/r1302/, accessed 11/22/18.
[651] https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r1302.pdf, accessed 11/22/18.
[652] https://legislature.idaho.gov/wp-content/uploads/OPE/JLOCMinutes/min130121.pdf, accessed 1/22/18.
[653] https://legislature.idaho.gov/ope/reports/r1302/, accessed 11/22/18.
[654] https://legislature.idaho.gov/sessioninfo/2016/legislation/H0538/, accessed 11/24/18.
[655] http://myemail.constantcontact.com/News-from-Governor-C-L---Butch--Otter.html?soid=1104363258036&aid=p9t0qrAgPkA accessed 8/21/18.

employees; stipulated ethical expectations (Idaho State Code Section 67-9233; KTVB, 2016); individual prohibitions (Idaho State Code Section 67-9230) and penalties (Idaho State Code Section 67-9231); require competitive bid exempt entities to establish policies and procedures relating to the administration, management, monitoring and other oversight of contracts (Idaho State Code Section 67-9219(2)); and all state entities, including those exempt from the competitive bid requirements, must report their contracts annually to the legislature on the first day of regular session indicating for each contract the amount, duration, the parties, and the subject (Idaho State Code Section 67-9219(4)).[656] This requirement includes sole-source (no-bid) or multi-year contracts with a lifetime value of $1.5 million or more. We are told by sources that this marks significant shift from prior procurement practice by getting the legislature directly involved via annual reports and spelling out expectations for actors involved in procurement with corresponding penalties (interview notes, 2018).

But not all of OPE's recommendations were adopted. Despite the new law, more than half of all taxpayer money falls outside the competitive bid process because many of the exemptions identified by OPE have survived in the new law (Idaho State Code Section 67-9203(3); Corbin, 2016a). For example, the State Superintendent for Public Instruction granted a no-bid contract to a temporary employment agency to hire her chief policy officer (Corbin, 2016b). A common argument for keeping exemptions to the competitive bid process is that many of these exempt entities are headed by an elected official, which means their constituency would ultimately have say on whether or not the contracts were appropriate. We found this argument referenced by interviewees and contemporaneous journalism cited throughout this section. Media reports suggest that these issues might be addressed in the 2017 session by the State Procurement Laws Committee (Corbin, 2016a), but that committee is not listed among those for the 2017 interim[657] or 2018 session. Thus, it appears that the legislature has gained some capacity to oversee state contracts, but there are loopholes and room for improvement in the process.

Oversight Through Automatic Mechanisms

Oversight through Sunset Legislation: Sunset legislation may be "selectively" attached to "programs or legislation" (Baugus & Bose, 2015; Council of State Governments, 2016). Recent evidence suggests that Idaho is being encouraged to add sunset clauses to more legislation. For example, right wing groups, such as the Idaho Freedom Foundation, have advocated the use of such legislation (Idaho Freedom Foundation Staff, 2012). Also, there have been news articles discussing legislation with sunset provisions that have emerged during the 2018 regular session (Rydalch, 2018; Russell, 2018). At this point, however, Idaho reviews programs and legislation only selectively.

[656] https://legislature.idaho.gov/statutesrules/idstat/Title67/T67CH28/SECT67-2805/, accessed 11/24/18.
[657] https://legislature.idaho.gov/sessioninfo/2017/interim/interimcommittees/, accessed 11/24/18.

Methods and Limitations

In Idaho, 10 people were interviewed out of the 11 people that were contacted. Idaho's legislature also provides public and online access to audio (in the form of a video file), minutes, and agendas for their committee meetings. Overall, Idaho was very responsive and provided useful resources, however, having access to transcripts and video for committee meetings would help us better assess the legislature's levels of oversight more accurately.

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Legislative Oversight in Illinois

Capacity and Usage Assessment

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

Summary Assessment

Illinois' legislature appears to do an adequate job of overseeing the executive, despite having substantial institutional capacity to produce information and institutional structures that facilitate bipartisan participation. We note that the absence of recordings of oversight hearings and other committee hearings makes it very difficult to assess legislators' performance on oversight. The appropriations process appears to be controlled by legislative leadership. And there is a contest of wills between the executive branch and the legislature that led to a two year budget stalemate.

Major Strengths

Illinois balances partisan membership on its oversight committee, the Legislature Audit Committee (LAC) and its Joint Committee on Administrative Rules (JCAR), which insures that the minority party has a voice in these hearings. The legislature's rule review powers are extraordinarily strong—trending toward a legislative veto. Furthermore, the state's legislature does appear to make substantial use of audit reports in creating legislation and during the budget and appropriations process. Joint committee meetings make it easier to communicate audit reports to both chambers. The appropriations process is often contentious, however, and appears to be infused with partisan politics. The Illinois General Assembly seems to scrutinize appointees thoroughly, and it intervenes in the governor's efforts to reorganize agencies.

Challenges

While it appears that special legislative committees are somewhat effective in addressing pressing issues in executive agencies, they are not especially numerous, and their purview is limited. Meanwhile, the general assembly's numerous standing committees do not appear to be heavily engaged in oversight activities. State contracts, meanwhile, are mostly out of the legislature's hands. In conclusion, the legislature in the State of Illinois could improve its

oversight over the executive branch by seeking to increase their involvement in through standing committees and auditing the performance of contractors delivering public services.

Relevant Institutional Characteristics

Illinois has a highly professionalized legislature, ranked as 9th in the country (Squire, 2017). The Illinois legislature is also variously classified as "full-time" (Haider-Markel, 2008) or by the NCSL as "full-time lite."[658] It meets throughout the year, and Illinois legislators earn a base salary of $67,836 annually and are entitled to $111 per diem.[659] Assembly members in Illinois are supported by 784 full-time staff.[660] Senators serve four-year terms, while house members serve two-year terms.

Powerful leadership is a notable feature of the Illinois Legislature,[661] and some observers have noted that "[t]he leadership's control of the legislative process is" exceptionally strong (Haider-Markel, 2008). The result is a highly managed legislative process in which standing committees, appropriations, and the legislative process, more generally, is subordinated to the decisions of the leadership. In January 2017 the Illinois Senate adopted a resolution that imposed term limits on its leadership, but the state house did not follow suit, leaving Mike Madigan, the longest-serving state house speaker in recent U.S. history, in power (Berg, 2017).[662]

Illinois's governor, meanwhile, is also fairly powerful, being tied for 13th out of 50 states in terms of authority (Ferguson, 2013). There are several sources of gubernatorial power. There are no gubernatorial term limits in Illinois, only a few other executive positions are separately elected, the governor can call the legislature into special session, and, importantly, the governor has broad veto powers, including a whole-bill veto, a line-item veto, a reduction veto, and an amendatory veto (Paprocki, 2017).[663] Furthermore, the Illinois governor has more time in which to use a veto than many other states: "No state comes close to the 60-day window allotted to Illinois' governors, [and] this unique constitutional provision is consistent with the 'extraordinary veto power' granted to the executive branch" (Tomaka, 2015).[664] Illinois is also among just a few states that permit a governor to item-veto parts of all bills, not just budget or appropriations bills. Aside from the reduction veto, which can be overridden with a simple majority, overriding gubernatorial vetoes requires a three-fifths majority (Paprocki, 2017).[665] Thus, even though the Illinois General Assembly is highly professional, and "considers itself a coequal branch of government," the state's governor appears to have many powers, both formal and informal (Haider-Markel, 2008).

Illinois has a lower than average proportion of its citizens working in state and local government jobs—10.6% compared to 11.3% nationally (Edwards, 2006). Of this, 6% work in education, 1.7% in public safety, 1% in welfare, 1.3% in services, and 0.6% in other sectors.

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[658] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 7/1/18.
[659] http://www.ncsl.org/research/about-state-legislatures/legislator-compensation-2018.aspx, accessed 7/1/18.
[660] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 7/1/18.
[661] Battista (2011) provides a composite index of legislative leader power that ranks Illinois are the 3rd most powerful legislative leaders nationally, after West Virginia and Arizona.
[662] https://www.illinoispolicy.org/illinois-senate-passes-term-limits-for-legislative-leaders/, accessed 7/2/18.
[663] https://www.illinoispolicy.org/illinois-gubernatorial-veto-procedure/, accessed 7/2/18.
[664] https://www.csgmidwest.org/policyresearch/0915-veto-powers.aspx, accessed 7/2/18.
[665] https://www.illinoispolicy.org/illinois-gubernatorial-veto-procedure/, accessed 7/2/18.

Compared to other states, the area of welfare is the one that employs fewer than average percentage of workers—1% in Illinois compared to an average of 1.5% nationally.

Political Context

Although the Illinois General Assembly was controlled by Democrats in 2018 (37 to 22 in the senate and 67 to 51 in the house), the governor at that time, Bruce Rauner, was a Republican. Republicans have controlled the governor's office the majority of the time since the 1980s, with the exceptions being Rod Blagojevich followed by Patrick Quinn until the 2018 election of J B. Pritzker. Democrats have controlled the Illinois Senate since 2003, although for all of the previous decade Republicans controlled that chamber. Democrats have more consistently controlled the state house, with only one two-year period of Republican control (1995-96) since 1992. Therefore, much of the time Illinois has had divided government. Within the legislature, Illinois shows only moderate levels of polarization: the house is ranked as the 29th most polarized lower chamber out of 46 states and the senate is ranked the 36th most polarized upper chamber (out of 45 states), according to Shor and McCarty (2015). This lack of polarization could reflect the percentage of the population in Illinois that does not identify with either political party (24%).[666] Additionally, it could be a legacy of the era of moderate, sometimes called pragmatic, Republicans in the mold of Everett Dirksen, who joined President Johnson to pass civil rights legislation in the 1960s. Regardless of its origins, party moderation in the state legislature provides opportunities for bipartisan collaboration on issues of government accountability and legislative oversight.

Illinois politics has a reputation for corruption at both the statewide and national levels (Haider-Markel, 2008). Over the course of its statehood, Illinois has convicted five of its governors on corruption charges, two of its auditors general, a secretary of state, a treasurer, an attorney general, four Chicago aldermen/alderwomen, six municipal officials, seven US house members, and a US senator (Gradel and Simpson, 2015). These experiences with corruption could also motivate legislative efforts to check executive power and oversee state agencies.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

As prescribed in the state's constitution, the Illinois auditor general is recommended by the Legislative Audit Committee and is confirmed by the general assembly by a three-fifths majority vote for a 10-year term (NASACT, 2015).[667] In addition to the Statewide Single Audit, the Office of the Auditor General (OAG) is required by the Illinois State Auditing Act[668] "to conduct . . . a financial audit and or compliance examination of every state agency at least once every two years." The auditor general also conducts performance audits "pursuant to a resolution or law passed by the general assembly." Finally, the auditor general is responsible for IT audits,

[666] https://www.openprimaries.org/research_illinois, accessed 7/20/18.
[667] http://ilga.gov/commission/lrb/con8.htm, accessed 7/3/18.
[668] http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=466&ChapterID=7, accessed 7/3/18.

which are intended to "determine whether appropriate controls and recovery procedures exist to manage and protect the state's financial and confidential information." IT audits typically are part of broader compliance or performance audits.[669]

The OAG is well staffed, with 99 allocated positions. Its $6.8 million state appropriation does not seem large until one considers that the state appropriated nearly $24 million for the OAG to hire contractors to perform some of its mandated audits. For example, the auditor general hires a CPA firm to conduct 100% of the state's single audit. The OAG itself, in addition to 120 financial audits of state agencies in 2017, completed seven performance audits.[670] During 2018 the OAG completed five performance audits of state agencies and authorities.[671] Performance audits usually take a year to conduct, and the Performance Audit Division will conduct five to six of these in-depth studies per year (interview notes, 2018).

Audits are variously requested by the Legislative Audit Commission (LAC), by house, senate, or joint resolutions, or through public acts. According to an interviewee, performance audits are requested more often by house resolutions than by the LAC; most performance audits are the result of resolutions by members. These performance audits will usually result in statutory change and may also prompt the rulings by the attorney general. For instance, during the completion of an audit conducted on the College of DuPage, statutory changes were made in administrative compensation. When the audit was officially released, the college made internal policy changes and further statutory changes were also made (interview notes, 2018). The impact of these audits—not exclusive to performance audits—will be discussed further within the "Oversight Through the Appropriations Process" and "Oversight Through Committees" sections of this paper.

The LAC consists of 12 legislators, six from each chamber and six from each political party. They are appointed by the leadership of the two legislative chambers. The LAC has three permanent staff members to support its work. Although this is considered a time consuming and demanding committee, its members do not receive any additional stipend for their LAC work. They are, however, reimbursed for travel expenses associated with their service on this committee. Co-chairs of the LAC must be from different political parties with one from each of the two legislative chambers.[672]

The LAC officially oversees the performance of the auditor general by contracting with an independent firm to conduct a biennial audit of the auditors.[673] Illinois state law requires that the Legislative Audit Commission also review all audits produced by the auditor general and "determine what remedial measures . . . are needed, and whether special studies and investigations are necessary."[674] If such a determination is made, the LAC is empowered to direct the auditor general to carry them out. This includes the more than 100 financial audits as well as performance audits. The reviews carried out by the LAC are touted as having two major benefits: (a) "Legislators are directly involved in the audit process, increasing communication within government and supplying feedback to the legislative and appropriations process;" and (b); "Opportunities are increased for both administrative and legislative action to correct weaknesses and deficiencies disclosed in the audit reports."[675]

[669] https://www.auditor.illinois.gov/Audit-Reports/description.asp, accessed 7/3/18.
[670] https://www.auditor.illinois.gov/Audit-Reports/Performance-Audits.asp, accessed 7/3/18.
[671] https://www.auditor.illinois.gov/Audit-Reports/Performance-Audits-In-Progress.asp, accessed 8/9/18.
[672] http://ilga.gov/commission/lac/Annual2017.pdf, accessed 7/20/18.
[673] http://ilga.gov/commission/lac/Annual2017.pdf, accessed 7/20/18.
[674] http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=461&ChapterID=6, accessed 7/3/18.
[675] http://ilga.gov/commission/lac/Annual2017.pdf, accessed 7/3/18.

Vignette: The Auditor General's Audit of the Neighborhood Recovery Initiative

Recent transcripts or archived audio and video for LAC meetings are not available. However, the LAC's website has minutes and transcripts posted for seven meetings held between May and October 2014 regarding an audit of the controversial Neighborhood Recovery Initiative (NRI), which was a program originally implemented in 2010 "to reduce risk factors associated with violence in 23 communities in Cook County."[676] Originally the NRI was supervised by the Illinois Violence Prevention Authority (IVPA). It appears that IVPA did not track the money spent and dispersed funds to agencies that did not meet NRI program eligibility criteria. The audit found that the NRI program was "hastily implemented," poorly documented, beset with budgetary problems, and could produce no evidence that it was producing any meaningful results to curb violence. Then-Gov. Patrick Quinn claimed that he identified problems with IVPA management of NRI prior to the audit report and that he had already dealt with the problems by abolishing the IVPA and put NRI under the purview of the Illinois Criminal Justice Information Authority (ICJIA). The audit was initiated by Republican representatives, but the Democratic majority in the house directed the state auditor to investigate the program. The LAC meetings regarding the NRI audit were fairly substantial, typically lasting two hours or longer.

During these meetings, committee members took testimony from witnesses and asked questions about various aspects of the NRI program. One particularly contentious issue pertained to the opaque methodology used to determine which communities were ultimately included in the NRI. The auditor general's report noted that several of the most crime-stricken areas of Cook County were omitted, while the relatively safer south suburbs were included. Chief of staff for Gov. Quinn stated that the determination was made based on a study of crime statistics, but neither that report, nor any documentation of that report, was ever found. As one committee member complained, "[t]he troubling part of this is that we get the same response from every witness that's here, which is there was some analysis somewhere that showed us something of which none of us remember what it was, how it was based [sic] or could produce the document that exists."[677]

Both the hearings and the audit of the NRI program became highly politicized. The former director of the Illinois Violence Prevention Authority (IVPA), the agency that managed the NRI until Gov. Quinn abolished it, claimed that "the entire [NRI] program had become a political football in the sense that the Republicans seemed very disturbed by this program. They wanted it cut and wanted it audited very early in the process" (Cremeens, 1969).[678] Indeed, "Republicans . . . blasted the program as a 'political slush fund' and a cynical election-strategy maneuver by [Governor] Quinn to win more South Side votes one month before his narrow victory over Illinois state senator Bill Brady in 2010" (Carlson, 2014).[679] Such concerns were not allayed by the fact that emails from an advisor to the governor, a Democrat, indicated that

[676] https://www.auditor.illinois.gov/Audit-Reports/Performance-Special-Multi/Performance-Audits/2014_Releases/14-IVPA-NRI-Perf-Digest.pdf, accessed 7/3/18.

[677] http://ilga.gov/commission/lac/nri/Transcripts/12October%209,%202014%20Legislative%20Audit%20Commission%20Meeting%20Transcript.pdf, accessed 7/3/18.

[678] https://townhall.com/watchdog/illinois/1969/12/31/nri-hearings-reveal-questions-on-program-integrity-n6323, accessed 7/3/18.

[679] https://www.nbcchicago.com/blogs/ward-room/Pat-Quinn-Illinois-Governor-Anti-Violence-Program-Controversy-257536421.html, accessed 7/3/18.

the governor's staff "believed the program would be beneficial for increasing support in African-American communities" (Illinois News Network, 2014).[680]
Despite the governor's efforts to improve oversight of the program, the NRI continued to be a "political football" for Republicans in the general assembly (The Caucus Blog, 2014),[681] who sponsored legislation directing the auditor general to carry out a follow-up audit on the NRI/ICJIA.[682] This audit also found evidence of continued gross mismanagement of the NRI program under the ICJIA.[683] Ultimately, criticism of the NRI program became a theme (Meisel, 2014)[684] in the successful election campaign of Republican gubernatorial candidate Bruce Rauner (Erickson, 2014).[685] However, with the end of the NRI program in 2014, "not much else [was] done to correct the problem 'other than there's new people in the agencies who wasted all this money before,'" according Senator Jason Brickman, the co-chair of the Legislative Audit Commission (Bishop, 2017b).[686] Brickman was one of the sponsors of SB0749,[687] which would have required more legislative oversight over spending by programs like the NRI. However, that bill has been stuck in committee since October 2017.

Indeed, despite the controversies surrounding the NRI and its political mobilization, it appears that inaction on the part of legislators in response to audit reports is a considerable problem in Illinois. As one member of the Legislative Audit Commission complained, "[w]hether it be not having an Office of Inspector General and having things go into a binder and sit, or whether it be EDGE credits (Bakala, 2017),[688] or whether it be how we invest money in violence prevention funds," audit reports are not always acted upon decisively (Bishop, 2017a).[689] This is borne out by the fact that audit recommendations made to agencies were repeated in the next audit—in some cases this occurred for up to 78% of the recommendations. Nevertheless, the LAC's 2017 annual report also notes six pieces of legislation that were signed by the governor "as recommended by audit reports or Audit Commission Members."[690]

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[680] https://www.ilnews.org/news/state_politics/thursday-s-nri-hearing-answers-few-questions/article_06a391f8-caeb-59f7-8ca8-45d590781a05.html, accessed 7/3/18.
[681] http://www.thecaucusblog.com/2014/03/week-in-review-for-3314-through-3714.html, accessed 7/3/18.
[682] http://www.ilga.gov/legislation/billstatus.asp?DocNum=888&GAID=12&GA=98&DocTypeID=HR&LegID=81433&SessionID=85, accessed 7/3/18.
[683] https://www.auditor.illinois.gov/Audit-Reports/Performance-Special-Multi/Performance-Audits/2016_Releases/16-ICJIA-Perf-Full.pdf, accessed 7/3/18.
[684] https://will.illinois.edu/news/story/troubled-anti-violence-program-used-as-political-fuel-during-debate, accessed 7/3/18.
[685] https://www.pantagraph.com/news/state-and-regional/illinois/government-and-politics/rauner-wants-nri-probe-to-move-forward/article_0f2fde71-e3d0-50bc-9a65-d333cae89345.html, accessed 7/3/18.
[686] https://www.ilnews.org/news/state_politics/millions-of-dollars-still-missing-from-dubious-quinn-era-neighborhood/article_c03f1b60-b8e7-11e7-aa63-e3008588b609.html, accessed 7/3/18.
[687] http://www.ilga.gov/legislation/billstatus.asp?DocNum=749&GAID=14&GA=100&DocTypeID=SB&LegID=101274&SessionID=91, accessed 7/3/18.
[688] The Economic Development for a Growing Economy (EDGE) tax credit program was intended to "lure companies to the Land of Lincoln in order to create jobs." However, there is little evidence that EDGE accomplished these objectives. In addition to being ineffective, EDGE was also expensive and unfair to Illinois businesses not selected for deals." See: https://www.illinoispolicy.org/illinois-senate-votes-to-revive-edge-business-tax-credit-program/, accessed 7/3/18.
[689] https://www.ilnews.org/news/state_politics/legislative-audit-commission-member-frustrated-with-lack-of-oversight/article_b9a22fd4-cbd6-11e7-a0e2-d7df4840c56e.html, accessed 7/3/18.
[690] http://ilga.gov/commission/lac/Annual2017.pdf, accessed 7/3/18.

Finally, Illinois also has an Office of the Executive Inspector General (OEIG), which is "an independent executive branch state agency which functions to ensure accountability in state government and the four regional transit boards."[691] OEIG produces reports of its investigative activities, which typically revolve around financial or ethical malfeasance on the part of government employees. These reports are referred to the Executive Ethics Commission,[692] and, apart from being the target of "outreach efforts," it does not appear that the legislature is substantially involved in OEIG's activities. The OEIG's 2017 annual report notes, moreover, that "[a]t the time this Annual Report was published, the bills the OEIG worked to introduce had not been passed by the general assembly."[693]

Oversight Through the Appropriations Process

The appropriations process in Illinois is dominated to a substantial degree by the legislative leadership. During the budget process, which must be concluded by May 31st, agency officials appear before appropriations committees to give testimony and take questions. There are two standing committees that have jurisdiction over all spending bills: Appropriations I and Appropriations II. In the house there are five appropriations committees with jurisdiction over broad substantive areas of spending: elementary and secondary education, general services, higher education, human services, and public safety. One person familiar with the process said that five to six agencies appear before the Senate Appropriations I committee during each hearing, and said that the process was similar in the Appropriations II committee. Prior to the hearings, the committee staff would have prepared for legislators an analysis of the agency's budget highlighting past spending, how current appropriations are being used, and future budget requests. This analysis is typically prepared in conjunction with agencies themselves. Large agencies, like the Department of Human Services (DHS) are typically questioned more extensively than others, simply due to the large number of programs they administer.

Audit reports, including performance and financial audits, have an impact on the appropriations process. Performance and financial audits have been used by the House Chairman of Appropriations for their "research on appropriations levels for agencies" (interview notes, 2018). In particular, the house chairman will hold a pre-meeting, which involves a survey process. During this process, the chair will specifically address audit findings, how they are used, and ask questions of the auditor general's staff. Furthermore, these audits also have an impact on the Combined Annual Financial Report of the State, which is used to assess "the financial position of the state"[694] (interview notes, 2018).

Outside of the survey process and during the official appropriations committee hearing for both chambers and for the budget, auditor general staff presents audit findings. Furthermore, the auditor general's fiscal officer meets regularly with the comptroller and appropriations' chairs as well (interview notes, 2018). Typically, staff does not comment on whether legislation should be adopted. Audits are, however, used "very frequently . . . to make statutory changes or

[691] https://www2.illinois.gov/oeig/about/Pages/default.aspx, accessed 7/9/18.
[692] https://www2.illinois.gov/eec/Pages/default.aspx, accessed 7/9/18.
[693] https://www2.illinois.gov/oeig/publications/Documents/2017%20Fiscal%20Year%20Annual%20Report.pdf, accessed 7/9/18.
[694] https://illinoiscomptroller.gov/financial-data/find-a-report/comprehensive-reporting/comprehensive-annual-financial-report-cafr/, accessed 8/9/18.

to prompt determinations or rulings for the attorney general" (interview notes, 2018).

Once hearings are concluded, committee members, in conjunction with legislative leadership and representatives from the governor's office, engage in what one source describes as "hours and hours" of budget meetings to formulate how money will be allocated. This process is highly influenced by the legislative leadership. While there is some input form "regular" members of the assembly, appropriations committees are stacked with people who are handpicked by the leadership, ensuring that they will go along with leadership preferences for the final budget.

Vignette: The Legislature's Override of the Governor's Budget Veto

In recent years, the appropriations process in Illinois has become particularly contentious. This has been driven in part by partisan battles between Democratic legislative leadership and the current Republican governor over ongoing deficit spending (Bosman & Davey, 2017a).[695] The state's powerful house speaker, Michael Madigan, "said that Democrats [were] engaged in an 'epic struggle' with [Governor] Rauner, and that he would not allow the governor to damage labor unions as a condition of passing a budget" (Bosman, 2015).[696] Similarly, the senate president, John Cullerton, "said that the governor's requirements for the budget would force Democrats to abandon their core principles as a party." Among other things, these requirements included freezes on property tax increases, changes to collective bargaining rights, and cuts to workers' compensation. Thus, in 2015, when the legislature submitted a budget for the governor's signature, it was vetoed (Schutz, 2015).[697] As a result of this impasse, between July 2015 and August 2017 the state had no budget (Bosman & Davey, 2017a).[698] In 2016, the general assembly failed to pass a budget altogether, forcing the legislature and the governor to agree to a "stopgap budget" that prevented the government from shutting down (Garcia, Geiger, & Dardick, 2016).[699] Then, in 2017, the governor was forced to call the legislature into special session after it once again failed to pass a budget. When the general assembly submitted its budget after a "dramatic showdown that culminated in an extraordinary Fourth of July vote," the governor again vetoed the bill, "citing its permanent income tax increase" as unacceptable (Korecki, 2017).[700]

This move, however, proved to be too much even for many of the governor's Republican allies in the legislature, and the general assembly subsequently overrode the veto (Garcia & Geiger, 2017).[701] According to one account, "Several Republican house members broke into tears as they voted in favor of a tax increase they said they opposed on principle but said they couldn't continue to watch the state burn to the ground" (Korecki, 2017).[702] In 2016 the state's

[695] https://www.nytimes.com/2017/06/29/us/illinois-state-budget-impasse.html, accessed 7/6/18.
[696] https://www.nytimes.com/2015/10/27/us/illinois-budget-stalemate-rauner-and-democrats-divided.html, accessed 7/6/18.
[697] https://chicagotonight.wttw.com/2015/06/25/gov-bruce-rauner-vetoes-budget-bills, accessed 7/6/18.
[698] https://www.nytimes.com/2017/06/29/us/illinois-state-budget-impasse.html, accessed 7/6/18.
[699] http://www.chicagotribune.com/news/local/politics/ct-illinois-budget-impasse-madigan-rauner-met-0701-20160630-story.htmlf, accessed 7/6/18.
[700] https://www.politico.com/story/2017/07/04/illinois-legislature-budget-bruce-rauner-240213, accessed 7/6/18.
[701] http://www.chicagotribune.com/news/local/politics/ct-illinois-senate-income-tax-hike-budget-met-0705-20170704-story.html, accessed 7/6/18.
[702] https://www.politico.com/story/2017/07/04/illinois-legislature-budget-bruce-rauner-240213, accessed 7/6/18.

credit rating had been downgraded to BBB; in 2017 it was downgraded again to BBB-. The S&P cited the looming threat of a shutdown of government and the state's present debt as well as a budget deficit as reasons for the downgrades (CNBC, 2017).[703] *Indeed, in July 2017, the Illinois government shut down momentarily after the governor vetoed a last-minute appropriations bill (Bosman & Davey, 2017b).*[704] *While the veto override avoided a further downgrade of the state's bond rating to "junk" status, Illinois amassed nearly $17 billion in unpaid bills since 2015 (Silets, 2018).*[705] *Nevertheless, by January 2018 the governor was again vowing to "roll back" the tax increases that had been included in the 2017 appropriations bill (The Associated Press, 2018).*[706]

Despite fears that another showdown over the budget was looming, the general assembly passed a balanced budget in May, which the governor subsequently signed. "Left for another day were some of the state's most pressing financial problems: A backlog of unpaid bills . . . and a massive pension debt that's on track to consume a growing portion of Illinois' annual revenue. Also set aside was the governor's call for retirement system changes that he said could allow for a modest quarter-percent rollback of the state income tax" (Garcia, Geiger, & Lukitsch, 2018).[707]

Oversight Through Committees

The Illinois legislature has 78 standing committees: 29 in the senate and 49 in the house. Standing committees in Illinois are heavily subordinated to the will of the legislative leadership. As Haider-Markel (2008) explains, legislative leaders can "change membership on a committee at any time, which [makes] it much easier to control the outcome of committee decisions. As a result, committees have become weak, although they have some value as forums for hearing the positions of interest groups and gathering expert information." Legislation is assigned to standing committees by the Rules or Assignments committee, depending on the chamber.

Afterwards, a "bill's proponent, generally an individual representing the interest group or government agency or the private citizen who asked that the bill be introduced, will often also be present to explain the reason the bill was introduced and to answer questions from the panel. Lobbyists, interest group representatives, and private citizens all have a chance at this time to voice support or opposition to a bill."[708] The committee may then vote, by a simple majority, to pass the bill out of committee for a vote in the full chamber. Despite the proliferation of substantive standing committees in the general assembly, there is not much evidence that they engage in oversight activities. Most committee meetings are instead devoted to approving (or disapproving) legislation for vote by the general assembly, according to the wishes of the legislative leadership.

[703] https://www.cnbc.com/2017/06/25/illinois-debt-is-about-to-be-rated-junk-what-that-means.html, accessed 7/9/18.
[704] https://www.nytimes.com/2017/07/06/us/illinois-budget-shutdown-states-rauner.html, accessed 7/9/18.
[705] https://chicagotonight.wttw.com/2018/02/12/illinois-lawmakers-preview-upcoming-budget-battle, accessed 7/6/18.
[706] http://wkms.org/post/illinois-governor-pledges-rollback-income-tax-increase, accessed 7/6/18.
[707] http://www.chicagotribune.com/news/local/politics/ct-met-illinois-legislature-budget-final-day-20180531-story.html, accessed 7/6/18.
[708] https://www.surs.org/pdfs/legal/How_a_Bill_Becomes_a_Law.pdf, accessed 7/6/18.

Apart from the appropriations process, audit reports are discussed during state government and administration committees within the house or senate. It does seem as though the activities of standing committees are driven by partisanship and the preferences of legislative leaders, as one source noted that audit reports are seldom requested or consulted, unless something "controversial" occurs that could be used for partisan gain and that "this is politics, after all" (interview notes, 2018). However, as previously discussed, when performance audits are conducted, a legislator often initiates the request. As a result of legislator interest, audits might be used more routinely by Illinois' legislature. Furthermore, staff from the auditor general's office will appear at committee hearings—similar to the appropriations process—to primarily present audit findings. This staff may answer other questions as well during these hearings (interview notes, 2018).

Oversight through committees in Illinois seems to occur mostly through the creation of special committees. These limited-term committees are created through legislative resolutions. For example, in 2014, House Resolution 96 created the Joint Criminal Justice Reform Committee "to examine the impact of the current sentencing structure, ensure that the enforcement and punishment of crimes does not disproportionately or unfairly affect certain racial, ethnic, or minority groups, and develop solutions to address the issues that exist within the system."[709] This committee met five times between July and November 2014 and took testimony from representatives from a variety of state agencies, including law enforcement agencies, the Illinois Department of Corrections, the Department of Juvenile Justice, scholars, analysts, and advocates and activists from the community. No minutes, transcripts, or archived audio and video exist from these hearings, so it is difficult to assess how incisive legislators' questions to witnesses were. However, the appendices[710] to the final report from this committee contain substantial written and documentary testimony from witnesses. Online documents[711] from the meetings also indicate that some witnesses provided oral testimony as well.

The recommendations contained in the committee's final report[712] indicated that the committee intended to "continue discussions and develop legislative proposals to present to the general assembly aimed at addressing the issues that exist within the criminal justice system." The report also noted that "committee members are committed to this task and expect to introduce legislation in early 2015." Some legislation pertaining to sentencing reform[713] was indeed sponsored by one member of the committee, but that legislation never received a committee hearing. It was, however, co-sponsored by a future member of the separate, governor-appointed State Commission on Criminal Justice and Sentencing Reform.[714] Another piece of legislation, SB2872 explicitly "contain[ed] a number of elements from the [gubernatorial]

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709 http://www.ilga.gov/legislation/BillStatus.asp?DocNum=96&GAID=12&DocTypeID=HJR&LegId=82253&SessionID=85&GA=98, accessed 7/6/18.

710 http://www.ilga.gov/reports/special/98Appendix%20A%20(Part%201).pdf; http://www.ilga.gov/reports/special/98Appendix%20A%20(Part%202).pdf; http://www.ilga.gov/reports/special/98Appendix%20A%20(Part%203).pdf, accessed 7/6/18.

711 http://my.ilga.gov/Committee/Index/1533?tab=2, accessed 7/6/18.

712 http://www.ilga.gov/reports/special/98Joint%20Committee%20Final%20Report.pdf, accessed 7/6/18.

713 http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=SB&DocNum=3258&GAID=12&SessionID=85&LegID=80378, accessed 7/6/18.

714 http://www.icjia.org/cjreform2015/about/, accessed 7/6/18.

commission's recommendations,"[715] and that legislation was co-sponsored by members of the Joint Criminal Justice Reform Committee.[716]

Currently, there are four special committees in the senate, but none in the house. These committees deal with topics like state and pension funds, housing, and Medicaid and managed care.[717] None of those committees have yet submitted final reports,[718] but it appears that this is a mechanism that the Illinois general assembly relies upon to conduct oversight.

Oversight Through the Administrative Rules Process

According to the Illinois Administrative Procedure Act (IAPA), the legislative Joint Committee on Administrative Rules (JCAR) "exercises oversight of the rulemaking process on behalf of the entire general assembly (GA) to insure that agency rules meet the requirements of the IAPA and do not exceed the authority that the GA has granted to the agency in statute."[719] JCAR was created in 1977 and is "authorized to conduct systematic reviews of administrative rules promulgated by state agencies. JCAR conducts several integrated review programs, including a review program for proposed, emergency and peremptory rulemaking, a review of new public acts and a complaint review program."[720] The committee consists of 12 legislators, split evenly between the two chambers of the general assembly and between the two major political parties. In addition to advising the legislature as a whole on issues pertaining to proposed regulations, JCAR also publishes a weekly "Flinn Report,"[721] which is intended to "inform and involve the public in changes taking place in agency administration."[722] JCAR meets "at least once each month to consider an agenda that generally includes from 35-50 separate rulemakings by state agencies."[723]

When an agency wishes to propose a new regulation, it first drafts the rule and publishes a "Notice of Rulemaking" in the Illinois Register. During this "First Notice" period, the general public can comment on the rule, and public hearings can be held; hearings are required when requested by "the governor, JCAR, an association representing over 100 persons, 25 individuals, or a local government."[724] After a minimum of 45 days, the agency can file the rule with JCAR. However, if the rule is not submitted to JCAR within one year it automatically expires. Once a rule is submitted to JCAR, a "Second Notice" review period, lasting no more than 45 days, commences. During this time, JCAR staff and legislative committee members review the rule "for statutory authority, propriety, standards for the exercise of discretion, economic effects, clarity, procedural requirements, technical aspects, etc." JCAR may then recommend technical

[715] https://www.iml.org/file.cfm?key=10692, accessed 7/6/18.
[716] http://www.ilga.gov/legislation/billstatus.asp?DocNum=2872&GAID=13&GA=99&DocTypeID=SB&LegID=96191&SessionID=88, accessed 7/6/18.
[717] http://my.ilga.gov/Committee/CurrentCommitteeListing?chamber=S, accessed 7/6/18.
[718] http://www.ilga.gov/reports/specialreports.asp, accessed 7/6/18.
[719] http://www.ilga.gov/commission/jcar/ilrulemakingprocess.pdf, accessed 7/6/18.
[720] http://www.ilga.gov/commission/jcar/default.htm, accessed 7/6/18.
[721] Named after Monroe Flinn, a founding member of JCAR.
[722] http://www.ilga.gov/commission/jcar/flinn/20180629_June%2029,%202018%20-%20Issue%2026.pdf, accessed 7/6/18.
[723] http://www.ilga.gov/commission/jcar/16AnnualReport.pdf, accessed 7/6/18.
[724] http://www.ilga.gov/commission/jcar/16AnnualReport.pdf, accessed 7/6/18.

changes to the rule, object to the rule, allow the agency to start the process over with a sufficiently amended proposal, block the proposed change entirely, or issue no objection, allowing the rule change to take effect.

JCAR also is empowered to review existing rules. According to the Illinois Administrative Procedure Act, the rules of each agency are to be evaluated at least once every five years. JCAR is statutorily required to "develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time." There are 14 different categories, including human resources, energy, transportation, public utilities, and government purchasing, into which JCAR is directed to group existing rules under review. Economic and budgetary effects, potential organizational or procedural reforms, merger or abolition of regulations, or the elimination or phasing out of overlapping regulatory jurisdictions are among the things that JCAR considers during the review process.[725] One recent piece of legislation, HB3222, was intended to make the five-year review optional, but that bill died in committee in 2017.[726]

According to one analysis (Falkoff, 2016), JCAR's powers have grown substantially over the years. Most recently, the general assembly revised the Illinois Administrative Procedures Act in 2004 to give JCAR unilateral authority to block rules. Previously, "JCAR's suspension authority had assured the committee possessed a powerful, coercive tool to wield against administrative agencies. But the suspension still required general assembly approval within 180 days to become permanent." After 2004, however, "a JCAR prohibition or suspension of an agency's rule would become permanent unless the general assembly voted by joint resolution (within six months) to reverse it." This change also coincided with an increase in the number of blocked rules: "During the twenty-three years that a JCAR veto would become permanent only if backed by a general assembly joint resolution, JCAR delayed or suspended rules only 39 times. During the 10 years when a JCAR veto became permanent unless it was overturned by a joint resolution, the committee issued 54 vetoes" (Falkoff, 2016). [727]

In a battle between former-Gov. Blagojevich and JCAR, the Illinois Supreme Court sidestepped the issue of constitutionality and ruled narrowly on the specific administrative rule in question. During the 2008 impeachment proceedings that led to Blagojevich's downfall, his action ignoring JCAR "was cited as an abuse of power" (Schwartz, 2010). This seems to establish JCAR's expanded power over administrative rules. Consistent with this, Illinois' two subsequent governors appear less willing to challenge JCAR's expanded authority.

Oversight Through Advice and Consent

The Illinois legislature also has the ability to block gubernatorial appointments. Every nominee is referred to the Senate Committee on Assignments and may also be considered by the

725 http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=000501000HArt%2E+5&ActID=83&ChapterID=2&SeqStart=2100000&SeqEnd=6400000, accessed 7/9/18.

726 http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3222&GAID=14&DocTypeID=HB&LegId=104890&SessionID=91&GA=100, accessed 7/9/18.

727 https://core.ac.uk/download/pdf/132419975.pdf, accessed 11/19/18.

Executive Appointments Committee or other standing committees.[728] Every nominee is required to appear before that committee for the purposes of considering their qualifications, though these hearings can be waived by the committee chair. The Senate Report for 2017 shows that the majority of nominees are ultimately confirmed.[729] Some gubernatorial nominees, however, are blocked. House Republicans, for example, blocked a former assemblywoman's appointment to the state's Prisoner Review Board on the grounds that the nominee had supported a very narrowly contested income tax increase (WIFR, 2011).[730] In that case, there was a statewide campaign by Republicans to have the nominee blocked, and even a "Republican-driven website urged Illinois residents to sign a petition opposing Gordon's appointment by Gov. Quinn to the prison board. Republicans say the part-time job is a payoff for Gordon's vote on Quinn's state income tax increase"(ABC7 Archive, 2011).[731] The nomination was eventually withdrawn.

The governor of Illinois has the power to promulgate both executive and administrative orders. The former pertains to anything from state contracting, agency fees, disestablishing boards and commissions, creating anti-terrorism task forces, and other subjects. Administrative orders, meanwhile, are more limited and pertain mostly to the internal policies of state organizations. Executive orders are issued rather frequently, with up to 20 being issued in 2009. Administrative orders are less common, and none have been promulgated since 2013.[732] Executive orders are sometimes explicitly used to bypass the will of the legislature. "To get much of what he wants to accomplish, Rauner will need Illinois' Democratic-majority general assembly to pass his initiatives and move legislation to his desk for signing. But being CEO of the state gives the Winnetka Republican broad powers to make some moves on his own. For starters, Rauner has power to cut spending" (Riopell, 2015).[733] Indeed, one of Gov. Rauner's first executive orders upon coming to office was to curtail government spending in response to the state's financial crisis.[734]

With the exception of refusing to spend money, Illinois' governor faces limits on the use of executive orders. First, if the order contradicts a statute, the statute prevails. Second, if the legislature passes legislation contradicting the order, then the new statute supersedes the executive order. However, in order to pass a law to overturn an executive order, the legislature is likely to need a veto-proof majority because the governor could veto the bill if he or she wanted to preserve the executive order (Book of the States, 2014).

Illinois' governor also "has significant authority to reorganize the executive branch" (Haider-Markel, 2008). Article V Section 11 of the Illinois Constitution describes the powers of the executive, including the power to reorganize executive agencies, while 20 ILCS 415/2 provides statutory authority. It states that the "purpose of the Personnel Code is to establish for the government of the State of Illinois a system of personnel administration under the governor."[735] If the reorganization "would contravene a statute, the Executive Order shall be delivered to the general assembly."[736] The legislature then has 60 days to affirm or block the

[728] http://www.ilga.gov/senate/100thSenateRules.pdf, accessed 7/9/18.
[729] http://www.ilga.gov/reports/static/99thCommittee%20Status%20Report%20-%20Senate.pdf, accessed 7/9/18.
[730] http://www.wifr.com/home/headlines/Ill_GOP_petitions_to_block_Quinn_appointment_117993539.html, accessed 7/8/18.
[731] http://abc7chicago.com/archive/8017697/, accessed 7/9/18.
[732] https://www2.illinois.gov/government/executive-orders, accessed 7/9/18.
[733] http://www.dailyherald.com/article/20150118/news/150118817/, accessed 7/9/18.
[734] https://www2.illinois.gov/Pages/government/execorders/2015_8.aspx, accessed 7/9/18.
[735] http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=236&ChapterID=5, accessed 7/9/18.
[736] http://www.ilga.gov/commission/lrb/con5.htm, accessed 7/9/18.

order. Furthermore, "Every agency created or assigned new functions pursuant to a reorganization shall report to the general assembly not later than six months after the reorganization takes effect and annually thereafter for three years."[737] The purpose of this report is to provide data on the economic effects and the effects on state government caused by the reorganization. The report is also to "include the agency's recommendations for further legislation relating to reorganization." Occasionally, agency reorganizations have been blocked by the legislature. In 2017, for example, Gov. Rauner attempted to merge the Illinois Human Rights Commission (HRC) and the Illinois Department of Human Rights (DHR).[738] The Illinois House, however, voted to block the move,[739] arguing that "the people deciding the cases should not be under the authority of those doing the investigations" (Mackey, 2017).[740] Legislators also argued that the governor should have instead come to the general assembly with a bill for consideration, instead of attempting to unilaterally reorganize the agencies.

Oversight Through Monitoring of State Contracts

Procurement in Illinois is under the jurisdiction of the Chief Procurement Officer (CPO), who "exercises independent procurement authority under the Illinois Procurement Code (30 ILCS 500)."[741] However, "the CPO exercises this authority through independent State Purchasing Officers (SPOs) who report to the CPO." The Illinois Procurement Code also establishes the Procurement Policy Board (PPB), which "has the authority and responsibility to review, comment upon, and recommend . . . rules and practices governing the procurement, management, control, and disposal of supplies, services, professional and artistic services, construction and real property and capital improvement leases procured by the State" (30 ILCS 500).

The board is comprised of five members, one each appointed by the legislative leaders and one by the governor. The appointee of the governor serves as the chair of the board."[742] No member, however, may be a member of the Legislature.[743] Minutes from PPB meetings indicate that the committee regularly meets to discuss a variety of issues, including property leases, the cost of janitorial services, and potential violations of the IPC. In some cases, the board takes testimony from and asks questions of witnesses.[744] "Upon a three-fifths vote of its members, the board may review a proposal, bid, or contract and issue a recommendation to void a contract or reject a proposal or bid based on any violation of [the IPC] or the existence of a conflict of interest."[745] Such findings are to be reported to the CPO and the Office of the Executive Inspector General.

[737] http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=185&ChapterID=4, accessed 7/9/18.
[738] https://www2.illinois.gov/Pages/government/execorders/2017_2.aspx, accessed 7/9/18.
[739] http://www.ilga.gov/legislation/billstatus.asp?DocNum=422&GAID=14&GA=100&DocTypeID=HR&LegID=107016&SessionID=91, accessed 7/9/18.
[740] http://northernpublicradio.org/post/illlinois-house-blocks-consolidation-anti-discrimination-judges-and-investigators, accessed 7/9/18.
[741] https://www2.illinois.gov/cpo/Pages/default.aspx, accessed 7/9/18.
[742] https://www2.illinois.gov/sites/ppb/Pages/default.aspx, accessed 7/9/18.
[743] http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=532&ChapterID=7, accessed 7/9/18.
[744] https://www2.illinois.gov/sites/ppb/Pages/board_minutes.aspx, accessed 7/9/18.
[745] http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=532&ChapterID=7, accessed 7/9/18.

In addition to legislative input into the PPB board membership, the LAC does have a small role in monitoring state contracts.[746] It receives quarterly reports itemizing emergency purchases. For example, if a repair to state property would further damage the property given the delays involved with the usual competitive bidding processes, state agencies can purchase needed supplies. But these expenditures must be reported to the PPB and to the auditor general, posted publicly and detailed in a report that is distributed to the LAC. Moreover, if for some reason the lowest bid is not accepted during a competitive bidding process, both the PPB and the LAC must be notified with an explanation for the variance in the bid process. Although these procedures do not provide much opportunity for legislative oversight of the performance of the state contractors, Illinois provides more opportunities for formal input from the legislature than is the case in most. Nonetheless, we stress that this is relative with most state legislatures almost completely excluded from the contracting process.

Oversight Through Automatic Mechanisms

Illinois has both a sunrise and a sunset mechanism (Baugus and Bose, 2015). The state's sunset laws are classified as both regulatory and selective, meaning that regulatory and licensing boards are regularly reviewed, while only select agencies are reviewed. The sunrise mechanism means that executive agencies that hope to pass new rules and or regulations are required to complete an exhaustive array of impact analyses designed to limit new regulations.

Sunsetting has occasionally become politicized in Illinois. A recent example occurred in the wake of the state's contentious budget battles, which resulted in the imposition of higher property taxes. On June 27, 2018, the Republican house minority leader introduced a bill[747] that would impose a sunset on all property taxes in the state (Lauterbach, 2018).[748] According to the legislator, "[t]he property tax system in Illinois is a failure, and it is time to start over. By setting a firm deadline for the general assembly, it will force the legislature to come together in a bipartisan manner to find a compromise solution that will remedy this crisis and help bring Illinois back. This forces the general assembly and stakeholders to review laws periodically to ensure they are working properly or risk repeal." As of this writing, that bill had not yet received any consideration, and given the large Democratic majorities in both chambers it is not likely to reach the governor's desk. Lawmakers also overrode a gubernatorial amendatory veto that would have eliminated the sunset review for fees intended to fund the state 911 system (WNIJ News, 2017).[749]

[746] http://ilga.gov/commission/lac/Annual2017.pdf, accessed 7/20/18.

[747] http://www.ilga.gov/legislation/BillStatus.asp?DocNum=5924&GAID=14&DocTypeID=HB&LegID=112992&SessionID=91&SpecSess=&Session=&GA=100, accessed 7/9/18.

[748] https://www.ilnews.org/news/state_politics/illinois-republican-leader-files-bill-to-repeal-all-illinois-property/article_782af3b0-7a54-11e8-9390-f77ec5a6d021.html, accessed 7/9/18.

[749] http://northernpublicradio.org/post/lawmakers-override-rauners-changes-911-funding-law, accessed 8/9/18.

Methods and Limitations

Nine individuals agreed to be interviewed about legislative oversight in Illinois. The Illinois legislature provides only minimal online records of its proceedings. Though the house and senate both livestream legislative sessions and provide transcripts, only the house archives its recordings, and they are only available on DVD for a fee. Overall, the minimal availability of audio and video recordings available to the public limited our ability to assess the state's oversight capabilities. Therefore, we relied heavily on information provided by people we interviewed.

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Legislative Oversight in Indiana

Capacity and Usage Assessment

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

Summary Assessment

The evidence compiled in this report suggests that the Indiana legislature lacks crucial institutional resources necessary for legislative oversight of the executive branch. Importantly, none of the analytic bureaucracies conduct performance audits of state agencies. Moreover, it appears that the Legislative Council tightly controls the legislative oversight process. The legislature lacks the capacity to truly engage in administrative rules review, and, in addition, lacks the power to confirm gubernatorial appointments to head state agencies. Despite these limitations, legislators ask tough questions of executive branch officials presenting budget requests. Occasionally program evaluations are conducted by outside contractors, and legislators appear interested in passing legislation to implement recommendations in these reports. There appears to be latent capacity for oversight, but more audits of state agencies need to be conducted and more evidence produced.

Major Strengths

Several legislators appear to be very knowledgeable and ask very incisive questions, especially during the appropriations process. We found evidence that the State Board of Accounts (SBOA) and the Legislative Service Agency (LSA) reports are utilized by the legislature to impact legislation. The legislature has some capacity to oversee state contracts via SBOA audits and committee hearings. The LSA (especially its Office of Management and Fiscal Analysis) can conduct studies of programs at the request of legislators. However, their actual program evaluations typically number only one per year. Also, the SBOA reports its audit findings to a joint committee, making the communication of audit reports to both chambers easier. Most of these audits, however, focus on local governments rather than state agencies. The legislature appears to be willing to pass legislation to alter the behaviors of state agencies and state programs when the need arises.

Challenges

Indiana's legislature has no power to confirm or reject any gubernatorial appointments chosen to lead state agencies. The legislature can codify reorganization plans, but they seldom use this as a form of "advice and consent." The process by which committees can ask the Legislative Council to hold hearings and pass resolutions intended to assign oversight elsewhere seems cumbersome and time consuming. This centralized control of committee jurisdiction also seems to limit the ability of legislators to investigate problems when they arise. It conveys an impression that the legislature commissions studies to study whether to study an issue rather than initiating an investigation. Not only does the Indiana Legislature lack some oversight prerogatives, it has been willing to eliminate some of the powers it once held in the past, such as the Administrative Rule Oversight Committee (AROC). Without that committee, the legislature has limited capacity to engage in rules review, although it appears that it rarely used this power when it still possessed it.

Relevant Institutional Characteristics

Unlike most Midwestern states, Indiana's legislature is not ranked as highly professional. Indeed, it ranks among the lowest in the nation at 40th (Squire, 2017). Legislators in Indiana work up to two-thirds time while earning less than full-time pay—$25,945 plus per diem of $173.[750] There is additional money available to pay legislators per diem for interim committee service, but it is tightly controlled through an appropriation that provides most interim committees with funds to pay for only three meetings per year.[751] Furthermore, the number of supporting staff members (roughly 300 staff during session) available to assist legislators in Indiana pales in comparison to the number of supporting staff members available to legislators in some states with professional legislatures (NCSL, 2009; NCSL, 2017).

The Indiana Legislature's session length is somewhat short; the legislature only holds legislative sessions for 61 days on odd-numbered years and for 30 days on even-numbered years (NCSL, 2010). Although the Indiana Legislature may also hold special (sometimes known as extraordinary) sessions, these may only be called by the governor (NCSL, 2009). Special sessions are still utilized today, as the Indiana Legislature convened a special session in May 2018 (Kelley, 2018).

According to Ferguson (2015), Indiana's governor is the 22nd most institutionally powerful of all fifty states. This assessment seems generous given the constraints the legislature places on the governor. The governor only controls about half of the state agencies; the rest are controlled by the cabinet, most of whom are separately elected. Indiana's governor can serve for eight years (two four-year terms) during any 12-year period. Indiana's governor lacks line-item veto power, and the state's Supreme Court ruled that pocket vetoes are unconstitutional. Therefore, if a governor fails to sign or veto a bill, it automatically becomes law after seven days.[752] Indiana is one of only six states in which gubernatorial vetoes of bills can be overridden

[750] https://ballotpedia.org/Indiana_General_Assembly , accessed 1/1/19.
[751] http://iga.in.gov/information/archives/2017/video/committee_i_legislative_council/, accessed 12/31/18.
[752] http://www.ncsl.org/documents/legismgt/ilp/98tab6pt3.pdf, accessed 12/12/18.

by a simple majority in both chambers.[753] Despite this low bar, Ferguson (2006) reports that the legislature was only able to override 10% of gubernatorial vetoes from 1967 to 2002.

Most of the governor's power accrues from his or her role in the budget process. The state operates on a two-year budget cycle beginning on July 1st of odd-numbered years. The state lacks a balanced budget requirement, and deficits can be carried over to subsequent budgets.[754] Therefore, neither the governor nor the legislature is required to propose or pass a balanced budget. But the governor must sign or veto the budget in its entirety. The governor's power to call a special session provides some leverage over the legislature because the short legislative sessions mean that there is often unfinished business that legislators want to a chance to complete.[755] The governor's power and limitations are discussed further in the Oversight Through Advice and Consent section of this paper.

Indiana possesses an average-sized state and local government bureaucracy—11% of the state's total workforce compared to the national average is at 11.3% (Edwards, 2006). Its education sector is larger than the national average, with 6.5% of its state workforce employed in K-12 or higher education, compared to a national average of 6.1%. Its service bureaucracy, which provides things like highways, transit, parks, water, and sewers is 1%, smaller than the national average of 1.3%. Similarly, its safety workforce (police, corrections, fire, judicial) is 1.5%, a smaller percentage of its population than the national average, which is 1.7% (Edwards, 2006).

Political Context

Over the last thirty years, Democrats have never simultaneously controlled both legislative chambers in Indiana. The Republican Party, however, controlled both chambers from 1995 to 1996, 2005 to 2006, and again from 2011 to 2018. Recent evidence suggests that both chambers of the Indiana Legislature are not that polarized along party lines (Shor and McCarty, 2017). Indiana's House has been ranked as the 27th most polarized lower legislative chamber, while Indiana's Senate has been ranked as the 33rd most polarized upper chamber. Polarization is based on differences between median roll call votes for each party in each chamber. This lack of polarization reflects a more conservative than normal Democratic Party in Indiana. Both chamber's Democratic caucuses are the 8th least liberal in the U.S. The Republican caucuses are fairly, but not extremely, conservative. Indiana's house Republican caucus is the 15th most conservative and its senate Republican caucus is only the 22nd most conservative. So it is the moderation of the Democratic Party that restrains partisan polarization in the legislative chambers.

Despite the Democratic Party's inability to control both chambers of the legislature in the past fifty years, the governorship in Indiana was controlled by the Democratic Party from 1992-2005.[756] Nonetheless, the one-party government has favored the Republican Party (NSA, 2017; NCSL, 2018). This is especially true recently.

[753] The five other states that permit this are: Alabama, Arkansas, Kentucky, Tennessee, and West Virginia
[754] https://ballotpedia.org/Indiana_General_Assembly, accessed 12/12/18.
[755] https://en.wikipedia.org/wiki/Governor_of_Indiana, accessed 12/12/18.
[756] https://ballotpedia.org/Governor_of_Indiana, accessed 12/13/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are three primary analytic bureaucracies in the state of Indiana: the Office of the Auditor of State (OAS), the State Board of Accounts (SBOA), and the Office of Fiscal Management and Analysis (OFMA) within the Legislative Services Agency. None of the three analytic bureaucracies is responsible for conducting performance audits of state agencies.

The Indiana State Auditor is a constitutionally elected office and is limited to eight years of total service in the office.[757] The auditor's authority is granted by Article VI of the Indiana Constitution and, according to the OAS's website, the auditor has "four primary duties, including accounting for all of the state's funds; overseeing and disbursing county, city, town, and school tax distributions; paying the state's bills; and paying the state's employees." An interviewee clarified that the state auditor does not conduct audits, but instead is the state's financial officer (interview notes, 2018). According to the National Association of State Auditors, Comptrollers, and Treasurers (NASACT), Indiana's State Auditor is categorized as a state comptroller.[758]

The OAS is comprised of five departments; Accounting and Reporting, Accounts Payable, Internal Controls, Local Government, and Payroll. Combined, the OAS consists of fifty total staff (interview notes, 2018). Available on the auditor's website are two annual reports, including an annual financial report and comprehensive annual financial report (in compliance with Generally Accepted Accounting Principles). Furthermore, "the Auditor of State provides daily allotment and trial balances, and other accounting and exception reports to keep agencies informed of their account balances."[759]

It does not appear that the OAS provides any staff support at legislative committee hearings. It is unclear, even to knowledgeable participants, whether any specific reports, such as the comprehensive financial annual report, are brought up during committee hearings (interview notes, 2018). An interviewee said that representatives attend committee hearings if they are testifying. Particularly, during the budget process the auditor will testify on bills that impact the OAS (interview notes, 2018). An interviewee noted that the OAS maintains the state financial data, hence, if a legislator is making a decision based on how much money is present in a state fund, they would be utilizing information provided by the OAS. But, evidence from interviews and from listening to committee hearings indicates that reports produced by the OAS are rarely if ever used during committee hearings, including those involved in the budget process.

Secondly, the State Board of Accounts (SBOA) is comprised of the state examiner and two deputy state examiners, all of whom are appointed by the governor. These appointed officials are approved by the Legislative Council[760] and must report to a legislative subcommittee, the Legislative Council Audit and Financial Reporting Subcommittee (LCAFR). NASACT's directory categorizes the state examiner as Indiana's state auditor.[761] As of 2018, the SBOA consists of 289 employees (interview notes, 2018). This is an increase of 81 employees from its 2015 staff size of 208 (NASACT, 2015). The SBOA is required by statute to (1) "collect financial reports annually from every state or local government …entity;" (2) "examine all

[757] https://ballotpedia.org/Indiana_Auditor_of_State, accessed 8/11/18.
[758] https://www.nasact.org/AF_MemberDirectory.asp, accessed 8/14/18.
[759] https://www.in.gov/sba/2372.htm, accessed 8/11/18.
[760] https://www.in.gov/sboa/4434.htm, accessed 8/14/18.
[761] https://www.nasact.org/AF_MemberDirectory.asp, accessed 8/14/18.

accounts and financial affairs of every public office and officer;" (3) "establish uniform compliance guidelines;" (4) "conduct any recount or other contest proceeding ordered by the state recount commission" and; (5) "collect all Conflict of Interest Statements from State and Local Government officials." In its responses to NASACT's survey, the SBOA reported that it does conduct financial audits, including the state's single audit. It also has responsibility for conducting local government financial audits, but it does not conduct performance audits or sunset reviews of state agencies (NASACT, 2015).

Pursuant to IC 2-5-1.1-.3, the SBOA "reports annually and as [required by statute] to the Legislative Council's Audit and Financial Reporting Subcommittee," which "reviews relevant information to assure the independence of the SBOA and provides guidance to the SBOA [as requested by the SBOA]" (interview notes, 2018). This joint interim subcommittee consists of two Democrats and two Republicans (including the chair),[762] and is established in IC 2-5-1.1-6.3. SBOA members do not staff committees (interview notes, 2018). During the 2017 meeting between the SBOA and the subcommittee, the state auditor was present and briefly testified that the OAS and the SBOA work together well.[763]

Recordings of meetings between the SBOA and LCAFR focus on information about what SBOA does, the problems it encounters, and the potential for the legislature to pass laws that would enable SBOA to audit some local government activities. For example, SBOA staff report that many local governments have contracts with non-profits for the purpose of increasing local economic development. Because these are classified as personal service contracts, the SBOA cannot audit these expenditures. If the legislature were to classify these contracts as grants, SBOA staff says that they would be able to audit these expenditures. In both subcommittee meetings that we listened to, one in 2017[764] and one in 2018,[765] SBOA staff point this out and seem to be asking or suggesting that the legislature should do this.

The SBOA provides a brief history on its audit reports, explaining how their current practices are intended to eliminate political bias. This is done by publishing reports publicly and allowing officials to have a hearing before publication. The SBOA must follow the Generally Accepted Government Auditing Standards (GAGAS). The board can audit local and state-wide government and non-government entities, including libraries, districts (government), and corporations (non-government). The board, according to statute or by request, conducts single audits for local and state government, financial audits (in accordance with GAAS – Generally Accepted Auditing Standards), private examiner audits, compliance engagement reports, reviews of financial statements, special investigations, agreed-upon procedures, and information technology audits (interview notes, 2018). The unit completed roughly 500 reports for the year 2017.[766] Additionally, in 2015 the SBOA released an Audit Exceptions Report to the legislature that goes over significant compliance and accounting issues not mentioned in previous audits to the legislature. [767]

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[762]https://iga.in.gov/legislative/2018/committees/i_legislative_council_audit_and_financial_reporting_subcommittee, accessed 8/11/18.

[763]https://iga.in.gov/information/archives/2017/video/committee_i_legislative_council_audit_and_financial_reportingsubcommittee/, accessed 8/11/18.

[764]http://iga.in.gov/information/archives/2017/video/committee_i_legislative_council_audit_and_financial_reporting_subcommittee/, accessed 12/31/18.

[765]http://iga.in.gov/information/archives/2018/video/committee_i_legislative_council_audit_and_financial_reporting_subcommittee/, accessed 12/31/18.

[766] https://secure.in.gov/apps/sboa/audit-reports/#/, accessed 8/11/18.

[767] https://www.in.gov/sboa/files/Audit_Exceptions_Report.pdf , accessed 8/11/18.

Vignette: The Analytic Bureaucracies' Oversight over the Muncie School District

The SBOA appears to collaborate with the State Board of Finance, the governor, and the legislature. An article released by the Muncie Star Press in July 2018 illustrates this role. The Muncie Community Schools needed $12 million in funds to remain solvent, so it sought a state loan. The school district was operating under supervision of an emergency manager, who requested an audit of the district's use of $10 million that it had raised through the sale of bonds several years ago. The emergency manager wanted the SBOA to investigate potential misuse of the bond money because the money had not been used for facilities upgrades and construction projects that were supposed to be funded by the bonds. The SBOA hired an independent accounting firm to conduct a forensic audit of the school district. Waiting for this audit report delayed the loan. The SBOA communicated with the firm during the firm's analysis. When it was complete, the SBOA used it to "determine [the] appropriate next steps, which could include . . . a special compliance report." The firm's report was not public (Slabaugh, 2018). The completed audit showed that no one had committed fraud, but that the money had been used to operate the school district rather than for physical infrastructure.[768]

The state legislature and the governor initially authorized the loan through legislation, HB 1315, that transferred governance of the school district to Ball State University. However, it is up to the State Board of Finance to determine whether to grant the loan. When asked about the HB 1315, the treasurer referred the questions to the Distressed Unit Appeal Board (DUAB). DUAB reported that the loan was delayed so audit findings could help guide the finalization of said loan. The State Board of Finance relies on the DUAB's recommendation to decide whether to authorize the loan (Slabaugh, 2018). This incident illustrates the interaction between the state's analytic bureaucracies, its executive branch and the legislature with respect to state financial decisions.

The SBOA conducted over 300 audits on townships in the past three years. During a hearing held on January 29, 2018, (Part 2) the Chairman of the House Ways and Means Committee commented that the SBOA's audits found roughly 30 instances of improper spending. The chair argued that there is a limited amount of oversight over township governments' spending of taxpayer money (Associated Press, 2018). The bill (HB 1005) that "[r]equires all townships with a population of less than 1,200 to merge with other townships," successfully passed through the committee.[769] During the first part of this meeting, the author of HB 1290 also referenced a report made by the SBOA. This evidence indicates that SBOA audit reports have a significant impact on legislation.

There are other various instances of the SBOA's reports having an impact on legislation. This impact has been confirmed by an interviewee; "[the SBOA's] reports at times have prompted legislative inquiries or changes in law, such as in situations where there were multiple repeat findings involving the same issue or set of issues." Pursuant to IC 5-11-5-1.5, "when an agency or local unit does not complete a corrective action plan after a repeat finding, [the SBOA] are required to provide a memo to the audit subcommittee describing the non-compliance and our recommendations for addressing it, and the subcommittee can then consider a number of

[768] https://www.thestarpress.com/story/news/local/2018/10/01/forensic-audit-finds-no-public-corruption-muncie-schools/1484786002/, accessed 12/14/18

[769] https://iga.in.gov/legislative/2018/bills/house/1005#document-fd6ed09a, accessed 8/11/18.

responses and remedies" (interview notes, 2018). Another interviewee mentioned that the SBOA may even suggest potential legislation (interview notes, 2018).

Lastly, the Legislative Service Agency (LSA) was established in statute (IC 2-5-1.1-7) and is headed by an executive director appointed by the Legislative Council,[770] who then hires staff to perform the duties of each of its divisions. The LSA produces reports on state programs, analyzing their management problems and evaluating their outcomes. The LSA reports to the Legislative Council (LC) and conducts additional investigations as directed by the Legislative Evaluation and Oversight Policy Subcommittee of the LC. The LC consists of sixteen legislators from both chambers.[771] These legislators include the president pro tempore and the minority leader of the senate, both the majority and minority caucus chairs of the senate, the speaker of the house, both the majority and minority house leaders, and both the majority and minority caucus chairs in the house. Additionally, seven members are appointed by chamber leaders: three by the senate president pro tempore, two by the house speaker, and one each by the senate and house minority leaders.

The Office of Fiscal Management and Analysis (OFMA) is one of the subdivisions of the LSA. It is mainly responsible for conducting budget analyses and producing fiscal notes for all bills and amendments to bills. But legislative committees and individual legislators can request that the OMFA conduct fiscal and management research. Also, the OMFA "provides technical support to the State Revenue Forecast committee" (NCSL, 2018). The OMFA's program evaluations are listed under the LSA's website, with their last program evaluation being published in 2016.[772] This analytic bureaucracy appears to produce no more than one evaluation report per year, (six reports from 2010 through 2018). In one instance, the legislature requested that the OFMA evaluate workforce-related programs over a ten-year period and also to provide technical support to [the] water infrastructure task force." Occasionally, an evaluation will impact legislation. For example, we were told that "Tax Incentive Evaluations" have been used to justify repealing these incentives (interview notes, 2018). According to an interviewee, OFMA evaluations and analysis (including their budget analysis) are used by legislators during committee hearings to question agencies.

As of 2018, the OFMA consists of "three employees with a Ph.D., seventeen . . . employees with a master's degree, and one . . . employee with a bachelor's degree."[773] OFMA staff attends every committee hearing and will respond to questions, such as those relating to the budget or an amendment. The OFMA makes presentations on budget issues only when requested; OFMA presentations are, however, rare (interview notes, 2018).

According to Indiana Law, state agencies are required to cooperate with the LSA in its evaluations. Reportedly, the LSA has "strong relationships with the state departments of Revenue and Workforce Development and the Indiana Economic Development Corporation."[774] The OFMA uses information provided by the OAS in their analyses (interview notes, 2018).

[770] http://www.in.gov/legislative/pdf/services/LSAbackground.pdf , accessed 8/11/18.
[771] http://www.ncsl.org/aboutus/ncslservice/director-office-of-fiscal-and-management-analysis-legislative-services-agency-indiana-general-assembly.aspx, accessed 8/11/18.
[772] https://iga.in.gov/legislative/2018/publications/evaluation_report/, accessed 8/11/18.
[773] http://www.ncsl.org/aboutus/ncslservice/director-office-of-fiscal-and-management-analysis-legislative-services-agency-indiana-general-assembly.aspx, accessed 8/11/18.
[774] http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/06/how-states-can-gather-better-data-for-evaluating-tax-incentives#2-collect-new-information, accessed 8/11/18.

Also, the OFMA annually produces the *Indiana Handbook of Taxes, Revenues and Appropriations*, which is a "guide to state and local government revenues and expenditures."[775]

Oversight Through the Appropriations Process

The governor is fully responsible for the creation of the budget in Indiana (Council of State Governments, 2008). To begin the budget process, state agencies submit a budget request to the State Budget Agency (SBA). The Director of the SBA is a fiscal analyst who serves the governor and essentially falls under the purview of the Office of Management and Budget (OMB).[776] Next, the SBA will analyze the effectiveness of the agency and make recommendations that will be discussed with the governor. The governor presents the proposed budget to the Budget Committee once the requests are readjusted. The Budget Committee is an interim committee that gets its authority from IC 4-12. The committee consists of four legislators equally split between parties and chambers as well as the Director of the State Budget Agency (SBA). The SBA is not staffed by the LSA.

The Budget Committee goes over agencies' budget requests during public hearings. They also go over the Revenue Forecast, which is prepared by the Economic Forum and the Revenue Forecast Technical Committee. Afterward, the committee makes a comprehensive budget recommendation to the governor. The committee also uses the recommendation to formulate an itemized budget report and the initial draft of the budget bill. The report and draft are forwarded to the governor who then sends the final budget report and bill to the general assembly. According to an interviewee, the State of Indiana does use performance-based budgeting. A new data hub collects the performance information of agencies on a quarterly basis and publishes it on the state's transparency portal. This interviewee said that the legislature often looks at information on the portal in finalizing the budget (interview notes, 2018).

The House Ways and Means Committee is the first stop within the legislature for the budget bill. This committee holds hearings with agency representatives and the public.[777] The OFMA provides a fiscal impact statement (which considers local and state impact) of the state budget to the legislature. We found evidence that the House Ways and Means Committee is not shy about questioning budget requests made by independently elected executive branch officials. For example, in a hearing on January 11, 2017, (Part 2) the attorney general asked for money to increase the pay for attorneys in his office because other state agencies were hiring away his talented younger attorneys. Legislators wanted to know why there was not a standard pay scale for attorneys throughout state government. They also expressed skepticism about the quality of the service the attorney general's office provided to other agencies given that those agencies wanted their own counsel rather than working with the attorney general's office. Committee members also questioned the Secretary of State at their January 17, 2017, meeting about whether the money spent on early voting increased voter turnout.[778]

The House Ways and Means Committee held a meeting with the Department of Workforce and Development, Natural Resources, Environmental Management, the Indiana

[775] http://www.agecon.purdue.edu/crd/localgov/glossary.htm#lstart, accessed 8/11/18.
[776] https://www.in.gov/sba/index.htm, accessed 8/11/18.
[777] https://www.in.gov/sba/2372.htm, accessed 8/11/18.
[778] http://iga.in.gov/information/archives/2017/video/committee_ways_and_means_2200/, accessed 12/31/18

Public Retirement System, and the Indiana Finance Authority on January 31, 2017. A few committee members were absent; out of those who were present, several committee members participated in asking questions of the agencies presenting. In-depth questioning was present throughout the meeting, but only a small number of legislators asked most of the questions. The chair of this committee appeared to have a wealth of knowledge and experience about the state. Several times he asked questions that demonstrated his command of state government and the state's budget. A few other legislators also seemed well versed on budget issues and asked very tough questions, indicating the ability of this committee to oversee the work of the executive branch. One key area of interest for legislators was the department's use of state contracts. We discuss this further in the *"Oversight Through Monitoring of State Contracts"* section.

The Senate Appropriations Committee is also responsible for legislative oversight during the appropriations process. However, the oversight authority of the committee is not mentioned in the state constitution, statutes, and chamber rules. The committee holds public hearings before issuing a committee report. The Senate Appropriations Committee held twelve meetings during the 2017 legislative session, with each archived video being roughly one to four hours long. During a meeting held on March 14, 2017, the Senate Appropriations Committee heard multiple budget proposals from various agencies. This included a budget proposal from the Indiana Department of Transportation (INDOT) given by its commissioner. During this meeting, a committee member (prompted by constituent) asked where money in the Major Moves fund is being spent and why the funds are not being considered over raising taxes. The commissioner explains that most funds have already been invested into projects. This type of in-depth questioning was conducted by only a few legislators and was not consistent throughout each presentation.

Oversight Through Committees

The Indiana Constitution and chamber rules do not mention the authority of Indiana's standing committees. However, Title 2, Article 2.1, Chapter 1, Section 10 of the Indiana Code mentions that during any session, the standing committees of the house and senate may announce and hold public hearings on any bill or resolution assigned to them. Videos of meetings conducted by standing committees are available on the Indiana General Assembly's website. Investigation of these videos indicated that finance-standing committees question agencies more often than non-finance standing committees.

There are five interim committees with the word "oversight" specified in their names, including the Legislative Council's Technology Oversight Subcommittee, Study Committee on Pension Management Oversight, INSPECT Oversight Committee, Judicial Technology Oversight Committee, and the Child Services Oversight Committee. The Technology Oversight Subcommittee and the Pension Management Oversight Committee do not have available meeting archives. [779] The INSPECT Oversight Committee has not met since 2016.[780] The Child Services Oversight committee met twice in 2018 (as of August), yet video and transcripts for these meetings are unavailable.[781] It is also worth noting that this committee is not a legislative branch entity, hence, it is not staffed by the LSA and is staffed only by the legislative assistant of the

[779] https://www.in.gov/children/2359.htm, accessed 1/1/19.
[780] https://www.in.gov/pla/inspect/2437.htm, accessed 8/11/18.
[781] https://www.in.gov/children/2359.htm, accessed 8/11/18.

chair (interview notes, 2018). The committee is always chaired by a member of the legislature (currently, a house representative is the chair) (interview notes, 2018), but as its website demonstrates its 10 members include only four legislators. The remaining members are practitioners and other knowledgeable members of the community, such as public defenders and educators. It appears that this is one of several committees that meld the legislative, executive, and judicial branches of government based on an issue or a topic.

Nonetheless, there are oversight interim committees without "oversight" explicit in their names, such as the Audit and Financial Reporting Subcommittee, that have some oversight power. Based on available video archives it appears that this subcommittee meets once or twice per year. During the 40-minute long meeting held on October 23, 2017, the SBOA summarized its work for the past year. The duties of this subcommittee were described during the hearing by the SBOA to the subcommittee members. The duties are as follows: (1) To review the independence, objectivity, and regulatory requirements of the SBOA; (2) To evaluate the quality of findings of the SBO, and; (3) To review the integrity and effectiveness of the SBOA in reviewing the accounting controls of auditing entities. So in effect, rather than presenting detailed audit findings or reports, the SBOA is meeting with the subcommittee as an annual review of SBOA's work.

Also, at this meeting, the SBOA discussed their current staffing levels, a joint project with the OMB, Office of Technology, the Management Performance Hub, an independent auditor's failed peer-review, and an update on various audit reports. During this hearing, questions focused soley on how the SBOA functions. Communication between the subcommittee and the SBOA is less about legislative oversight and more about helping the SBOA perform its work more effectively. For example, during the meeting held on September 13, 2016, a committee member asked the state examiner why the SBOA had asked that the Director of Special Investigations in the SBOA be classified as a law enforcement officer. The state examiner explained that the SBOA is charged with auditing local government, however, the SBOA does not have access to databases that law enforcement do. These databases would tell the SBOA whether the locality had prior inappropriate transactions. Furthermore, the SBOA works with the FBI, the police, and other law enforcement agencies in conducting certain audits, but since no one within the SBOA is law enforcement, the FBI and the police cannot talk to the SBOA about what is happening within the SBOA's own audit. The subcommittee and the state examiner agreed that it would be beneficial to have a trained law enforcement officer as a part of the SBOA to facilitate information sharing.

The Legislative Council is a standing committee that is responsible for managing the workflow of the legislature. It assigns issues to specific committees, especially interim committees. In our efforts to understand legislative oversight through committees, we examined the Legislative Council's response to a program evaluation conducted by an outside contractor. A hearing on this program evaluation was intended to result in a senate resolution that would ask the Legislative Council to assign the issue of child welfare services to an interim study committee. It appeared from a very brief discussions of this resolution held in this senate committee on February 12, 2018, and February 26, 2018, that the legislature was trying to insure that it had a voice in the evaluation process that seemingly was driven by the executive branch. The senate committee's resolution asked the Legislative Council to assign members of the Senate Committee on Family and Child Services and the corresponding committee in the House to this interim study committee. As we will discover below, the Legislative Council did assign the topic to an interim committee, but it created a judiciary committee rather than a child services

committee. This is the only evidence we could find in the agendas for the five meetings of this senate committee that related to this program evaluation. So rather than conducting oversight, the standing committee asked the Legislative Council to make sure that some other legislative committee conduct oversight.

The Legislative Council met on July 2, 2018, to listen to a presentation of the program evaluation of the Department of Child Services.[782] The program evaluation seems to have been triggered by a couple of events reported in the media. First, media reported that from 2005 to 2017 the number of children in foster care in Indiana increased by nearly 90% compared to decreases in foster care populations ranging from 10-40% in neighboring states. Second, the DSC executive director had resigned in December 2017 warning the governor that budget cuts "all but ensure children will die."[783] Outside consultants, the Child Welfare Policy and Practice Group (CWG), were hired to conduct a thorough (six-month) evaluation of the DCS.[784] According to CWG's June 18, 2018, report, Indiana has a problem in its child welfare system. The evaluation report included 20 recommendations. High turnover among staff was one problem identified by the evaluation. In response, the governor directed the Office of Management and Budget to provide $25 million from a surplus account to raise staff salaries and provide additional training for staff.

The executive director of DCS sat next to the CWG representative during the presentation of the evaluation to the Legislative Council. She responded to some of the questions from legislators. Legislators asked many questions that demonstrated familiarity with the issue, which appears to have been discussed by legislators in a variety of other committee hearings in prior years. During his presentation the CWG representative noted that there were three other outside evaluations that had been completed in the past few years that provided valuable information and recommendations consistent with CWG findings and recommendations. Legislators claimed to have been unaware of those reports. The new executive director of DCS, in response to legislators' questions, explained what she had been doing to implement some of the recommendations from those prior reports while the department waited for this new report. Legislators were especially interested in why Indiana's foster care caseload differed so much from neighboring states. CWG provided several reasons—one being the practice of putting children into foster care if their parents had substance abuse problems even if there was no evidence of abuse or neglect of the children.

The result of this particular Legislative Council meeting was a resolution referring the issues raised in the evaluation to the Interim Study Committee on Courts and the Judiciary for further discussion and investigation. This was not the set of legislators that the Senate Committee on Family and Child Services had hoped would receive this assignment. The issue was, instead, assigned to an interim committee.

It appears that this same presentation was being provided to other groups, such as the Child Services Oversight Committee, the executive, legislative, and judicial committee described above. Although the repeated presentations of the same information to multiple groups seems like a cumbersome and time consuming approach to disseminating information, the legislature appears to take action when it does have evidence from a high quality program evaluation. According to media reports, of 14 pieces of legislation introduced in the aftermath of the report to address child welfare problems in the state, eight reached the governor's desk. More

[782] http://iga.in.gov/information/archives/2018/video/committee_i_legislative_council/, accessed 1/1/19
[783] http://www.therepublic.com/2018/10/04/legislature_dcs_must_get_it_right/, accessed 1/1/19.
[784] https://www.in.gov/dcs/files/IndianaEvaluationReportCWGFinal.pdf, accessed 1/1/19.

legislation seems to be anticipated in 2019.[785] There does, however, seem to be a lot of time spent asking for permission to conduct oversight or creating some new entity and assigning oversight to that entity. Moreover, the discussion in the Senate Committee on Family and Child Services implies that standing committees do not conduct oversight hearings.

The interim committee to which the Legislative Council assigned the child welfare issues met four times to address "problems with DCS" on September 5, 19, and on October 3 and 17.[786] Although other issues were addressed by the Interim Study Committee on Court and the Judiciary (such as the new magistrate in a particular court), there was time spent on DCS at each of these hearings. At the initial meeting the LSA provided, at the chair's request, a list of anything in the evaluation that could require the legislation be passed. A final report from the committee[787] includes four items related to DCS: 1) recommends preparation of Preliminary Draft 3370 (legislation) for introduction to the General Assembly during the 2019 session; 2) encourages the Child Services Oversight Committee to collaborate with DCS, judges, the state bar, and others involved in contracting outside attorneys to represent DCS and prepare a report comparing in house and outside attorneys; 3) urges DCS to submit a report on various aspects of staffing and caseload; and 4) urges the Office of Judicial Administration and the Office of Court Services to provide training to judicial officers overseeing Child in Need of Services proceedings. There appears to be a lot of encouraging and urging, but not a lot of action other than the preparation of draft legislation, the content of which is not specified in the final report.

Oversight Through the Administrative Rules Process

The legislature plays only a limited role in the administrative rules process. The attorney general and the governor both have veto power over newly promulgated rules. First, the attorney general will approve or disapprove the rule based on format and statutory compliance. Then, as a courtesy, the rule will be sent to the governor who can choose to veto the rule (Tharp, 2001).[788] Indiana is only one of two states that requires the governor's approval of rules. After the rules are reviewed by the attorney general and the governor, they are sent to the Indiana Register and Administrative Code Division (IRACD) to be reviewed, accepted, and filed.[789] The Office of Management and Budget (OMB) will also review objections to the rule (not including court challenges) (Schwartz, 2010). It appeared that both the OMB and the governor's blessings were crucial to a rule's survival.

After the agency submits their notice to adopt a rule and their Economic Impact Statement (which are sent together), they submit a notice of a public hearing. The hearing is approved by the IRACD and the attorney general. Once held, the agency may choose to submit another notice for an additional public hearing.[790] Indiana Code 4-22-2 (which determines the procedures for a public hearing for administrative rules) does not indicate that citizens may file

[785] https://www.theindianalawyer.com/articles/48050-study-committee-to-return-spotlight-to-dcs?v=preview, accessed 1/1/19.
[786] http://iga.in.gov/legislative/2018/committees/i_courts_and_the_judiciary_interim_study_committee_on, accessed 1/1/19
[787] http://iga.in.gov/documents/d8f42ca2, accessed 1/2/18.
[788] http://www.in.gov/legislative/iac/IACDrftMan.pdf, accessed 8/11/18.
[789] http://www.in.gov/legislative/iac/IACDrftMan.pdf, accessed 8/11/18.
[790] http://www.in.gov/legislative/iac/IACDrftMan.pdf, accessed 8/11/18.

requests for hearings to be held. However, an agency may hold additional public hearings on a controversial rule to obtain a wider range of responses, allowing for more public input (interview notes, 2018).

Prior to 2014, the legislature had some power to oversee rule making.[791] At that time the legislature had a joint Administrative Rules Oversight Committee (AROC), but it had advisory powers only. Thus the legislature was limited to making recommendations to the agency promulgating a rule or to introducing legislation overturning a rule. When the AROC was meeting, its membership consisted of four members from the house and four members from the senate with equally divided party membership. The LSA provided staff. In 2014, however, the legislature in SB 80 repealed IC 2-5-18, which had established the AROC.[792] The rationale was that the AROC was not a productive use of legislators' time and per diem stipends, which as we noted earlier is a pot of money that the Legislative Council apportions very carefully, limiting the number of meetings an interim committee may hold. As a result of the decision to eliminate the AROC, the legislature participates infrequently in Indiana's present-day administrative rules review process.

Even when the AROC was active in statute, they would only occasionally hold hearings and had minimal involvement in agency rules (Schwartz, 2010). An interviewee remarked, ". . . when there was a complaint it would go to committee. There was not much activity" (interview notes, 2018). The lack of activity suggests that the AROC did not often make recommendations to the legislature, including those to void rules. However, an interviewee commented that (after rules are in effect) the legislature will occasionally pass legislation to void a rule (interview notes, 2018). This indicates that, even after the repeal of the AROC, the legislature still participates in oversight over administrative rules, even if minimally, with low capacity, and not over the rulemaking process itself.

After the AROC disbanded, the OMB was primarily responsible for conducting present-day rule review. The OMB would adopt the impact statements for their own analyses. This consequently put a lot of analysis responsibility on the agencies, with a lack of guidance for the agencies in doing so. Furthermore, there was not always enough time for agencies to prove fiscal efficiency since statutes required costs to be analyzed within the first year of the effective rule (Schwartz, 2010). The OMB would use their cost-benefit analysis to review a statement of need and the overall rationale and impacts of the rule. Recently, however, their authority to conduct rules review has been modified by HB 1003, passed in 2018.

HB 1003 repeals the requirement of the OMB to conduct "a cost-benefit analysis of certain rules for the three-year period following the rules' effective dates." It also repeals the statute that allows: "(1) state agencies to submit comments on proposed legislation to the OMB, and (2) OMB to review, amend and transmit the comments to the [LSA] for posting on the general assembly's website," among other reporting requirements for agencies.[793] Even before the repeal, OMB cost-benefit analyses were not required for a review and were meant to review business impacts. Although HB 1003 indicates that the legislature is shaping the rules review process, HB 1003 does not grant the legislature oversight authority within the process itself. The above findings are consistent with sources that say that formal rule review is not performed by either the legislative nor executive branch in Indiana (Council of State Governments, 2016).

[791] https://iga.in.gov/static-documents/b/9/c/f/b9cf71db/IssuesRelatingToLegislativeCommittees.pdf, accessed 8/11/18.
[792] https://iga.in.gov/legislative/laws/2018/ic/titles/002, accessed 8/11/18.
[793] https://www.indianachamber.com/wp-content/uploads/2018/02/2018LegAgendaV2.pdf, accessed 8/15/18.

Oversight Through Advice and Consent

The advice and consent powers on gubernatorial appointments for the Indiana Senate are not mentioned in the state constitution or chamber rules. The legislature does not approve gubernatorial executive branch appointments according to an interviewee (interview notes, 2018). This is consistent with information provided by the Council of State Governments (2014). The governor can appoint, without the consent of the legislature, the adjutant general, emergency management, the heads of budget, commerce, corrections, economic development, finance, health, higher education, labor, natural resources, public utility regulation, social services, transportation, and so forth. In some cases, agencies heads select executive branch officials, and the lieutenant governor selects some executive branch officials.

The governor derives the authority to issue executive orders from the constitution, statutes, and case law (Council of State Governments, 2014). The governor can issue orders in response to public emergencies, including energy emergencies, creating advisory and study commissions, to respond to federal programs and requirements, and to handle state personnel administration. According to an interviewee, the legislature does not have "anything in statute regarding the priority of an executive order. . ." (interview notes, 2018). This is supported by the finding that executive orders are not subject via formal provision to any filing or publication procedures, the Administrative Procedure Act, or to legislative review (Council of State Governments, 2014).

The governor of Indiana can issue agency reorganization plans and create agencies via executive order, although, the Council of State Governments notes that this power is limited. Although executive orders are not subject to legislative review (Council of State Governments, 2014), some reorganization plans include legislative action. According to IC 4-3-6, the governor is required to review the organization of all agencies to determine if changes are necessary. If the governor finds that "an agency should be transferred into another agency, abolished, or consolidated," the governor shall submit the plan "to the general assembly to take effect through the enactment of a bill" (interview notes, 2018). The legislature is not required to approve these plans, and they expire when the governor leaves office (unless the next governor upholds it in an executive order). Furthermore, "the senate does not track which bills originated from a [gubernatorial] reorganization plan" (interview notes, 2018). Thus, it is hard to say how often the senate approves or disapproves gubernatorial reorganization plans. However, the legislature recently codified the governor's Management Performance Hub (a part unit of the OMB)[794] in 2017 under IC 4-3-26-8 (interview notes, 2018). Another interviewee commented that, "rarely does the governor reorganize . . . at an executive level . . . governors do not reorganize . . . on their own unless it is purely executive and would not be controversial." So although the legislature has the authority to oversee government reorganization, it is not clear how extensively this power is used. The only media coverage of government reorganization in Indiana involves consolidation of townships and other municipal reorganization issues.

[794] https://www.in.gov/omb/2345.htm, accessed 9/1/18.

Oversight Through Monitoring of State Contracts

Pursuant to IX 4-13-1-4(2), the Indiana Department of Administration (IDOA) is responsible for overseeing all state contracts (interview notes, 2018). Nonetheless, analytic bureaucracies in the state of Indiana play a role in overseeing state contracts. For instance, the "SBOA audits may review [state or local] contracts and related financial and compliance issues involving those contracts" (interview notes, 2018). Meeting archives reveal that for the years 2016 and 2017, findings related to state contracts have not been reported to the Subcommittee on Audit and Financial Reporting. But as we discussed earlier, the SBOA repeatedly points out to the LCAFR subcommittee, if local government economic development activities were classified as grants rather than personal services contracts, SBOA would be able to audit them. That the legislature has demurred despite these entreaties suggests that the legislature is not especially eager to wade into this area of oversight.

The state auditor does not oversee state contracts but provides transparency tools for overseeing state contracts. In June 2018, the OAS released an updated version of the Indiana Transparency Portal (ITP), which "allows users to track spending by state agency [including contracts], program, and year" (Associated Press, 2018). The ITP maintains a record of agency budgets and performance measures.[795] The IDOA also tracks state contracts, including contracts with state businesses, Certified Disadvantaged Business Enterprises (DBE), and Quantity Purchase Agreements (QPA's). The IDOA Procurement Division manages the purchasing for all state agencies, except for the Department of Transportation.[796]

Furthermore, companies who plan to contract with the State of Indiana must register with the IDOA, the secretary of state, and the auditor of state. Under IC 4-2-7, the inspector general is responsible for addressing the wrongdoing of agencies in state contracts. They can investigate contracts and receive complaints about the "violation of a statute or rule relating to the purchase of good or services by a[n] . . . employee [which includes anyone who is doing business with an agency]." IC 35-44.1-1-4 covers conflicts of interest, which means that those conscious of their wrongdoing can be convicted of a level 6 felony. These statues do not make mention of the legislature.

However, the legislature can use statutory change to oversee state contracts to an extent. IC 4-2-7 (which covers ethics and conflicts of interest) reads that the Ethics Commission can hear complaints filed by the inspector general under 4-2-7 (or other statutes), refer the matter to the inspector general, or "[r]ecommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, special state appointees, and persons who have business relationships with agencies." Although this was not the result of a recommendation, the legislature recently introduced SB 388. If passed, SB 388 will prohibit agencies from contracting with or providing grants to abortion educators and will cancel any current appropriations made to abortion educators; this bill would require that the budget agency prevent future contracts and terminate current contracts or grants for this specific purpose.[797] This legislation appears to be motivated more by the substance of the contracts than a desire on the part of the legislature to expand its capacity for oversight.

[795] https://www.in.gov/itp/, accessed 8/11/18.
[796] https://www.in.gov/idoa/2463.htm, accessed 8/11/18.
[797] https://iga.in.gov/legislative/2018/bills/senate/388#document-f3cd8f0d, accessed 8/11/18.

Vignette: The Legislature on I-6, a Project Two Years Overdue

Aside from enacting limitations on state contracts, the legislature utilizes committee hearings to oversee contracts. For instance, the Indiana Finance Authority (IFA) is questioned on their contract with the I-69 Development Partners during the House Ways and Means Committee hearing held on January 31, 2017. The committee member was initially questioning the agency on how they went about funding roads other than through bonds from private-public partnerships. The IFA replied that there were only two major projects funded by private activity bonds, including the Interstate-69 Section Five Project (sponsored by both the IFA and INDOT). The road construction begun in 2014 with an initial end date of 2016, yet it continued into 2018 (Spieth, 2018).

Simply put, the committee member asks the IFA when the project will be done. When the agency replied that they were in "negotiations" on the end date with the developers, the member asked why negotiations were taking place if an end date was already set, adding that if the end date has not been met, then the developers are in breach of their contract. The IFA responds that they believe the most time and cost-efficient route would be to further negotiate with the developers. The member brought up the possibility of ejecting them from the contract, and although the agency said that they could do that, it would be a difficult path to take. Five months later in June 2017, INDOT would announce their termination of their agreement with the private developers (Alesia, 2017; IFA, 2017), with INDOT officially taking over in August 2017 (Spieth, 2018). Although Indiana's Legislature participates in overseeing state contracts, this appears to be on an ad hoc basis.

Oversight Through Automatic Mechanisms

The Indiana Legislature reviews agencies and regulatory boards on a selective basis (Baugus and Bose, 2015). Moreover, all administrative rules in Indiana sunset on January 1, seven years after they were adopted (Schwartz, 2010). Indiana does not have sunrise provisions.[798]

All agencies are required to re-promulgate their rules and may adopt identical rules. According to Schwartz, opponents of the sunset provision claim that it allows rules to expire without public input while proponents of the sunset provisions believe that it rids the state of obsolete rules. Nonetheless, it appears that most rules are renewed. Rules with impacts that are more than $500,000 are more likely to be subject to legislative review and cost-benefit analyses (Schwartz, 2010). First, "an agency must obtain a waiver from the Regulatory Moratorium" before "filing a notice of intent to file a proposed rule . . . for publication in the Indiana Register." "The Indiana Register and Administrative Code Division (IRACD) of the LSA acts as the publishing branch of the Legislative Council for the Indiana Administrative Code."[799] The agency must also "submit the proposed rule to the Small Business Administration (SBA) for review and approval" before submission.[800] Agencies will also submit an Economic (Small Business) Impact Statement to the IRACD.[801]

[798] https://www.clearhq.org/page-486181, accessed 8/11/18.
[799] http://www.in.gov/legislative/iac/IACDrftMan.pdf, accessed 8/11/18.
[800] https://www.in.gov/omb/2626.htm, accessed 8/11/18.
[801] http://www.in.gov/legislative/iac/IACDrftMan.pdf, accessed 8/11/18.

The legislative Job Creation Committee (JCC) and the Office of Fiscal Management and Analysis (OFMA), part of the Legislative Services Agency that we described in the section on analytic bureaucracies, both participate in sunset reviews. The JCC produces annual reports[802] that document this process. These reports, commissioned by the legislature, summarize the structures of reviewed boards. Members of the JCC are not legislators. Reports are submitted to the legislature, the governor, and the LSA. The JCC was created based on a "lack of regulatory oversight in Indiana following the elimination of the Indiana Sunset Evaluation Commission." Furthermore, "[there is an] unwillingness of the general assembly to reduce regulations . . . given the . . . financial investment made by education providers and practitioners to meet state requirements and obtain a license." To elaborate, the JCC is concerned about how licensing structures enacted by the legislature are difficult to remove in review.[803]

During 2016, the JCC met four times and reviewed eight state licensing boards. Any changes to the licensing board would require either administrative action or legislative action. The 2017 JCC report, a 100-page document that provides detailed information about the activities of each board, indicates that in no case for any of the eight professional board licensing occupations that were reviewed in 2016 did the JCC recommend either administrative or legislation changes.[804] The 2016 JCC report includes a series of recommendations for administrative changes to the State Board of Health Facility Administrators, such as classifying the license as a certificate so that there would not be a fee. The report also included several recommendations to the legislature, such as continuing to license veterinarians, vet technicians, and CSR-veterinarians and that the legislature continue to regulate several types of real estate licenses, physicians' licenses, and that the legislature discuss further whether to license pharmacy technician training programs and other regulations pertaining to the pharmacy profession.[805] These reports indicate that the legislature has authority to oversee the work of occupational licensing boards in the state. It is not clear how much time the legislature spends following up on the JCC reports, but the information is available. The reports are thorough and detailed.

Methods and Limitations

In Indiana, 12 people agreed to interviews out of the 16 that we contacted. Archival videos of committee hearings are available on the Indiana Legislature's website, along with meeting minutes and reports from agencies.

[802] https://www.in.gov/pla/3144.htm, accessed 8/11/18.
[803] https://www.in.gov/pla/files/JCC_-_2015_Annual_Report_for_Licensing_Boards%282%29.pdf, accessed 8/11/18.
[804] https://www.in.gov/pla/files/2017%20JCC%20Annual%20Report%20-%20FINAL.pdf, accessed 1/2/19.
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Legislative Oversight in Iowa

Capacity and Usage Assessment

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

Summary Assessment

Legislative oversight in Iowa is typified by a relative balance of institutional powers between the legislative and executive branches, and observable cooperation between the executive branch auditor and the legislature. Some oversight appears to occur in most areas, but we stress that the lack of audio or video recordings of committee hearings and the cryptic committee minutes make it very difficult to tell what is happening during committee hearings. There is evidence that the legislature actively reviews administrative rules. The legislature does occasionally reject gubernatorial appointees even during the current era of one-party control of state government.

Major Strengths

Evidence suggests that cooperation exists between the directly-elected executive branch auditor of state and the legislature. The Administrative Rules Review Committee appears to wield its powers effectively. The House Government Oversight Committee's activities demonstrate a laudable commitment to the monitoring of executive branch agencies. The Fiscal Services Division of the Legislative Services Agency produces very detailed reports that legislators find valuable in keeping tabs on the performance of state agencies.[806] This analytic bureaucracy also provides fiscal notes and budget information used by legislators to build the state's budget. Again, it is hard to assess how extensively this information is used because there are no publicly available records. We could only rely on interview responses rather than listening to hearings ourselves.

Challenges

Much of the oversight that occurs appears to be reactive (i.e. in reaction to scandal and/or public pressure) rather than proactive, which was confirmed by discussions with people familiar

[806] Interview notes 12/18/18

with the process. Despite the productive relationship between the state auditor and the legislature, the absence of a legislative auditor limits legislators' capacity to monitor state agencies. Additionally, the lack of a legislative auditor limits opportunities for the minority party to conduct oversight through dedicated non-partisan staff.[807] The legislature makes modest use of its power to confirm or reject gubernatorial appointees. Also, the lack of any video or audio recordings of committee hearings is problematic and demonstrates a level of opaqueness to the oversight process.

Relevant Institutional Characteristics

Iowa ranked 17th among the 50 states in legislative professionalism (Squire, 2015). Legislators in Iowa work roughly two-thirds time[808] while earning approximately $25,000 per year[809] with a per diem of $168/day.[810] As of 2015, the legislature had 342 staff members, 167 of whom were permanent staff.[811] These supporting staff members include personal staff, committee staff, partisan staff, and non-partisan professionals from legislative service agencies such as the Office of Ombudsman and the Legislative Services Agency's (LSA) Administrative Services Division, Computer Services Division, Fiscal Services Division, Legal Services Division, and Legislative Information Office.

The Iowa Legislature—also referred to as the general assembly—alternates annually between 100 and 110-day regular sessions.[812] It may also hold special sessions, which can be called by the governor or the legislature. In order for the legislature to call a special session, two-thirds of the members of each house must write a request to the presiding officer of each house.[813] However, the Iowa Legislature has not convened for a special session since 2009.[814]

Ferguson (2015) ranked the Office of Iowa Governor as having the 31st-strongest institutional powers of the fifty U.S. state governorships. Iowa does not have legislative or gubernatorial term limits.[815] Therefore, the governor has very high tenure potential, but does not have especially strong budgetary powers. The governor can only make budget recommendations to the legislature. On the other hand, the governor can veto line items in the budget, and it takes a two-thirds majority vote in each chamber of the legislature to override these vetoes.

Iowa has a slightly larger than average percentage of its population employed by state and local government—11.9% compared to the national average of 11.3%. Much of this employment reflects a higher than average percentage employed in education and in welfare—7.1% versus the national average of 6.1% in education and 1.7% versus the national average of 1.5% in welfare. This is partially offset by a lower than average proportion of the population employed in safety—1.1% compared to a national average of 1.7% (Edwards, 2006).

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[807] Interview notes 12/18/18

[808] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 7/30/18.

[809] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 7/30/18.

[810] https://ballotpedia.org/Iowa_General_Assembly, accessed 9/21/18.

[811] http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf, accessed 7/30/18.

[812] http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx, accessed 7/30/18.

[813] http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx, accessed 7/30/18.

[814] https://legiscan.com/IA, accessed 7/30/18.

[815] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 7/30/18.

Political Context

Iowa typically operates under divided party control. Although its state government is currently controlled by a Republican trifecta, in the years since 1992, there have been only two other relatively brief periods of one party control—from 1997-98 Republicans were in control and from 2007-10 Democrats were in control. The current Republican Governor, Gov. Kim Reynolds, was elected in 2017[816] and the Democrats lost control of the senate that same year. Republicans have controlled the lower chamber since 2011.

Unfortunately, there is no data available from Shor and McCarty (2015) on the degree of ideological polarization in either of Iowa's legislative chambers. However, anecdotal evidence from interviews suggests the legislature is more polarized today than in the past.[817] In one interview, it was suggested that the State Auditor's office because it is a partisan elected office has worked closely with the governor and Republican leadership in the legislature to avoid oversight of issues that would embarrass or harm the governor and Republican party.[818]

However, Iowa does have a recent history of more amicable politics when compared to its Midwest neighbors. According to Patterson (1984) "[i]deological extremes are not popular in Iowa in a way that such extremes can be sustained in Minnesota or Wisconsin, or perhaps Illinois." Patterson further contends that Iowans tend to prefer a limited role for the government and feel that the state government should not meddle in public affairs unless it is to stimulate business, particularly the agricultural industry, which they value considerably.

In sum, "Iowa politics is blatantly characterized by honesty, fair play, honorable intentions, and good government . . . Iowans' expectations about how government and politics should be conducted are based upon such high standards, and generally speaking they are fulfilled so well, that Iowa politics is often not very interesting" (Patterson, 1984). However, much has changed since Patterson's initial assessment of Iowa politics, and it is fair to suggest that Iowa is not immune to the increased polarization of political parties in institutions across the various states.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The main auditing entity within Iowa's state government is a separately elected executive branch Office of the Auditor of State (OAS), which fulfills many of the oversight responsibilities often performed by legislative auditors in other states. The OAS receives its authority from § 11, Iowa Statutes,[819] which summarizes its functions as "responsibility for audits of counties, cities, school districts and other governmental subdivisions . . . " along with the requirement, "to provide guidelines to CPA firms performing such audits."[820] The OAS website describes the auditor as "a constitutional official, elected every four years. The auditor is required to annually

[816] https://ballotpedia.org/Governor_of_Iowa, accessed 7/31/18.
[817] Interview notes 12/18/18
[818] Interview notes 12/18/18
[819] https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=11&year=2018, accessed 7/31/18.
[820] https://auditor.iowa.gov/about-us, accessed 8/1/18.

make a complete audit of the books, records and accounts of every department of state government."[821] With a staff of approximately 100 professionals and a budget of $10.4 million (NASACT, 2015), the OAS produced 314 reports during 2017 (including two performance audits), while contracting an additional 1,057 reports to private firms.[822] Although the total budget exceeds $10 million, the state appropriation for the OSA is less than $1 million (NASACT, 2015). All local governments and other public entities that are required to be audited pay the OSA a filing fee when they are audited. The auditor also audits the state's Comprehensive Annual Financial Report, and participates in financial oversight of contracted entities, as discussed below.

There appears to be some collaboration between the OAS and the legislature. The legislature may order the state auditor to conduct a specific audit, but this involves passing legislation. Use of such authority is evidenced by the senate's passage of SF 2355 on March 7, 2018.[823] An example of the House Government Oversight Committee's use of auditor of state reports is discussed below, in the "Oversight Through Committees" section.

Within the last year there have been charges that the OAS acts as a partisan office to protect the governor rather than acting as an independent auditing agency. In conversations with individuals familiar with the legislative oversight process and actions of the legislative oversight committees, it appears that the OAS is highly reactive to scandals and highly visible agency failures, but yet very little is done to address those failures in any meaningful fashion.[824] Specifically, there appear to have been no consequences or changes affecting the Department of Human Services (DHS) after the deaths of several teenagers who were alleged to have been starved to death by their custodians.[825] While the director eventually resigned and some hearings were held, no substantial solutions were offered by OAS or the legislative oversight committees to change the way DHS monitored children.[826] Indeed, after a review of the OAS list of audit reports and special investigations webpage, we could find no reports that were conducted in response to this high profile failure.[827]

Iowa's Legislative Services Agency's (LSA) Fiscal Services Division is the state's other analytic bureaucracy that is involved in legislative oversight. The LSA is headed by a director appointed by the Legislative Council--an interim joint committee, described as a "steering committee" on its website.[828] The director of the LSA is responsible for staffing the Fiscal Services Division's 17-member staff and the Legislative Services Division's 21-member staff.[829] The LSA derives its authority from § 2A, Iowa Statutes,[830] which, among other things, obliges the LSA to conduct fiscal analyses of state agencies.

The LSA and its Fiscal Division juggle a wide range of demands, staffing committees, analyzing legislation, producing fiscal analyses conducted throughout the year, and "[providing] information to legislators and staff regarding the state's financial condition and the potential

[821] https://auditor.iowa.gov/about-us, accessed 8/1/18.
[822] https://auditor.iowa.gov/audit-reports, accessed 8/10/18.
[823] https://www.legis.iowa.gov/docs/publications/LGR/87/SF2355.pdf, accessed 8/12/18.
[824] Interview notes 12/18/18
[825] https://siouxcityjournal.com/news/state-and-regional/iowa/iowa-dhs-director-to-retire-amid-child-abuse-complaints/article_ea73f8c0-0595-542a-b13b-20b98ede9dfe.html, accessed 12/18/18
[826] Interview notes 12/18/18
[827] https://www.auditor.iowa.gov/reports/audit-reports/, accessed 12/18/18
[828] https://www.legis.iowa.gov/committees/committee?ga=87&groupID=703, accessed 8/9/18.
[829] https://www.legis.iowa.gov/agencies/nonpartisan/lsa/fiscalServices, accessed 8/1/18.
[830] https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=2A&year=2018, accessed 8/1/18.

fiscal impact of legislative and administrative rules."[831] The Fiscal Services Division also works together with the Legal Services Division, "[performing] review and oversight of the state program operations and program evaluations of state agencies."[832] The LSA produces around a dozen to 15 issue reviews each year that describe various state programs or issues in some detail. The reports are about 10 to 15 pages long. They are not comprehensive performance audits or program evaluations that would meet national standards or win awards from professional audit and evaluation organizations, but they do provide substantial descriptive and quantitative information on specific topics. While the division's fiscal analyses are numerous and difficult to quantify, reports on the fiscal impact of administrative rules can be quantified and total six for the 2017 fiscal year. These analyses of the fiscal impact of administrative rules are provided for each Administrative Rules Review Committee meeting.

The following information is based on a publicly available interview with the Director of the Fiscal Services Division of the Legislative Services Agency.[833] The LSA's Fiscal Service Division (FSD) also produces fiscal notes, which are required for any legislation introduced that would have an impact of $100,000 per year on the state revenue and/or expenditures. Additionally, any legislator can request a fiscal note for any piece of legislation simply by contacting the FSD by either email, phone, or in person. These requests for fiscal notes are confidential unless the legislation moves to a stage at which a fiscal note is required, or the legislator asks that the analysis be made public. Typically, the FSD files approximately 150 fiscal notes, but write and research many more that are not filed because the legislation does not get far enough in the legislative process. If time permits, the FSD also responds to requests for information from the public or the press.

Iowa also utilizes an Office of Ombudsman which is classified as an "independent and impartial agency" that investigates state government activities at the behest of the citizenry.[834] While the Ombudsman is authorized to investigate complaints against state agencies and officials, it is not required to submit reports or recommendations on its findings.[835] Since 2009, the Ombudsman has issued 9 investigative and special reports, which may appear to be a small number. However, the Ombudsman website explicitly states it attempts to resolve issues informally if possible.[836] The Ombudsman's office publishes an annual report detailing the variety of issues reported to the office. In the latest report issued in 2017[837] the focus was on difficulties citizens encountered the state's switch from state-managed Medicaid plans to privately managed plans, the increase in complaints about the state's corrections facilities, and, disturbingly, the "culture of secrecy among state regulators who license doctors, real estate agents, and other professionals."[838] In particular, the legislature failed to substantively address the issues surrounding the privatization of Medicaid before the end of the legislative session.[839]

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[831] https://www.legis.iowa.gov/agencies/nonpartisan/lsa/fiscalServices, accessed 8/1/18.
[832] https://www.legis.iowa.gov/agencies/nonpartisan/lsa/fiscalServices, accessed 8/1/18.
[833] https://www.legis.iowa.gov/publications/fiscal/conversations, accessed 9/23/18.
[834] https://www.legis.iowa.gov/Ombudsman/, accessed 12/13/18
[835] https://www.legis.iowa.gov/Ombudsman/, accessed 12/13/18
[836] https://www.legis.iowa.gov/Ombudsman/, accessed 12/13/18
[837] https://www.legis.iowa.gov/docs/publications/CA/961900.pdf, accessed 12/13/18
[838] https://siouxcityjournal.com/news/state-and-regional/iowa/medicaid-complaints-to-iowa-ombudsman-tell-story-of-frustration/article_54de5669-0b1c-5d53-a03c-f5cc6b33dd8d.html, accessed 12/13/18
[839] https://qctimes.com/opinion/editorial/editorial-iowa-medicaid-is-burning/article_6455a38e-39a1-579a-9fd4-92580540431e.html, accessed 12/13/18

Oversight Through the Appropriations Process

Iowa's annual state budget is prepared by the governor and then submitted on or before February 1 to the legislature for approval. Both the governor and the legislature are required to use the budget targets set by the state's Revenue Estimating Conference when proposing a budget. This ensures that there is agreement on the official economic forecasts used in the budget process. A balanced budget is both constitutionally and statutorily mandated. [840] Once the legislature passes a final budget bill the governor can sign it, veto the whole bill, or use the line item veto to eliminate selected portions of the bill.[841]

The Iowa Senate and House each have their own respective Appropriations and Ways and Means Committees. While neither audio, video, nor transcripts are available for legislative committee meetings, meeting minutes are available; these minutes, however, provide only a very general description of what occurs during meetings (i.e. which members were present, which bills were discussed, etc.). If nothing more, it is clear that the legislature's Appropriations and Ways and Means Committees meet regularly. The Senate Appropriations Committee met ten times during the 2018 legislative session and nine times during 2017;[842] Senate Ways and Means met ten times in 2018 and ten times in 2017.[843] House Appropriations met 19 times in 2018, and 22 times in 2017;[844] House Ways and Means met 22 times in 2018 and 21 times in 2017. Appropriations subcommittees also meet fairly regularly.

The Joint Fiscal Committee also provides general oversight of budgetary matters; while it is not explicitly an interim committee, it appears to only meet outside of the legislature's regular session. § 2.46, Iowa Statutes,[845] grants the committee authority to, "[e]xamine budget and expenditure matters. Direct the administration of performance audits and visitations. Study the operation of state government and make recommendations regarding reorganization to the General Assembly."[846] The committee met once during the 2016 interim,[847] twice during the 2015 interim,[848] and twice during the 2014 interim.[849]

The Fiscal Committee's membership consists of 10 members, five of whom are senators and five of whom are representatives. Senate membership of the Fiscal Committee is comprised of the leading members of the Senate Appropriations and Ways and Means Committees; house membership is comprised of the leading members of the House Appropriations and Ways and Means Committees. These leading members come from both the majority and minority parties of their respective chambers.[850]

The Appropriations Committees appear to meet during the legislative session according to the calendar of the meetings they held in 2018. According to a publicly available interview with the Senior Legislative Analyst with the Legislative Services Agency, there are seven appropriations subcommittees, all of which are joint chamber subcommittees. These committees

[840] https://ballotpedia.org/Iowa_state_budget_and_finances, accessed 8/9/18.
[841] https://dom.iowa.gov/faq/what-process-developing-state-budget, accessed 8/9/18.
[842] https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=324&ga=87, accessed 8/9/18.
[843] https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=692&ga=87, accessed 8/9/18.
[844] https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=695&ga=87, accessed 8/9/18.
[845] https://www.legis.iowa.gov/docs/code/2018/2.46.pdf, accessed 7/31/18.
[846] https://www.legis.iowa.gov/committees/committee?ga=87&groupID=704, accessed 7/31/18.
[847] https://www.legis.iowa.gov/docs/publications/IP/858368.pdf, accessed 8/9/18.
[848] https://www.legis.iowa.gov/docs/publications/IP/798000.pdf, accessed 8/9/18.
[849] https://www.legis.iowa.gov/docs/publications/IP/680681.pdf, accessed 8/9/18.
[850] https://www.legis.iowa.gov/docs/code/2018/2.45.pdf, accessed 8/1/18.

receive budget targets from the revenue estimating conference, then meet three times per week for approximately six weeks to develop appropriations for agencies under their jurisdiction. They submit their appropriations recommendations to the full Appropriations Committee. The only exception is that the Transportation Subcommittee is not constrained by the state budget target.[851]

While the various appropriations, ways and means, and fiscal committees have some formal procedures with which to exercise oversight of the appropriations process, the extent to which such oversight occurs is difficult to discern, largely due to the dearth of detailed documentation of committee and subcommittee meetings. To try to determine whether reports produced by the state's Legislative Services Agency are used by appropriations committees, we interviewed people knowledgeable about the budget process to see if a January 2018 report entitled, *Health and Human Services Appropriations Subcommittee Detailed Analysis of the FY 2018 and FY 2019 Governor's Recommendations* was used.[852] These kinds of reports explain parts of the governor's budget recommendations that are not "clear or easy to read" (interview notes, 2018). We were told that staff walks the subcommittee through reports like this, then the committee members use information in the report, particularly in the appendices, to question executive branch agencies. Committee members, we were told, are especially interested in funds carried forward and funds that reverted back to the General Fund. This report would be a first step in building the state budget. The appendices are especially helpful in providing legislators with information about what is going on in an executive branch agency. This information can be used to oversee these agencies (interview notes, 2018).

Oversight Through Committees

The house and senate each have government oversight committees. During 2017, these committees received a total of 20 reports from a variety of public and quasi-public agencies and boards, a few of which were prepared by the LSA.[853] The majority of these reports were statutorily-required, with the various statutes that required the reports' submission to the oversight committees referenced within the text of such reports.

Unlike some states, the House and Senate Oversight Committees have a partisan split, and there is no joint oversight committee to help coordinate the efforts of the Senate and House. Meetings of the Senate Oversight Committee in recent years have been perfunctory. The committee is not balanced by party but rather reflects the Republican majority in the Senate. According to one source, the lack of hearings is a conscious choice by the Republican majority. There are efforts to prevent issues from being properly addressed by the committee due to fears of embarrassing the governor and majority party.[854] Overall the oversight process in the House and Senate appear to be coordinated effort by the Republican trifecta and the Republican State Auditor to keep certain policy hot topics, like Medicaid abuses, as reported by the Ombudsman's Office, and DHS failures from being publicly addressed.[855] Based on meeting minutes, the committee met twice during 2017, with a total of one bill discussed, and each meeting lasting ten

[851] https://www.legis.iowa.gov/docs/publications/FOA/24887.mp3, accessed 8/23/18.

[852] https://www.legis.iowa.gov/docs/publications/SCGR/917104.pdf, accessed 10/30/18.

[853] https://www.legis.iowa.gov/committees/meetings/documents?committee=589&ga=87, accessed 8/5/18.

[854] Interview notes 12/18/18

[855] Interview notes 12/18/18

minutes. One Joint Government Oversight Committee meeting also occurred during 2017, lasting over six hours and featuring extended questioning of Department of Human Services (DHS) officials. In 2018, the Senate Oversight Committee met three times, during which three total bills were discussed. One of these meetings lasted five minutes, while minutes are not available for the other two meetings. The joint committee met twice during 2018; one meeting lasted an hour and 35 minutes, in which the DHS Director testified. Minutes were not available for the other joint committee meeting.[856]

The House Government Oversight Committee, conversely, meets more frequently (six times in 2017, seven times in 2018), with meetings longer in duration, and with more bills and subjects discussed than its senate counterpart.[857] Further, the House Government Oversight Committee appears to utilize oversight performed by the OAS to inform its own monitoring of state agencies, at least in instances in which allegations of improprieties within such agencies have come to light. One such example occurred recently, involving the Iowa Communications Network (ICN) (Heartsill, 2018), "an independent state agency that administers Iowa's statewide fiber optic telecommunications network," used by schools, libraries, hospitals, and state and federal government offices in Iowa, under the supervision of the Iowa Telecommunications and Technology Commission (ITTC).[858]

Vignette: The State Auditor, House Government Oversight Committee, and ICN

In January 2018, Ric Lumbard, the Iowa Communication Network's (ICN) executive director was fired following an Office of the Auditor of State (OAS) report,[859] which "found that he misspent almost $380,000 of taxpayers' money as part of a wide-ranging enterprise that involved questionable purchases and cronyism" (Kauffman, 2018). The impetus behind the state auditor's investigation was "a meeting held on July 17, 2017, [in which] Auditor Mosiman and staff from the OAS were informed of concerns regarding ICN's purchase of pre-owned semi-trailers containing video production equipment" (p. 9). According to the auditor's report, Lumbard had improperly hired and/or given pay raises to persons he'd known prior to his appointment, had improperly awarded no-bid contracts, had used agency funds for some relatively small personal electronics purchases, and had used ICN funds to purchase the aforementioned semi-trailers, delivered to Wind and Fire Ministries (an organization of which he was CEO, concurrently to his role at the ICN), the contents of which were later sold on Ebay.[860] The report also found that the ITTC had failed to properly monitor the activities of the ICN. Lumbard's 2014 appointment had been approved by the senate (Kauffman, 2018).

Following the January 2018 report and Lumbard's subsequent firing, the House Government Oversight Committee sought frequent updates on the OAS Investigation. The ICN was a topic of discussion at committee meetings on January 31, February 8, February 28, and March 21. At these meetings, Auditor Mosiman (1/31), ICN Acting Executive Director Groner and Chief Administrative Officer Johnson (2/8), and ITTC Commissioners Bruner and LaPointe (2/28) made presentations and took questions from the committee.[861] While neither recordings

[856] https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=588&ga=87, accessed 8/11/18.
[857] https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=589&ga=87, accessed 8/11/18.
[858] https://icn.iowa.gov/about-icn/agency-information-icn-story, accessed 8/5/18.
[859] https://auditor.iowa.gov/sites/default/files/audit_reports/1860-3360-0E00.pdf, 8/9/18.
[860] https://auditor.iowa.gov/sites/default/files/audit_reports/1860-3360-0E00.pdf, accessed 8/10/18.
[861] https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=589&ga=87, accessed 8/12/18.

nor transcripts documenting these meetings appear to exist, these officials' attendance at the meetings suggests that the committee, at minimum, attempted to monitor the agency's response to the recent scandal.

On March 7, the senate unanimously passed SF 2355, which ordered the state auditor to conduct a new, detailed audit of the ICN.[862] The LSA's fiscal note[863] on the legislation, however, found that "[t]he OAS does not have the in-house expertise to conduct a complete inventory audit as well as identify and quantify the value of services provided by the ICN and its current authorized users, nor can it identify all such current users and business units" (p. 2). Further, the LSA found that "[i]n order to facilitate the gathering and analysis of data done by both the OAS and the independent appraisal firm, the ICN assumes it will need to hire one additional full-time equivalent (FTE) position" (p. 2). The LSA put the total cost of the new audit at $1.4 million.[864] This cost was evidently prohibitive. On March 13, the same day as the fiscal note was published, the House State Government Subcommittee[865] recommended that the bill be postponed indefinitely.[866]

It also appears that public pressure may, at times, motivate the legislature to modify or abandon unpopular legislation. For instance, on March 6, 2017, the legislature held a public hearing on HF 484, a bill that would transfer the Des Moines Water Works from an independent board of trustees to area city councils. According to the legislature's website, 207 individuals signed up to speak at the hearing, of which only eight individuals supported the bill. Public testimony at the hearing, as well as news media, suggested that this bill originated in the Agriculture Committee and was possibly being pursued so that powerful individuals in the agricultural community can continue to pollute the water system with chemicals from the fertilizers they use. Following the public hearing, the bill was never brought up for debate before the legislature and remained on the "unfinished business" calendar at the end of the 2017 legislative session (Bleeding Heartland, 2017).[867] This example suggests that, while there are procedures for legislators to exercise oversight through the committee process, the occurrence of such oversight may be contingent on public outcry. In this situation, the public opposition expressed at the hearing likely influenced legislators to preclude, at least for the time being, what appeared to be certain passage of HF 484.

Oversight Through the Administrative Rules Process

The Iowa General Assembly's Administrative Rules Review Committee (ARRC) is a joint statutory committee that derives its authority from § 17A.8 of the Iowa Administrative Procedure Act (2018), which allows the committee to temporarily suspend both proposed and existing rules.[868] Per § 17A.4, rules may be suspended by a two-thirds majority vote of committee members (the same section allows the attorney general and the governor to suspend rules, as well).[869] In instances in which rules are suspended accordingly, the rule is then referred

[862] https://www.legis.iowa.gov/docs/publications/LGR/87/SF2355.pdf, accessed 8/12/18.
[863] https://www.legis.iowa.gov/docs/publications/FN/943507.pdf, accessed 8/12/18.
[864] https://www.legis.iowa.gov/docs/publications/FN/943507.pdf, accessed 8/12/18.
[865] https://www.legis.iowa.gov/committees/subCommitteeAssignments?groupID=681&ga=87, accessed 8/12/18.
[866] https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=SF2355, accessed 8/12/18.
[867] https://www.legis.iowa.gov/committees/publicHearings?action=viewMeetingSignups&meetingID=25070, accessed 8/4/18.
[868] https://www.legis.iowa.gov/docs/code/17A.pdf, accessed 8/8/18.
[869] https://www.legis.iowa.gov/docs/code/17A.4.pdf, accessed 8/8/18.

to the pertinent substantive committee. Rules can only be formally disapproved—and thus permanently abolished—by joint resolution of the general assembly.[870] Such joint resolutions are not subject to gubernatorial veto.[871] Once the legislature, governor, or attorney general has suspended a rule, the agency has the burden of proof in any court proceedings to demonstrate that the rule is reasonable and within the agency's authority and neither arbitrary nor capricious (Schwartz, 2010).

The ARRC consists of 10 members: five from the senate and five from the house, with a partisan split of six Republicans and four Democrats. Six legislators (three senators and three representatives) are appointed by the majority leaders of the senate and house, and four legislators (two senators and two representatives) are appointed by the minority leaders of the senate and house, respectively. [872] Although the members are appointed by the leadership of their respective chambers, the committee itself chooses its chair. The chair rotates between chambers annually. The agenda—which rules will be considered—is the primary power of the chair. The public is encouraged to participate in these meetings, and agencies must defend their rules to the public.[873] The house rotates membership on the committee frequently, but senators tend to serve on the committee for many years, providing continuity and uniquely high levels of knowledge about the agencies.[874] The ARRC has two part-time attorneys and one part-time fiscal analyst to help it evaluate rules (Schwartz, 2010). Additionally, there is an Administrative Rules Coordinator, an ex-officio, non-voting member of the ARRC, who is the governor's representative on the committee (Schwartz, 2010).

During the last year for which the ARRC's Annual Report is available (2014), the report indicates that Iowa's executive branch agencies adopted 263 "rulemaking filings," consisting of "approximately 1,000 individual rule additions, amendments, or rescissions" (p. 2).[875] None of these filings were formally objected to by the ARRC, although, "[t]wo session delays and four 70-day delays were imposed" (p. 3). Two of these delays imposed by the committee (a 70-day delay, followed by a session delay) pertained to a rule promulgated by the Iowa Department of Education.

The proposed rule that triggered these delays would have reduced the necessary qualifications for medical professionals performing mandatory annual physical examinations on school bus drivers. In the ARRC's November 2014 meeting, members asked Department of Education officials whether the proposed rule would contravene federal requirements, thus risking the loss of federal revenue. As the officials did not know the answer, the ARRC delayed the rule's implementation for 70 days. In the committee's December 2014 meeting, Department of Education officials reported that federal regulations require that, medical professionals, who perform annual exams on contracted school bus drivers who cross state lines in fulfilment of their duties, are subject to the more stringent federal standards (evidently, such regulations do not apply to school bus drivers directly employed by school districts); thus, "$37 million in federal funding could potentially be jeopardized" (p. 11). Accordingly, the ARRC voted to suspend the rule for the remainder of the session. As of the end of the 2015 legislative session, the rule had not been acted upon further.[876] This example suggests that, despite lacking a unilateral

[870] https://www.legis.iowa.gov/docs/code/17A.8.pdf, accessed 8/8/18.
[871] http://knowledgecenter.csg.org/kc/system/files/3.26%202016.pdf, accessed 8/8/18.
[872] https://www.legis.iowa.gov/docs/code/17A.pdf, accessed 8/8/18.
[873] https://www.legis.iowa.gov/docs/publications/FOA/645383.mp3, accessed 9/22/18
[874] https://www.legis.iowa.gov/docs/publications/FOA/645383.mp3, accessed 9/22/18.
[875] https://www.legis.iowa.gov/docs/publications/AAR/765726.pdf, accessed 8/8/18.
[876] https://www.legis.iowa.gov/docs/publications/AAR/765726.pdf, accessed 8/8/18.

mechanism to permanently block rules, the relative level of engagement of ARRC members—as well as the committee's willingness to utilize those limited mechanisms that it does have—results in substantial oversight of state agencies' rulemaking processes by the committee.

Despite the absence of an annual report, the ARRC continues to meet monthly. The minutes of the August 2018 meeting show that 48 rules were examined, but only one of these was delayed by the ARRC. Although there was some discussion by the committee of nearly half these rules, 25 rules received no discussion by the committee. These minutes show that some members of the public made comments about a small number of these rules and that lobbyists made comments on just a few rules.[877] In addition to a delay, the ARRC could recommend that the chambers pass legislation to "overcome" the rule and accompany this by referring the rule to the speaker of the house and president of the senate for further study. These legislative leaders would then forward the rule to the appropriate committees.

Another example of rules review was provided by a retiring Administrative Rules Coordinator (ARC) in an interview with the Iowa Legislative Services Agency. This was a case in which the ARRC's effort to delay a rule was thwarted by the full chamber but then the governor vetoed the rule. The rule involved requiring steel shot for dove hunting. There are people who think lead shot is poisonous and others who think that steel shot ruins your gun. There was a big meeting with a lot of public participation. The committee delayed the rule. The rule was perfectly legal, so this was a political decision. The full legislature did not repeal the rule, so eventually it went into effect. But, the governor's office had 70 days to veto the rule after it took effect and, in this case, the governor vetoed the rule immediately after the legislature adjourned. Most rules are not controversial, and most of the time the governor pre-approves rules so that the executive branch is on the same page.[878] But in this case, according to the former ARC, the governor appears to have wanted to let the administrative rules process play out to see what level of public opposition there was to the rule (Legislative Services Agency interview with Joe Royce, former Administrative Rules Coordinator, publicly available on the Iowa State Legislative webpage).[879]

In addition to the review of new rules, anyone in the state may petition the Administrative Rules Coordinator (ARC) asking that an agency review any of its rules to justify whether the rule should be repealed, amended, or replaced by a new rule. If the (ARC) decides that this review is not too burdensome for the agency, then the agency must prepare a report addressing the future status of the rule and provide copies to the ARRC, the ARC, and the public.

Oversight Through Advice and Consent

The advice and consent powers of the Iowa Senate are delineated in Rule 59 of the Iowa Senate Rules. Appointments are submitted by the governor and referred to the Senate Rules and Administration Committee. The nominees are then referred to the pertinent standing committee. Such standing committee may hold hearings to question the nominee on his or her qualifications and viewpoints on issues facing the office to which the person is nominated. After a nominee has been placed on the calendar and prior to the vote on confirmation, any senator may request an informational meeting on the nomination, which shall be held before the subcommittee. Lastly,

[877] https://www.legis.iowa.gov/committees/meetings/minutes?meetingID=28123, accessed 9/22/18.
[878] https://www.legis.iowa.gov/docs/publications/FOA/645383.mp3, accessed 9/22/18.
[879] https://www.legis.iowa.gov/publications/fiscal/conversations, accessed 9/23/18

the nominee must undergo a vote of confirmation and must receive a two-thirds vote of approval from all members of the Iowa Senate.[880]

Although the Iowa Legislature does not appear to provide any record of votes on nominees for executive positions, news media indicate that the Iowa Senate occasionally refuses to confirm gubernatorial nominees. For instance, according to media reports, the senate refused to confirm two of the current governor's appointees in April 2017 (Boshart, 2017).

In Iowa, executive orders are subject to legislative review and also must comply with the state's Administrative Procedures Act. The number of executive orders peaked in the 1980s and 90s, with governors issuing 50 or more executive orders. Currently, Gov. Kim Reynolds has issued only three executive orders during her first year in office. Despite their power to review these orders, we find no evidence that the legislature exercises this prerogative often. Additionally, Iowa's governors do not appear to be shy about using their power to formulate policy. For example, on February 21, 2008, Governor Chester J. Culver issued an extensive (five pages) executive order called the Green Government Initiative.[881] The order implemented the Green Government Initiative in all state ". . . agencies under the jurisdiction of the Governor . . ." Part of the Green Government Initiative included an Energy Excellent Buildings Task Force, a Sustainable Materials Task Force, a Biofuels Task Force, and a Green Government Master Plan. A search of media sources and the legislature's webpage reveals no hearings or objections to gubernatorial executive orders.

The most recent activity in Iowa on government reorganization involves a report prepared by the Iowa Department of Administrative Services for the general assembly's State Government Reorganization Commission. This may indicate that the legislature, rather than the governor, takes the lead in government reorganization.

Oversight Through Monitoring of State Contracts

As discussed in the analytic bureaucracy section of this report, the elected auditor is sometimes responsible for reviewing the financial records of contracted entities during the audit process. These may be disclosed in their contract/grant/agreed-upon procedures reports. Five of these reports were conducted in 2016. We have not identified any examples of the legislature making use of the auditor of state's reports for monitoring state contracts.

There appears to be some interest among Iowa media outlets in increased oversight through the monitoring of state contracts. For example, an article recently published in a local Iowa newspaper discusses the Iowa Transportation Commission's lack of oversight over 47 contracts valued at $1 million or more–more than $168 million in total–since 2013, awarded by the Iowa Department of Transportation. The article goes on to discuss whether the commission needs to exercise greater oversight over the department (Morelli, 2015).

Oversight Through Automatic Mechanisms

Iowa is one of three states that has never had a sunset law (Baugus & Bose, 2015).

[880] https://www.legis.iowa.gov/docs/publications/SR/852022.pdf, accessed 8/8/18.
[881] http://www.responsiblepurchasing.org/UserFiles/File/Iowa%20ex_ord_6.pdf, accessed 9/23/18.

Methods and Limitations

While Iowa provides public and online access to agendas and most minutes, these minutes tend to be vague. The legislature does not provide audio nor video archives of their committee meetings. A state website with public interviews of former state officials provided some information about the legislature. The lack of publicly available information increased the need for interviews. Out of the 19 people we contacted, we conducted interviews with two people.

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Legislative Oversight in Kansas

Capacity and Usage Assessment

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

Summary Assessment

While entities such as the Legislative Division of Post Audit (LPA) and the Joint Committee on Administrative Rules and Regulations provide the basis for effective legislative oversight in Kansas, in actual practice one-party government in Kansas may have dampened these efforts. Despite its limited formal authority to force agencies to change rules, Kansas's JCARR is one of the more active rule review committees among the states. It seems to be willing to pass legislation forcing agencies to alter rules, which seems likely to enhance its ability to persuade state agencies to take its concerns seriously.

Even in cases where legislators have taken an interest in overseeing executive agencies, as in the case of the Department of Corrections or on the issue of foster care, very little overt action seems to be taken to address problems. There may be more indirect effects across time, however. Interestingly, much of the oversight that has occurred in recent years appears to have resulted from pushback against some of former Gov. Brownback's fiscal policies, as moderate Republicans joined forces with Democrats to take a firmer control over the budget. Crises can and did generate fire alarm oversight in Kansas.

Major Strengths

The LPA has, in certain cases, demonstrated its abilities to work closely with the legislature to investigate issues in state government, notably in the incidence of mismanagement at two of Kansas's prisons. In addition to audits required by law, legislators can request audits at any time, although the Legislative Post Audit Committee ultimately selects the audits that are conducted. Based on archived audio available online, appropriations committees appear to hold agency heads accountable for expenditures. The State of Kansas Division of the Budget's Comparison Report is a particularly noteworthy oversight mechanism employed by the Kansas legislature.

Challenges

Although the LPA may work closely with the legislature, often, implementation of recommendations is slow. Instead, oversight in Kansas through analytic bureaucracies appears less comprehensive. It is typical for audit recommendations by the LPA to target agency change rather than seeking to use legislation to change agency behavior. In other states some analytical bureaucracies frequently seek legislative change as part of their recommendations.

Relevant Institutional Characteristics

Kansas's legislature consists of 125 representatives and 40 senators. Although the National Conference of State Legislatures (NCSL) classifies Kansas's legislature as "part-time lite," meaning that while it is a part-time legislature with low pay and small staff, it is not among the "most traditional of citizen legislatures."[882] Legislators are paid $88.66 per calendar day of the session, plus a $142 per diem for each actual working day of the legislative session.[883] The legislative session is approximately five-and-a-half months in duration; in 2017 it lasted from January 9 through June 26. The legislature has 354 total staff members, 148 of whom are permanent.[884] Kansas legislators are not term-limited.[885] Based on these and other factors, the Kansas legislature is ranked as the 31st most professional legislature in the country by Squire (2017).

Kansas's governor has fairly extensive powers, with full budget-preparation responsibility and the right to reorganize government agencies through an executive reorganization order (ERO), a particular kind of executive order. The governor also has a line-item veto on appropriations bills. This authority is restrained only by an override vote of two thirds of the majority in both houses of the legislature (Beyle, 2008). According to Ferguson (2013), the Office of the Kansas Governor is the tenth most powerful among the 50 states.

Kansas's state and local government employees make up 12.8% of total employment in the state. Of these, 7.6% are engaged in the education sector, while 1.5% is employed in public safety, 1.3% in welfare, 1.4% in general services, and 1% in other sectors (Edwards, 2006). Kansas has a high percentage of state and local government employees overall (11.3% nationally) and in education (6.1% nationally) than 41 other states.

Political Context

In Kansas, Republicans control the governorship and both chambers of the legislature. While Republicans have historically dominated Kansas politics, the governorship has regularly

[882] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 6/12/18.
[883] http://www.ncsl.org/research/about-state-legislatures/2017/legislator-compensation-information.aspx, accessed 6/12/18.
[884] http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf, accessed 6/12/18.
[885] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 6/12/18.

alternated between Republican and Democratic control over the last sixty years.[886] Republicans have controlled the house since 1993 and the senate since 1917.[887] The house is currently comprised of 85 Republicans and 40 Democrats, while the senate has 31 Republicans and nine Democrats. According to Shor and McCarty (2015), Kansas's house is the 19th most polarized in the country, while its senate is the 22nd most polarized.

Despite the Republican Party's electoral dominance, factional disputes between moderates and social and fiscal conservatives in the party have led to Kansas being described as having "a de facto 'three party' system, comprising Democrats, conservative Republicans, and 'traditional-moderate' Republicans who may side at times with Democrats" (Haider-Markel, 2009). Thus, while the conservative wing of the party has been ascendant in recent years, the factions of legislative Republicans have increasing disagreed with another over the policies of former Gov. Sam Brownback, who stepped down in January 2018 to assume an ambassadorial post in the Trump administration. During his tenure in Kansas, Brownback implemented controversial economic policies, including sizeable tax and budget cuts, privatization of the state's Medicaid system, and refusal of federal Medicaid subsidies (Judis, 2014). The resulting "gaping budget shortfalls, inadequate education funding and insufficient revenue," coupled with the state's poor economic performance, culminated in the legislature overriding Gov. Brownback's 2017 veto of budget items that were intended to reverse some of his tax policies (Bosman, 2017).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Legislative Division of Post Audit (LPA) is Kansas's analytic bureaucracy.[888] It is established by statute 46-1101. Its essential function is to evaluate the usefulness of government agencies, their adherence to the law, and the extent to which each agency achieves its prescribed functions. The LPA is tasked with conducting audits of state agencies, "providing oversight of state government by evaluating whether agencies are following laws, achieving intended results, and operating efficiently."[889] It conducts performance audits that are mandated by Kansas law, as well as limited scope performance audits that are selected by the chair of the Legislative Post Audit Committee (LPAC). Limited scope audits are "limited" in the sense that they are intended to take fewer than 100 hours of staff time to complete.[890] The LPA does not have subpoena power. In 2015, the LPA had a professional staff of 25 and a budget of $2.3 million (NASACT, 2015). Most of its professional staff (17) conducts performance audits. It has only one financial auditor. This supports the finding that it hires outside CPA firms to conduct the state's single audit and other financial auditing projects. It employs four Information Technology (IT) auditors.

[886] http://www.kshs.org/p/kansas-governors/11702, accessed 6/12/18.
[887] https://www.kssos.org/forms/communication/KSOfficialsHist2018.pdf, accessed 6/13/18.
[888] http://www.kslpa.org/, accessed 6/14/18.
[889] http://www.kslpa.org/about-us/, accessed 6/13/18.
[890] http://www.kslpa.org/media/committeerules/lpac_rules.pdf, accessed 5/3/18.

The LPAC directs the LPA's work.[891] Most of the audits that are conducted are done at the behest of the LPAC, a joint standing committee that consists of five senators and five representatives from the house. Three members are appointed by the president of the senate or the speaker of the house, respectively, and two each by the minority leader in each chamber.

In addition to periodic audits required by law, any legislator can request an audit, though the LPAC ultimately selects the audits that are conducted. This process involves a presentation by the LPA to the LPAC, which then decides whether to approve or reject the proposed audit request. According to an interviewee, "The LPA work[s] with legislator[s] to prepare a scope statement, which defines the questions they want answered. The scope statement also includes some background on the subject and an estimate for how many staff [LPA] would need to dedicate to the audit. This is all done in private. The research is confidential until presented to LPAC. [The LPA] also does a lot to help guide [legislators] to good questions [and does not] try to influence the substance of their concerns, but . . . help[s] shape them into answerable audit questions" (interview notes, 2018). Once a scope statement is approved, it is forwarded to the LPAC, which typically considers all outstanding audit requests at a single meeting rather than in a rolling process.

In 2017, the LPA conducted 15 performance audits and five IT audits. Additionally, "[e]xternal CPA firms under contract with LPA conducted financial audits of several state agencies."[892] KSA 74-7287 directs that at least four performance audit topics approved by the LPA must focus on cost-saving measures. Minutes from LPAC meetings[893] confirm this but demonstrate that audits are designated as meeting this standard after the fact through a vote by LPAC members. Every three years, external auditors review the Kansas Lottery and the state's 911 emergency system.

The LPA works closely with the legislature and is utilized by legislators to investigate issues in state government. One example involved a series of incidents between May and July 2017 at the El Dorado Correctional Facility near Wichita, as well as numerous problems at Kansas's largest prison, the Lansing Correctional Facility (Llopis-Jepsen, 2017). One legislator called for more transparency in the Kansas Department of Corrections (KDOC), noting that various problems, including understaffing, serious injuries suffered by inmates, and prisoners starting fires, had gone completely unreported until uncovered by the media (Woodall, 2017). The same legislator requested an audit of the KDOC, which was subsequently completed in December 2017. In the end, auditors found that the incidents were largely "spontaneous" and did not offer recommended actions to the legislature or the KDOC.[894] Around the same time, the Legislative Budget Committee held hearings on the state prison system's funding issues. During these hearings, legislators utilized the auditor's report and heard testimony from the secretary of corrections.[895] Much of the testimony regarded plans to renovate the Lansing Correctional Facility and pay and benefits for correctional officers at El Dorado.[896] Follow-up hearings held

[891] http://www.kslpa.org/media/annualreports/AFU2017_v9PcESk.pdf, accessed 7/2/18.
[892] http://www.kslpa.org/media/annualreports/AFU2017_v9PcESk.pdf, accessed 6/14/18.
[893] http://www.kslpa.org/media/files/minutes/042518.pdf, accessed 6/14/18.
[894] http://www.kslpa.org/media/files/reports/l-17-019.pdf, accessed 6/6/18.
[895] http://www.kslegislature.org/li/b2017_18/committees/ctte_leg_budget_1/documents/testimony/20170803_15.pdf, accessed 6/6/18.
[896] http://www.kslegislature.org/li/b2017_18/committees/ctte_leg_budget_1/documents/minutes/20170803.pdf, accessed 6/6/18.

in October included testimony from the KDOC's Director of Capital Investment and dealt solely with the plans to renovate the Lansing facility.[897]

People familiar with the LPA and its relationship with the legislature suggest that this is par for the course: very often "there is no perceivable action" when legislators engage in oversight activities. "When there is action, it could be years away from implementation...there is rarely a strong action from the legislature. Legislatures have an enormous torpor." Instead, audits are "more commonly useful as 'ammo' which supports an ongoing effort in the legislature." For example, "Kansas has a long battle with foster care oversight. [The LPA] did about five audits of foster care [over the course of several years] – none of them directly resulted in significant oversight, but they all assisted the efforts of committees, individual legislators, and outside groups" (interview notes, 2018).

More often, audit recommendations are targeted at changing agencies, rather than eliciting legislative action. Agencies tend to either implement the recommendations quickly or ignore them entirely. Recommendations that are "relatively innocuous and . . . helpful to the agency" are often "implemented without any dispute," while "ones that require significant work are typically not implemented." The legislature, meanwhile, "typically won't act unless there is significant public appeal to the subject" (interview notes, 2018). Although the LPA claims that it tries to stay in the background, letting legislators have the press attention, it does release brief summaries of its reports to the media (NASACT, 2015).

Kansas also has a Legislative Research Department (KLRD), which provides "objective research and fiscal analysis for members of the Kansas legislature."[898] The KLRD reports to Legislative Coordinating Council (LCC) which consists of seven legislative leaders: The speaker of the house and speaker pro tempore of the house, the majority and minority party leaders of each chamber, and president of the senate. The LCC appoints the KLRD director. The KLRD's 40-member staff analyzes agency budgets, helps legislators write appropriations bills and provides the committee staff for standing and interim committees. Legislators can use the KLRD to request information from various local, state, and federal entities, research particular statutes or policy areas, and prepare substantive reports pertaining to those requests. The KLRD also publishes annual Agency Budget Summaries, Appropriations Reports, and Committee Reports to the legislature. It previously published a report on annual legislative highlights.[899]

Oversight Through the Appropriations Process

Proposed budgets are prepared by each agency, subject to analysis by the KLRD and to analysis and recommendations of the Division of the Budget. These budgets are also submitted to the Legislative Research Department (LRD) at the same time. The governor, upon consideration of these recommendations, submits a budget proposal. The governor may revise the budget of executive branch agencies, but may not revise those of the judicial branch, which

[897] http://www.kslegislature.org/li/b2017_18/committees/ctte_leg_budget_1/documents/testimony/20171005_09.pdf, accessed 6/6/18.
[898] http://www.kslegresearch.org/KLRD-web/Services-to-Legislators.html, accessed 6/12/18.
[899] http://www.kslegresearch.org/KLRD-web/Publications/LegislativeHighlights/2018_highlights_landscape.pdf, accessed 7/4/18.

remain unchanged in the final budget proposal. The LRD then prepares an analysis of the budget, which is presented to the legislature.[900]

The House Appropriations Committee and the Senate Ways and Means Committee are the legislative standing committees to which the governor's budget is referred. These committees refer agency-specific budget items to the pertinent house standing committees and senate subcommittees. Based on committee minutes and archived audio,[901] appropriations committees do pose questions to agency representatives, expecting them to explain their expenditures and justify future appropriations. After such hearings conclude, then the proposed budget is revised based on the recommendations of the standing committees. The revised budget is then submitted to the full house and senate for approval, rejection, or amendment. A simple majority is required for budget approval. If approved, the budget is then submitted to a conference committee for reconciliation. Kansas's governor has line item veto authority over the budget.

Importantly, the State of Kansas Division of the Budget publishes the annual Comparison Report that compares the budget proposed by the governor and what was actually approved by the legislature.[902] For fiscal year 2017-2019, the legislature allocated an average of $263 million more to the budget than the governor recommended, indicating that some review and amendment is happening in this domain. On the other hand, this action partially resulted from the Kansas Supreme Court's decision that the previously enacted K-12 education funding system was unconstitutional (Hancock, 2018), rather than through independent action by the legislature. The legislature on its own initiative, however, battled the state's governor over restrictions on Medicaid funding. Ultimately, the governor vetoed the legislature's restrictions on the debated program (Koranda, 2018).

During the budget battles over K-12 education funding in March 2018, the House K-12 Education Budget Committee met regularly. During its March 5 meeting, the committee listened to a presentation on a Legislative Post Audit by a representative of the American Institutes for Research. On March 6, it received an informational briefing on the impact of investments in early childhood education. On March 7, it listened to briefings from the State Department of Education, and on March 8 considered two bills related to weighting of certain groups of at-risk children when funding public schools. The Kansas Legislative Highlights for 2018,[903] published by the KLRD, lists changes to this weighting formula among the legislative accomplishments for the year.

This appropriations subcommittee continued to meet almost daily (five days per week) throughout the month of March.[904] This might have been a response to an impending showdown between the courts and the state over education funding.

Oversight Through Committees

Most standing committees seem to engage in fairly limited oversight. While a decent amount of legislation is passed through both house and senate standing committees, our review

[900] http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2017_briefing_book.pdf, accessed 6/14/18.
[901] http://sg001-harmony.sliq.net/00287/Harmony/en/View/Calendar/20180430/-1, accessed 6/14/18.
[902] https://budget.kansas.gov/comparison-reports/, accessed 6/14/18.
[903] http://www.kslegresearch.org/KLRD-web/Publications/LegislativeHighlights/2018_highlights_landscape.pdf, accessed 7/4/18.
[904] http://sg001-harmony.sliq.net/00287/Harmony/en/View/Calendar/20180402/-1, accessed 7/4/18.

indicates that not much of it is oversight-related. According to an interviewee, standing committees will sometimes "question an agency harshly. This public haranguing seems to have some value. One example was [an] audit of the Sexual Predator Treatment Program, which found significant legal, financial, and operational problems. "LPAC was very aggressive with them during the report's presentation" (interview notes, 2018). However, there is no indication that any legislation or other actions emerged from these hearings. Other times, members of standing committees will work more discreetly. For example, one legislator who was very interested in the state's foster care problems held "a number of private conversations with Department of Children and Families regarding [the auditor's] findings and what was being done" (interview notes, 2018). However, no oversight-related legislation emerged from these meetings.

Substantive legislative oversight by standing committees takes place in certain instances. In 2017, for example, the LPA audited the privatized (nonprofit) state foster care system. The performance audit was "ordered following two deaths in 2014 of children who were in the foster care system." In 2015 the LPAC voted along party lines against ordering an audit of the Department of Children and Families (DCF), but did wait list the audit request (Hancock, 2015). So the audit was not completed until 2017. The report read that "the state's system of oversight needs improvement," particularly in the realm of the ability to "compile, maintain, and better use data to make decisions about the children in the foster care system" (Hancock, 2017). Yet it was not until 2018 that Kansas legislators took action to legislate changes in the transparency in reporting deaths that occur while children are in the foster care (Bauer, Thomas and Woodall, 2018). So, although it appears that the Kansas legislature does use audit information, it does not appear in this instance to have done so with a sense of urgency even though children's lives are involved.

In 2017, full and limited-scope performance audits were also performed on the state's K-12 education system, casinos, the KDOC, and certain minority-serving liaison offices within the Office of the Governor (among other things). In each case, the reports noted agency responses to the issues identified in the audits.

Oversight Through the Administrative Rules Process

All proposed rules must be filed with the Kansas Secretary of State. The legality of proposed rules is reviewed by the attorney general. The rule is then considered by the Joint Committee on Administrative Rules and Regulations (JCARR). Since 1988, the JCARR has been charged with reviewing all proposed rules and regulations (KSA 2016 Supp. 77-436). The committee then holds a public hearing and expresses its recommendations to the proposing agency within a statutory 60-day comment period. The committee then forwards its comments and recommendations to the appropriate agency. Although the JCARR's comments on these rules have no more formal weight than any other public comment, the committee has been effective in leveraging its comments into agency responsiveness (Schwartz, 2010). Comments often pertain to issues of authority, clarity, fees, and costs, program concerns, and, in some cases, commendations for work carried out by the relevant agencies.[905] If an agency chooses not to follow the recommendations made, the committee may file a bill with the whole legislature to

[905] http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2016CommitteeReports/jcarr'16-'17-cr.pdf, accessed 6/14/18.

require that their recommendations be implemented.[906] As noted below, the JCARR actively utilizes this ability.

The committee conducted 17 meetings during the 2017-18 legislative session. Some of these meetings included testimony from representatives of agencies proposing new regulations, totaling up to 46 rules, regulations or fees across the 17 meetings. Formal comment, sometimes critical of proposed rules, was offered fairly frequently. An interviewee confirmed that the JCARR does not have the power to block the adoption of any rules, and such action must be taken by the whole legislature. In some cases, legislation was enacted that contained "provisions authorizing, requiring, moving, or clarifying authority for rules and regulations."[907] Existing rules may also be "amended, revived or revoked as provided by law" (KSA 77-426). According to the KLRD annual report on the JCARR, 26 of the 104 bills enacted by Kansas's legislature in 2017 include changes that would affect these rules and regulations. Additionally, of the 46 rules and regulations that the JCARR considered in 2017, three were withdrawn and four were not published in the Kansas Register by July 1, 2017, the cutoff for this KLRD report.[908]

On June 7, 2018, the Kansas legislature passed HB 2280,[909] which requires all proposed regulations to be reviewed and approved by the Director of the Budget and required an expanded economic impact analysis. Previously, the law required only a "brief description" of economic impacts. The purpose, according to an interviewee, is to ensure that all proposed regulations are financially "good for Kansas" (interview notes, 2018). The same source indicated that this bill was passed very swiftly and quietly, and both the JCARR and the secretary of state were taken by surprise. It remains unclear whether these changes affect the work previously performed by the JCARR.

Oversight Through Advice and Consent

The governor of Kansas, assisted by the Office of Appointments, is responsible for appointing individuals to serve on boards and commissions. The governor appoints 54 agency directors, board members, and commissioners subject to confirmation by a majority vote in the senate, pending approval by the Senate Confirmation Oversight Committee.[910] Partisan representation on this committee is proportional to that of the entire senate. Applicants submit documents to the Office of Appointments for review and are then subjected to a phone interview with the Director of the Office of Appointments. Pending the results of a background check, the applicant is then subject to senatorial confirmation.[911] Among other things, a questionnaire used by the Senate Confirmation Oversight Committee contains basic questions about educational and employment background, relevant experience, professional licenses, the applicant's reason as to why they would be a good fit for the position, and their understanding of the purpose of the

[906] http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2017_briefing_book.pdf, accessed 6/14/18.
[907] http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2016CommitteeReports/jcarr'16-'17-cr.pdf, accessed 6/14/18.
[908] http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2016CommitteeReports/jcarr'16-'17-cr.pdf, accessed 7/4/18.
[909] https://legiscan.com/KS/bill/HB2280/2017, accessed 6/14/18.
[910] http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2017_briefing_book.pdf, accessed 6/14/18.
[911] https://governor.kansas.gov/serving-kansans/office-of-appointments/faqs-for-appointment-process/, accessed 6/13/18.

position to which they are applying.[912] Supreme Court justices are chosen by the governor from a list compiled by the Supreme Court Nominating Commission. Court of appeals judges are nominated by the governor and subject to confirmation by the senate.[913]

The governor may issue executive orders "when empowered to do so by the legislature." These orders "do not have the force of law and may only be issued when related directly to the governor's duties."[914] Generally speaking, however, executive orders are not common in Kansas, and most appear to be related to disasters like drought and wildfires or to the creation and reorganization of agencies.[915]

According to the state constitution, the governor may reorganize executive agencies by issuing an "executive reorganization order" (ERO), which is distinct from other executive orders. EROs may be issued "for the purpose of transferring, abolishing, consolidating or coordinating part or all of a state agency or its functions within the executive branch."[916] EROs also have the force of law unless either chamber of the legislature invalidates it by passing "a resolution disapproving such executive reorganization order" within 60 days.[917] Several agencies, including the former Kansas Department on Aging, the Disability and Behavioral Health Services Division, and the Department of Administration, have been reorganized in recent years; the legislature does not appear to have intervened (KDOA, 2015; KHI, 2012).

Oversight Through Monitoring of State Contracts

State contracts are administered by the Office of Procurements and Contracts, which is a division of the Department of Administration. The office's secretary is a gubernatorial appointment subject to senatorial confirmation. At least once per year the Director of Purchases must prepare a "detailed report . . . of all contracts over $5,000" and submit it to the Legislative Coordinating Council (LCC), the Chairpersons of the Senate Ways and Means and the House Appropriations Committees (KSA 75-3739). The director must also supply a similar report detailing all instances in which the competitive bidding process was waived.

Oversight Through Automatic Mechanisms

Kansas does not have automatic sunrise or sunset processes. Sunset provisions on specific laws or entities, do, however, exist. The Kansas Lottery, for example, has historically been subject to periodic renewal by the legislature. Over the years, there has been some pressure to repeal the sunset requirement (Rothschild, 2006), on the grounds that sunsetting is costing the state money since it requires the lottery to renegotiate with vendors. During the 2017-2018

[912] http://www.kslegislature.org/li_2016/b2015_16/committees/misc/ctte_s_cnfrm_ovst_1_20150504_02_other.pdf, accessed 6/13/18.
[913]http://web.archive.org/web/20141002190406/http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=KS, accessed 9/26/18.
[914] http://www.civics.ks.gov/kansas/executive/governor.html, accessed 6/6/18.
[915] https://kslib.info/Archive.aspx?AMID=41, accessed 6/12/18.
[916] http://www.civics.ks.gov/kansas/executive/governor.html, accessed 6/6/18.
[917] https://kslib.info/827/Article-1-Executive, accessed 6/12/18.

legislative session, a bill was introduced to abolish the sunset provisions (SB 168). That bill, however, died in committee and the legislature subsequently ended its session.[918]

Methods and Limitations

In Kansas, a total of three people were interviewed. The legislature's website provides livestreams of house and senate proceedings, but there is a lack of archival recordings of committee hearings. Minutes and agendas for committee meetings are available online, but some of these are cryptic. It is, therefore, difficult to determine how well the Kansas legislature uses its oversight tools.

[918] http://www.kslegislature.org/li/b2017_18/measures/sb168/, accessed 6/6/18.

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Legislative Oversight in Kentucky

Capacity and Usage Assessment

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

Summary Assessment

Kentucky's governor has historically wielded substantial authority, while the legislature has had limited ability to exercise oversight. While the studies conducted by the state's analytic bureaucracy do seem to result in some action by the legislature, such reports are limited in number. Particularly in the domains of advice and consent and monitoring of state contracts, the instruments of oversight seem limited.

Major Strengths

Legislators on the appropriations committee appear knowledgeable and capable of asking questions of state agency officials. The Legislative Research Committee (LRC) appears to be an especially active analytic bureaucracy attached to a legislative committee. It is instrumental in conducting oversight, and all interim committees operate under the umbrella of the LRC. This means that oversight activities can be coordinated.

Challenges

We found little evidence that reports from analytic bureaucracies are used during the appropriations process. There is evidence that the administrative rules review process has, in the past, facilitated the interest of the private sector rather than preserving the public welfare.

Relevant Institutional Characteristics

The National Conference of State Legislatures (2017) classifies Kentucky's Legislature as a hybrid, since the job of legislator takes more than two-thirds of the time of a full-time job,

but the pay typically requires a second job. Compensation is set at $188.22 per calendar day. When the legislature is in session, there is a daily per diem of $135.30, which is 110% the federal rate.[919] Kentucky's legislature ranks 36 out of 50 in terms of professionalism (Squire, 2017). The legislature has 468 staff members, 375 of which are permanent (NCSL 2015).[920] There are no limits on the number of terms, consecutive or otherwise, a legislator may hold. Kentucky's legislature is in session for 30 legislative days in odd years and 60 legislative days in even years.[921]

Kentucky grants extensive institutional prerogatives to its governor, ranked second in the country in gubernatorial power (Ferguson, 2015). Kentucky's governor has a budgetary line item veto and can use a pocket veto to avoid justifying use of the legislative veto. On the other hand, gubernatorial vetoes can be overridden by a simple majority vote, making Kentucky one of only six states with such a low bar for the legislature to rein in the governor's challenge to its prerogatives. In addition to being "the source of significant legislative proposals," Kentucky's governor "continues to call special sessions…and submits budgets that generally serve as the starting point for legislative actions" (Haider-Markel, 2009). Furthermore, 12.7% of Kentucky's workforce is employed in state or local government, making it one of the larger bureaucracies relative to its workforce (Edwards, 2006).

Political Context

For most of Kentucky's history, the state's legislature, the General Assembly, was solidly under the control of the Democratic Party (Haider-Markel, 2009). Democratic dominance in Kentucky gave way in 2000 to a long period of split control that lasted until 2017, when Republicans took control of the General Assembly. Democrats have retained control of the governorship, except between 2003 to 2007 and since the 2015 election of Republican Matt Bevins.[922] Democrats, led by Attorney General Steve Beshear, are not accepting Republican dominance without a fight, as demonstrated by repeated lawsuits by AG Beshear against Governor Bevins.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Kentucky has both an elected Auditor and a separate legislative support agency that conduct reviews and audits with the support of professional staffs. First, Kentucky has an Auditor of Public Accounts, a constitutionally elected partisan position. Elections for the position occur in gubernatorial election years, increasing the likelihood that the Auditor General and the

[919] http://www.ncsl.org/research/about-state-legislatures/2011-ncsl-legislator-compensation-table.aspx, accessed 7/4/18.
[920] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 7/4/18.
[921] http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx, accessed 7/4/18.
[922] https://www.nga.org/cms/home/governors/past-governors-bios/page_kentucky.html/, accessed 7/4/18.

Governor share political party affiliation. The mission of the office includes both financial audits and performance audits.

The Auditor's office contains four divisions, two of which are directly involved in auditing. The first of these, the Office of Financial Audits, conducts audits of "state agencies, fiscal courts, sheriff's, county and circuit clerks, special districts, education cooperatives and other entities that manage public funds." The second is the Office of Technology and Special Audits, which itself consists of two branches: Information Technology Audit and Support and Performance and Examination Audits. The former largely supports the Statewide Single Audit and the Comprehensive Annual Financial Review, whereas the latter conducts performance audits "to determine the effectiveness and efficiency of state programs and examinations to identify fraud, waste, or abuse of public funds."[923] These types of audits can be requested by the Auditor of Public Accounts, the legislature, the governor, other constitutional officers, or the public.[924] We found that four performance audits were conducted in 2018, using a generous definition of state agency performance audits that included the Kentucky Firefighters Commission as a state agency.

Local government financial audits occur fairly frequently, and are advertised on the Auditor's Twitter feed (@KyAuditorHarmon). More extensive "special examinations," are conducted by the auditor's office to examine allegations of suspected fraud, waste, or abuse and performance reviews. These reports are produced infrequently, however. In 2017, there were four reports issued on different cities and a horse park in Kentucky, and one audit of the Louisville Arena Authority. In 2016, there were four special examinations, two of cities, one of the Department of Criminal Justice Training and Kentucky Law Enforcement Foundation Program Fund, and one of the Buffalo Fire Department.[925] The Auditor also uses the Twitter feed to actively engage with legislators to advocate legislation, such as Senate Bill 91 (2018), which would mandate annual financial audits for Kentucky municipalities.

Second, Kentucky has the Legislative Research Commission (LRC), a hybrid of an analytic support agency and a legislative committee that is described as a "fact-finding and service body for the legislature." [926] The LRC consists of 16 legislators: 7 from each of the two legislative chambers plus the Senate President and the Speaker of the House, who serve as co-chairs. The LRC "[i]s administered by a full-time LRC director who presides over a highly-trained staff of researchers, fiscal analysts, attorneys, computer operators, librarians, secretaries and others who provide expert services to the legislators."[927] Neither the director nor any staff is a legislator. Among its duties, the LRC "provides committee staffing, bill drafting, oversight of the state budget and educational reform, production of educational materials, maintenance of a reference library and Internet site, and the preparation and printing of research reports, informational bulletins and a legislative newspaper."[928]

The LRC was created in 1948, but was originally dominated by the governor, who appointed its leadership team. In the late 1970s, the legislature was granted authority over the LRC through a citizen initiative. This was an instrumental step in the development of Kentucky's

[923] https://auditor.ky.gov/about/Pages/Orginazation.aspx, accessed 7/4/18.
[924] https://auditor.ky.gov/about/Pages/Orginazation.aspx, accessed 7/4/18.
[925] https://auditor.ky.gov/auditreports/Pages/SpecialInvestigationsPerformance.aspx, accessed 7/4/18.
[926] http://www.lrc.ky.gov/lrc/aboutlrc.htm, accessed 7/4/18.
[927] http://www.lrc.ky.gov/lrc/aboutlrc.htm, accessed 7/4/18.
[928] http://www.lrc.ky.gov/lrc/aboutlrc.htm, accessed 7/4/18.

legislature from a "rubber stamp" for the governor into an independent locus of power within Kentucky's government.

Consequently, it appears that the LRC frequently plays an important role in discussing and raising issues pertaining to oversight. Due to its short legislative sessions, Kentucky is among the states that rely on interim committees to monitor budgets and to "study issues, draft and approve bills for prefiling for the next regular [legislative] session." In Kentucky all interim committees are subcommittees of the LRC. We discuss below the extent to which its reports lead to legislative oversight activities.

Oversight Through the Appropriations Process

Kentucky's governor still holds extensive power over budgetary matters, although not as much as in previous decades (Haider-Markel 2009). The governor initiates the budget process by proposing a budget without input from the legislature. Budgets are biannual, and once the governor has submitted a budget to the legislature it must be passed, as adapted, in the House and Appropriations and Revenue Committee before being voted on in the full chamber. It then proceeds to the Senate, where it undergoes the same process. The governor has line-item veto power over any budget passed by the General Assembly, but the veto can be overridden by a majority vote in both chambers of the legislature.[929]

Both the House and Senate Appropriations and Revenue Committees share largely the same staff, with the Senate employing 5 people, including a Committee Staff Administrator and a Committee Assistant, and the House employing one additional person. Throughout the budget-making process, the LRC with its staff of more than 400 "produces legislative information documents for each agency budget hearing, which compares Branch Recommendations for a budget unit with the Agency Request for the Operating Budget." According to its website, "The LRC has established a budget review office, with professional fiscal analysts and support staff, to assist LRC, the appropriations committees, and budget review subcommittees in performing their duties and functions throughout Kentucky's budget process and to provide an independent source of budget information for members." The Interim Joint Committee on Appropriations and Revenue, which is housed under the umbrella of the LRC, must be informed of adjustments to the budget during the lengthy periods when the legislature is not in session. Although the Joint Committee may not act as the legislature, its approval is required for any budget adjustments. If the Joint Committee does not approve of these adjustments, then the executive branch actors making the request must revise the request to comply with the committee's input.

Legislative budgets sometimes differ substantially from those proposed by the governor. In 2018, for example, Governor Bevin's budget "proposed the elimination of 70 programs, stripping funding from Kentucky Mesonet, the state's poison control center, and the Robinson Scholars Program for first-generation students from eastern Kentucky attending college at the University of Kentucky".[930] Both the House and the Senate proposed substantial changes to the governor's budget, attempting to reverse cuts recommended by the governor while

[929] https://transparency.ky.gov/transparency/Pages/How-the-Budget-is-Made.aspx, accessed 7/4/18.
[930] http://www.wkyt.com/content/news/House-GOP-budget-plan-reverses-many-major-cuts-475490473.html, accessed 7/4/18.

simultaneously avoiding tax increases.[931] [932] [933] However, media reports note that the House and Senate proposals differed substantially.[934]

In previous years, budget disputes between the House and the Senate have meant that there have been times when the legislature has failed to pass a budget. In both 2002 and 2004, the House and Senate were unable to agree on a budget, leaving the governor free to "use[s] his own spending plan until lawmakers passed a budget in 2003" (Haider-Markel, 2009). A similar crisis was avoided in 2016, when a budget was passed with two hours left in the legislative session. However, the budget was still subject to a gubernatorial line-item veto, so with the legislative session ending there was no opportunity for the general assembly to exercise its power to override any vetoes.[935] The state's contentious budget-making process has at times meant that budgets are not passed, or are passed at the last moment, with the result that power over spending has been conceded to the governor, albeit temporarily.

It would therefore appear that some oversight through the appropriations process does occur in Kentucky. The Interim Joint Committee appears to be an attempt to maintain legislative involvement in the budget even when the chamber is not in session, which is the vast majority of the time. Although several House Appropriations and Revenue Committee meetings consisted entirely of hearings on legislation, the meeting held on January 9th, 2018[936] included a presentation by the Kentucky Department of Education on a new facilities project assessment system. Following a detailed presentation by department, legislators asked multiple questions about the proposed system. In general, the plan decentralized authority for facilities projects to the district level. Legislators wanted to know how consistency across districts would be maintained. They expressed concerns about student safety. The questions demonstrated knowledge of school facilities and problems such as asbestos.

Oversight Through Committees

Most standing committees hold regular hearings. The minutes of these meetings are available on the general assembly's website. A sample of minutes indicates that committee members often take testimony from agency heads, auditors, and others. In some cases, legislators expressed disappointment that individuals like the Secretary of State did not attend, because they had questions that they wanted him to answer.[937]

Interim committees, as noted earlier, are part of the LRC. They provide information on their work that is published monthly by the LRC in a newsletter format called the Interim Record, which are available online. Looking at past Interim Record newsletters reveals that interim committees actively conduct hearings on the performance of state programs.

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[931] https://www.courier-journal.com/story/news/politics/2018/03/01/kentucky-house-millions-employees-health-plan-budget/384431002/, accessed 7/4/18.
[932] https://www.courier-journal.com/story/news/politics/2018/03/20/kentucky-senate-budget-committee-state-spending-plan-proposal/438999002/, accessed 7/4/18.
[933] https://www.courier-journal.com/story/news/politics/2018/02/28/6-takeaways-kentucky-house-budget-matt-bevin-proposal/373417002/, accessed 7/4/18.
[934] https://www.courier-journal.com/story/news/politics/2018/03/20/kentucky-senate-2018-20-state-budget-proposal-takeaways/441196002/, accessed 7/4/18.
[935] http://www.kentucky.com/news/politics-government/article72123697.html, accessed 7/4/18.
[936] https://www.ket.org/legislature/?archive&program=WGAOS&epoch=2018&nola=WGAOS+019012, accessed 1/24/19.
[937] http://www.lrc.ky.gov/minutes/st_gov/171129OK.HTM, accessed 7/4/18

The September 2018 issue described committee hearings on inmate reform and on protections for vulnerable populations. Both articles referred to legislation that had been passed to address these problems. This is a newsletter with information that Kentucky citizens might want to consult rather than transcripts of the hearings. The topics covered suggest that interim committee focus their attention on oversight of public programs, however.

Kentucky has a Program Review and Investigations Committee (PRIC). Created in 1978, the PRIC is a 16-member statutory committee "empowered to review the operations of state agencies and programs, to determine whether funds are being spent for the purposes for which they were appropriated, to evaluate the efficiency of program operations, and to evaluate the impact of state government reorganizations".[938] Its members in 2019 consist of 12 Republicans and 4 Democrats. In discharging its duties, PRIC has the power to subpoena and examine witnesses and to compel the production of any documents it might need (Kentucky Revised Statutes, Title 2 Section 6.920).[939] The committee has 12 employees, including a Committee Staff Administrator and a Committee Assistant.

The PRIC website provides access to exceptionally complete minutes for the nine meetings the committee held in 2017. The two initial meetings of that year appear to provide a forum for legislators on the committee to propose new study topics. PRIC staff attends the meetings along with the legislators and various "guests," which include parties involved in performance reports being reviewed. Most of the guests are state agency directors or other top administrators within government. But there were occasional experts, such as university faculty. Most of the reports reviewed during PRIC meetings are produced by PRIC staff, but University of Kentucky students also produced a report on animal shelters. The committee spent a large portion of one meeting working through the content of this report, but it does not appear that this led to tangible action. The minutes simply reflect the judgment of the committee's legislators that local enforcement of state laws is ineffective.[940]

For example, the PRIC produced a report in 2015 on the Local Defined-Benefit Pension Plans in Kentucky. [941] It was presented to the Public Pension Oversight Board (LRC Report Number 411). This report looks at the vestiges of an older system in which local governments setup their own pensions, an approach which was stopped by statute in 1988. The report analyzes the remaining liability and the degree to which they are funded and warns that statutes governing such pensions are no longer sufficient. The report recommended that the legislature revise statutes governing such plans, allowing them to be more easily repealed. PRIC conducts studies as directed by a joint resolution of the general assembly. When the Assembly is not in session, studies are conducted by the LRC.

There is evidence that studies conducted by the PRIC have provided the impetus for legislative action. For example, one study from 2012 concluded that it was impossible to determine exactly how many boards, commissions, and task forces, or their exact cost, were actually operating in Kentucky.[942] The report was able to identify 571 such entities, double the number found in most other states. The report also noted that "[t]here are no objective standards for determining the appropriate number and responsibilities of boards, commissions, and similar

[938] http://www.lrc.ky.gov/committee/statutory/Prog%20Rev/home.htm, accessed 7/4/18.
[939] https://www.lawserver.com/law/state/kentucky/ky-statutes/kentucky_statutes_6-920, accessed 7/4/18.
[940] http://www.lrc.ky.gov/minutes/prog_rev/171109OK.HTM, accessed 7/4/18.
[941] http://www.lrc.ky.gov/lrcpubs/RR411.pdf, accessed7/4/18.
[942] http://www.lrc.ky.gov/lrcpubs/RR394.pdf, accessed 7/4/18.

entities. As with the decisions to create them, deciding which ones to eliminate, consolidate, revise, or continue is a policy decision for the General Assembly".[943] The report made a number of recommendations, including creating lists of inactive entities for legislative review, new processes for the legislature to identify entities with overlapping responsibilities, and for the implementation of more robust sunset rules.[944] These findings ultimately bore fruit and prompted gubernatorial efforts to "reduce red tape," along with legislative measures in the form of board consolidation, sunset provisions, and legislation intended to reduce the number of such entities to under 400.[945]

Minutes for PRIC meetings, as well as the results of the committee's investigations, are available online. The reports sometimes gain traction in the media. For example, a PRIC "staff report" called "Kentucky's Foster Care System", found that state funding for social work is inadequate, and noted other issues in the system, including long review times, growing number of children in the foster care system, and a lack of reliable data on the system. Although the report was not published officially, due to loss of quorum, it was nonetheless discussed widely in the media.[946][947] Furthermore, during the 2018 legislative session, the general assembly took steps to address the problems noted in the report.[948]

Oversight Through the Administrative Rules Process

All proposed rules are sent to the LRC, after which there is a public hearing and comment period held between the 21st day and the last day of the month. After the end of the public comment period, the rule is considered by the LRC Administrative Regulation Review Subcommittee. This subcommittee consists of 8 legislators, four from each chamber with co-chairs each representing one legislative chamber each. Minutes from these hearings indicate that committee members occasionally ask questions or hear testimony about the necessity of, or outcomes resulting from, the implementation of particular rules. The committee's determinations, however, are nonbinding (KRS 13A.030). Findings are reported to the LRC, at which point the rule is assigned to the second committee for review. The second committee is a House or Senate committee that specializes in the appropriate subject area.

A rule can be found deficient by either review committee. If a rule is found to be deficient, it is "attached" and sent to the governor, who then decides whether it will go into effect, whether it requires amendment by the agency, or whether it should be withdrawn (Administrative Regulation Promulgation Process; KRS 13A.330).[949] If not "attached," the rule is adopted "as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first" (Administrative Register of Kentucky, 2018).[950] The finding of deficiency occurs rarely and even when it occurs the finding is non-binding to the

[943] http://www.lrc.ky.gov/lrcpubs/RR394.pdf, accessed 7/4/18.
[944] http://www.lrc.ky.gov/lrcpubs/RR394.pdf, accessed 7/4/18.
[945] http://kentuckytoday.com/stories/bevin,7061, accessed 7/4/18.
[946] http://www.kentuckynewera.com/ep/news/article_9677b97c-c9ae-11e7-86f5-0700666a839a.html, accessed 7/4/18.
[947] https://www.courier-journal.com/story/news/politics/2017/12/12/kentucky-budget-child-protection-services/941531001/, accessed 7/4/18.
[948] http://www.kentucky.com/news/politics-government/article201638604.html, accessed 7/4/18.
[949] http://water.ky.gov/Documents/Regulations/RegulationPromulgationProcess.pdf, accessed 7/4/18.
[950] http://www.lrc.ky.gov/kar/contents/registers/44Ky_R_2017-18/09_March.pdf, accessed 7/4/18.

governor (interview notes, 2/8/19). This process, however, has not been utilized in several years, with people familiar with the process unable to recall the last time a finding of deficiency was issued (interview notes, 2/8/19). While this suggests that the legislature is not engaged in active oversight of administrative rules through the official committee process, the legislature is active in addressing major concerns with proposed rules prior to the rule reaching the committee review stage (interview notes, 2/8/19). In a normal session the Administrative Regulation Review Committee may review between 600 to 800 rules and since the committee only meets once a month, hearings are not an efficient forum to work out issues with the proposed rules (interview notes, 2/8/19). This informal process demonstrates, that despite not having a formal legislative mechanism to stop or impede a proposed rule, the legislature often works with agencies, the governor, and affected interests to make the new rule palatable to all parties. Additionally, one informal check on more controversial rules is the committee's ability to simply defer reviewing the regulation until the next scheduled meeting (interview notes, 2/8/19). This informal norm is usually respected by all parties and rarely are there institutional political battles over rules (interview notes, 2/8/19).

Thus, it appears that the legislature provides advice on administrative rules, but the executive branch can ignore that input. Schwartz (2010) reports that legislative review of rules in Kentucky historically resulted in lots of "wins" for business interests. So it is not clear that the administrative rule review process is as neutral as one might hope. Furthermore, in conversations with people familiar with the rules process, it is possible for individual citizens, or more likely prominent interests to suggest rules to the governor or petition his office regarding a proposed agency rule (Interview notes, 2/8/19). The governor's office has an online business portal[951] that provides guidance to businesses on the rules process and how to become involved. Also, Kentucky has a massive email list which can notify concerned parties about proposed rules that may have a direct impact on them (interview notes, 2/8/19). The RegWatch program is free and allows anyone to receive notification of rule changes or proposals that are tailored to their specific area of interest.[952]

Additionally, the Administrative Regulation Review Subcommittee also has the power to review existing rules, and to recommend their amendment or repeal if necessary. Regulations with effective dates on or after July 1, 2012 expire 7 years after its last effective date; otherwise, they expire on July 1, 2019 (KRS 12A.3102). If an administrative body wishes to prevent a regulation from expiring, it must submit a formal request to the LRC (KRS 12A.3104).

Oversight Through Advice and Consent

Kentucky's governor has wide powers to appoint members of boards and commissions. In most cases, legislative approval is not required. However, specific statutes may require confirmation by the General Assembly for particular positions (KRS 11.160). Kentucky's nine-member Parole Board, for example, is appointed by the Governor but subject to approval by the Senate (KRS 439.320). Similarly, appointments to the Kentucky Board of Education must be confirmed by both the Senate and the House of Representatives. Even though the legislature

[951] https://onestop.ky.gov/operate/Pages/regulations.asp, accessed 2/8/19
[952] https://secure.kentucky.gov/Regwatch/, accessed 2/8/19

could block some of these gubernatorial appointments, it does not appear that this happens very often.

The governor has the power to reorganize agencies through executive orders. However, for this to take permanent effect, it must be translated into legislation by the general assembly by the end of the next legislative session (KRS 12.028). If that does not occur, the agency "is required to revert back to the last enacted organizational structure".[953] The governor also has the power to reorganize agencies when the legislature is not in session, and he has used this power "at least a dozen times to abolish and replace state boards and commissions", earning the ire even of fellow Republicans in the legislature.[954] In 2017, one Republican member of the House claimed that many legislators "believe Gov. Matt Bevin's use of executive orders threatens their independence".[955] Those remarks came in the wake of an order that abolished several education boards and reorganized several others, a move that provoked Kentucky's Attorney General to threaten a lawsuit.[956] Previously, the "members and duties of those boards had…been set by the legislature".[957]

The governor's use of executive orders has therefore become controversial in Kentucky in recent years. Currently, the legislature does not have much oversight power pertaining to executive orders. However, a bill adopted by the Senate in March of 2018 would give the general assembly more authority by delaying their implementation for 35 days after being filed with the Secretary of State to allow for review by the legislature.[958] The legislature would then have the power to draft legislation declaring objectionable executive orders void or to amend them. It would also force the Governor to create a list of all executive orders currently in effect and to identify those that needed to remain in effect; others would be revoked or cease as of October 1, 2018 (SB 200, 2018). According to the bill's sponsor, "the bill helps address a long-standing practice when governors issue executive orders after the legislature has completed a session".[959]

Oversight Through Monitoring of State Contracts

According to KRS 45A, Kentucky has a bipartisan Government Contract Review Committee. The committee reviews "[a]ll proposed personal service contracts, tax incentive agreements, and memoranda of agreement" and evaluates whether such contracts are necessary, could be performed instead by state personnel, and whether the amount of the contract is appropriate. Per KRS 45A.705, if the committee disapproves of the contract, it attaches "a written notation of the reasons for its disapproval or objection…to the secretary of the Finance and Administration Cabinet", whereupon a determination is made to amend the contract, cancel

[953] https://hr.personnel.ky.gov/Documents/Reorg-Process.pdf, accessed 7/4/18.
[954] https://www.courier-journal.com/story/news/politics/2017/06/12/rep-john-carney-gov-bevins-executive-orders-concern-gop-lawmakers-kentucky/390928001/, accessed 7/4/18.
[955] https://www.courier-journal.com/story/news/politics/2017/06/12/rep-john-carney-gov-bevins-executive-orders-concern-gop-lawmakers-kentucky/390928001/, accessed 7/4/18.
[956] https://www.usnews.com/news/best-states/kentucky/articles/2017-06-16/bevin-alters-executive-order-as-lawsuit-threat-looms, accessed 7/4/18.
[957] https://www.courier-journal.com/story/news/politics/2017/06/12/rep-john-carney-gov-bevins-executive-orders-concern-gop-lawmakers-kentucky/390928001/, accessed 7/4/18.
[958] http://weku.fm/post/kentucky-senate-weighs-gubernatorial-executive-orders, accessed 7/4/18.
[959] http://weku.fm/post/kentucky-senate-weighs-gubernatorial-executive-orders, accessed 7/4/18.

it, or make no changes.[960] Whatever decision is made, the Secretary of the Finance and Administration Cabinet must notify the Government Contract Review Committee, but beyond establishing reporting procedures the committee has no power to halt the adoption of a contract of which it disapproves. The committee's "purely advisory" nature has come under some criticism from the press, who see Kentucky's weak contract review process as contributing to "tens of millions of wasted tax dollars every year".[961]

The independently elected Auditor of Public Accounts also appears to have responsibility for investigating waste, fraud, and abuse of public funds. The auditor responds to requests from legislators to investigate contracts, as demonstrated by an investigation of a $12 million contract with ARAMARK in which it concluded that the Corrections Department was not monitoring ARAMARK's performance adequately. [962] A decision by a House committee to cancel the Aramark Correctional Services contract with a prison in which a riot occurred may have triggered the audit, but there are also media reports that indicate a legislator requested the report in response to a complaint from constituents about the prison food. The legislature received a report about the prison riot in November 2009, but was not aware that it was not the full report. It finally received a redacted report in response to repeated requests from the House Judiciary Committee.

This type of audit report initiates a response from the state agency directly to the auditors. The audit report, posted on the Auditor of Public Accounts webpage, includes the auditor's findings and the agency responses. The report with the Department of Corrections responses was sent to the legislature to, in the words of the cover letter on the report, "assist the Kentucky General Assembly and the Department of Corrections in improving procedures and internal controls."[963] But news reports indicate that the Corrections Department determined that Aramark was not in violation of the contract and, despite protests from State Representative Brent Yonts, was renewing the contract. And the difficulty the legislature had in getting access to the information indicates that the legislature does not easily learn of information it needs to oversee public funds and programs.

Oversight Through Automatic Mechanisms

Kentucky has no comprehensive sunset process that would require "all statutory agencies to undergo sunset review on a preset schedule." Instead, the state has a regulatory review process that "requires only licensing and regulatory boards to undergo sunset reviews, and a selective review state reviews select agencies and regulatory boards" (Baugus & Bose, 2015). In Kentucky, this duty falls to the Administrative Regulation Review Subcommittee of the LRC.

[960] http://www.lrc.ky.gov/statutes/statute.aspx?id=22470, accessed 7/4/18.
[961] https://www.courier-journal.com/story/opinion/columnists/bob-heleringer/2017/07/24/slay-bloated-personal-service-contracts-bob-heleringer/506266001/, accessed 7/4/18.
[962] http://apps.auditor.ky.gov/Public/Audit_Reports/Archive/2010ARAMARKreport.pdf, accessed 7/4/18.
[963] http://apps.auditor.ky.gov/Public/Audit_Reports/Archive/2010ARAMARKreport.pdf, accessed 7/4/18, p. 6.

Methods and Limitations

Kentucky provides access to archival recordings of legislative committee hearings through the state's public television network. The ability to link the recording to an agenda or minutes does not appear to be a feature of this system. This makes listening to records a hit-or-miss proposition. Fourteen people were contacted, but we were only able to conduct one interview.

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Legislative Oversight in Louisiana

Capacity and Usage Assessment

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

Summary Assessment

Louisiana has good analytic bureaucracies and ample institutional structures to produce outstanding legislative oversight. Legislative appropriation committees are generally active in probing the impact of budget cuts. Although the legislature has more opportunities to monitor contracts than we have found in most other states, the review process does not appear to be used effectively. Administrative rule review powers are exceptionally robust, but it does not appear that the legislature makes effective or consistent use of these powers. There seem to be many commissions and committees that perform oversight that a legislative committee might perform in other states. These entities combine members from the executive branch, the legislature, and sometimes the judicial branch or the private sector. This approach to oversight may reflect the historical reliance on the informal power of the governor in the state (Haider-Markel, 2008)

Major Strengths

Many members of the Joint Legislative Budget Committee demonstrate extensive knowledge of the state agency programs, and they ask focused, precise questions about the impact of various budget scenarios. The Legislative Audit and Advisory Council (LAAC) meets at regular intervals with the Louisiana Legislative Auditor (LLA) to hear presentations on performance audits. LAAC members query both the auditors and the auditees about the findings.

Challenges

LLA is seeing an erosion of capacity after years of budget cuts. Interestingly, we found instances in which the LAAC appeared more skeptical of the auditors and their findings than of the auditees. The LAAC seemed hesitant about challenging the auditees too strongly. An audit report described use of public resources for personal gain by the superintendent of the State Police, and there appear to be serious problems with Medicaid contracts that can be attributed to

lack of oversight. Information from audits of these problems seems to be used by the attorney general and other law enforcement entities to impose consequences rather than by the legislature.

Relevant Institutional Characteristics

The Louisiana legislature consists of 39 senators and 105 representatives.[964] The National Conference of State Legislatures (2017) classifies Louisiana's legislatures as a hybrid—the job takes more than two-thirds the time of a full time job but the pay typically requires a second job. Members of both chambers run for reelection every four years. Starting in 2007, members of the Louisiana house and senate were subject to term limits of three consecutive four-year terms, allowing them to serve continuously only for twelve years in each chamber, provided they are reelected (NCSL, 2015). Compensation consists of a yearly salary of $16,800 plus a yearly $6,000 expense allowance, for a total of $22,800, plus a per diem of $164, and mileage tied to the federal rate. In odd years, the regular legislative session consists of 45 session days to be conducted within a 60 calendar-day period. In even years, there are 60 legislative days within an 85 calendar-day period (NCSL, 2010). Therefore, with the per diem payments, expense stipend, and salary, legislators can expect to make approximately $30,000 in odd-numbered years and $32,600 in even-numbered years. The legislature has 922 staff members, 743 of which of permanent (NCSL, 2015). Based on these and other characteristics of the chambers, Squire (2017) ranks Louisiana's legislature as the 29th most professional in the country.

There are six types of legislative sessions: organizational, emergency, special, regular general, regular fiscal, and a veto session. Regular general sessions last no more than 60 legislature days, occur on even-numbered years, and during these sessions no "new taxes, tax increases, exemptions, exclusions, deductions, credits, rebates, incentives, or abatements may be introduced or enacted."[965] Regular fiscal sessions last no more than 45 legislative days, convene in odd-numbered years, and only fiscal issues may be addressed. During 2017 and 2018, the legislature was in regular fiscal session from April 10, 2017, through June 8, 2017, and in regular general session from March 12, 2018, through May 18, 2018. Special sessions may be called by either the governor or the legislature for a specific reason, (e.g., to address taxation). In 2017, there were two special sessions, both called by the governor.[966] The legislature has the power to call for a special session with the support of a simple majority in each chamber.[967] Organizational sessions are for the election of officers and organization of both houses. Emergency sessions are convened to address emergencies, such as a natural disaster. A veto session is for overriding a gubernatorial veto, although these sessions are extremely rare with the last one occurring in 1979.[968]

Louisiana grants a lower-than-average amount of institutional power to its governorship. Ferguson (2015) ranks its governor as only the 37th most powerful in the country. The

[964] https://ballotpedia.org/Louisiana_State_Legislature, accessed 8/29/18.
[965] https://laddc.org/initiatives/community-living-and-self-determination/quality-assurance/current-initiatives/advocacy-101/government-the-legislative-process/the-legislative-process/, accessed 8/31/18.
[966] https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_9e1fd270-70ea-11e8-8413-b3f0ff118c26.html, accessed 8/29/18.
[967] http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx, accessed 8/29/18.
[968] https://laddc.org/initiatives/community-living-and-self-determination/quality-assurance/current-initiatives/advocacy-101/government-the-legislative-process/the-legislative-process/, accessed 8/31/18.

governor's powers are limited due to a larger than average number of separately elected executive branch officials (e.g., the treasurer, the agriculture commissioners, and the insurance commissioner). The governor may not serve more than two consecutive terms. Haider-Markel (2009) notes that historically, the governor's informal powers surpassed what one might expect from looking at only the institutional powers. He attributes this to Louisiana's weak political parties, oil and natural gas wealth, and to public perception of political titans like Huey Long. But he notes that in recent years all three of these sources of gubernatorial power have eroded.

Louisiana's state and local government employees make up 14.6% of the total employment in the state. This high proportion of state and local workers is exceeded only by Alaska, Wyoming, and Mississippi. Louisiana has a higher-than-average proportion of workers in four major sectors of state and local government activity: education, safety, welfare and services, but its proportion of workers in education (7.5%) is much higher (nearly 1.5%) than the national average of 6.1%. The state has 2.2% of its citizens employed in public safety compared to national rates of 1.7%, 2.4% in welfare compared to 1.5% nationally, and 1.6% in general services compared to 1.3% nationally (Edwards, 2006).

Political Context

Over the last 50 years, Louisiana had a Democratically controlled legislature until 2012, when Republicans won majorities in both chambers (NCSL, 2017). Although Democrats often controlled the executive branch as well, starting in the mid-1990s the party affiliation of the state's governor alternated regularly between the two major political parties.[969] Louisiana was a Republican trifecta (control of both houses and governorship by the same party) from 2012 to 2015, when the state elected a Democratic governor.[970] In 2018, the house was comprised of 39 Democrats, 60 Republicans, three Independents, and three vacancies[971] while the senate consisted of 14 Democrats and 25 Republicans.[972] According to Shor and McCarty (2015), Louisiana's legislative chambers are not highly polarized. They rate Louisiana's house as the 45th most polarized in the country, while its senate is the 48th most polarized. This reflects not only Democratic caucuses in both chambers that are barely liberal,[973] but also Republican caucuses that are only moderately conservative.[974]

Overall, political parties are considered weak compared to those found in other states, in part due to the fact that state house and state senate primaries are non-partisan (Haider-Markel, 2009). This weakness combined with the informal power of the governor resulted in the unusual situation in which legislature voluntarily deferred to the governor in their selection of chamber leadership. In 2008, despite Democratic majorities in both chambers, both chambers allowed Republican chamber leaders to preside over Democratic majorities (Haider-Markel, 2009). However, the power is shifting toward the legislature with the decline in the informal power of

[969] https://en.wikipedia.org/wiki/List_of_Governors_of_Louisiana, accessed 11/30/18.
[970] https://ballotpedia.org/Party_control_of_Louisiana_state_government, accessed 8/29/18.
[971] https://ballotpedia.org/Louisiana_House_of_Representatives accessed, 8/29/18.
[972] https://ballotpedia.org/Louisiana_State_Senate, accessed 8/29/18.
[973] Only two states, Arkansas and Oklahoma have Democratic caucuses that are less liberal. This applied to both chambers.
[974] Louisiana's house Republican caucus is only the 32nd most conservative in the country. Its senate Republican caucus is the 34th most conservative.

the governor and the rise of a disciplined Republican caucus and an African American caucus in the legislature (Haider-Markel, 2009). Interest groups are relatively strong compared to the weak parties. In the economic sphere, the strongest interest group is the Louisiana Association of Business and Industry (LABI) and their power is somewhat offset by the Louisiana Association of Trial Lawyers, while on social issues Christian conservative groups are considered a force in the legislature (Haider-Markel, 2009).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Created by the legislature in 1962 by a constitutional amendment, the Louisiana Legislative Auditor (LLA) is the legislature's primary analytic bureaucracy serving as its fiscal advisor and providing "audit services and other useful information."[975] The LLA is appointed by a majority vote of each legislative chamber and may be removed only by a two-thirds vote in each chamber (NASACT, 2015). The legislature has constitutional authority over the work of the LLA (Art. III, Section 11) and relies upon the Legislative Audit Advisory Council (LAAC) to supervise the work of the LLA. LAAC is a joint committee of the Louisiana Legislature that consists of five representatives and five senators. In 2018 six of these legislators were Republicans, and three were Democrats with one vacancy.

The LLA provides the following services: audits of financial statements, the single audit, attestation engagements, compliance only audits, economy and efficiency audits, program audits, sunset review, performance measures, IT audits, and accounting and review services (NASACT 2015). The LLA has 268 staff including 41 support staff. The state appropriation that funds it was $10 million in 2015 (NASACT, 2015). There are several analytic divisions within the LLA, including Actuarial Services, Advisory Services, Financial Audit Services, Investigative Audit Services, Legal Services, Local Government Services, Performance Audit Services, and Recovery Assistance Services.

The Performance Audit Services (PAS) is an LLA subunit with the primary responsibility for performance audits and program evaluations. While PAS has been described as independent, it does operate at the direction of the LAAC just as the full LLA does. PAS has 41 staff (NASACT, 2015) and produced 20 performance audits in 2017.[976] PAS describes the work it does as follows:

> Performance auditors evaluate the economy, efficiency, and effectiveness of state agency programs, functions, and activities and provide that information to legislators and public officials. Under the provisions of the Louisiana Performance Audit Program, performance auditors must conduct at least one performance audit of each of the 20 executive branch departments over a seven-year period. In addition, legislators may request an audit of a particular agency or an audit may be conducted in response to a specific issue or problem. Performance auditors are

[975] https://lla.la.gov/about/history/, accessed 12/1/18.
[976] https://www.lla.la.gov/reports-data/audit/audit-type/index.shtml?key=Performance, accessed 8/15/18.

based in Baton Rouge and have advanced degrees in a variety of backgrounds, including public administration, law, business administration, and other social science fields (PAS).

Although some audits are mandated by law or rule, audits can also be initiated by the legislative auditor (NASACT, 2015). Indeed, most performance audits are initiated at the discretion of the legislative auditor based on what audit staff thinks legislators will be interested in (interview notes, 2018). The LAAC, as part of its supervision of LLA, is responsible for resolving audit findings identified in audit documents.[977] In the event that the LAAC encounters noncompliant auditees, it forwards this information to the Joint Legislative Committee on the Budget and the appropriate oversight committees in each chamber.[978] Despite the importance of the LAAC's duties, the minutes indicate that the committee met only four times in 2017 and averaged four meetings each year over the past decade, having as few as two (2016 and 2012) and as many as seven (2010).[979] Although practitioners report that the LAAC rarely routes audits to specific subject matter committees. Although the LAA sends copies of all audits to all legislators and committees, it is up to the committees whether to hold a hearing (interview notes). It is rare for LLA staff to present an audit to a committee other than the LAAC. Typically, media reports or public outcry motivate committees to hold hearing on an audit (interview notes).

A review of the four 2017 LAAC meeting minutes showed that the average meeting lasted approximately three hours. Committee members engaged in serious discussions on issues of good government, with most of the time spent on performance audit findings. Our sampling and survey of the minutes did not reveal instances of an audit issue being forwarded to the Joint Legislative Committee on the Budget or any other committee. Knowledgeable sources, however, report that this does occasionally occur. Examples of audits that were presented to other committees were an audit of incarceration rates and a sexual harassment audit (interview notes). The LAAC will be discussed further in the section titled *Oversight Through Committees.* Practitioners report that they perceive that the relationship between the auditors and their assigned legislative committee interact more closely in a lot of other states, noting that the LAAC does not "hear all of our reports" (interview notes).

Despite the somewhat limited number of LAAC meetings and LLA budget cuts, LLA audits have gotten traction on a range of issues. Two examples were covered closely by the state media, one audit on corrections and another on public health. In the Corrections Department, an LLA audit determined that the state does not know where 11% of its inmates are housed. This means that the state may be paying sheriffs multiple times for the same inmate at the cost of $24.39 per day per inmate (O'Donoghue, 2017). Moreover, the prisoner tracking system, CAJUN, was not secure with former employees constituting more than one-third (38%) of people with access to the system.[980] This access could have permitted unauthorized individuals to alter the time served by inmates or to make other changes to prisoner data. The Corrections Department Secretary agreed to implement the suggested changes in tracking procedures and immediately purged the system of former employees with access.

[977] https://lla.la.gov/laac/, accessed 8/15/18.
[978] http://jlcb.legis.la.gov/Docs/JLCB%20Oversight%20&%20Responsibilities.pdf, accessed 8/15/18.
[979] https://lla.la.gov/laac/laac-minutes/index.shtml, accessed 8/15/18.
[980] https://www.nola.com/politics/index.ssf/2017/11/louisiana_prisoner_data.html, accessed 12/3/18.

Another LLA audit identified improprieties in recent Medicaid contracts initiated by former Gov. Bobby Jindal's office. Among the many problems identified, "auditors found 41 million paid claims totaling $2.4 billion from October 2015 through December 2017 that didn't have valid provider identification numbers."[981] These claims were paid out to private managed care facilities. The senate chair of the health committee publicly pressed for action by the state health department.[982] The LLA's reports resulted in a legislative task force to determine further action, and legislators introduced a bill, HB 88, to criminalize government benefits fraud to facilitate prosecution by the attorney general of people who "fraudulently received Medicaid."[983] The LAA also presented this audit to the Joint Legislative Committee on the Budget (JLCB). Although this is a rare occurrence, the JLCB does occasionally hold a hearing on LAA audits if the audit has financial implications.

The Legislative Fiscal Office (LFO) is the other analytic bureaucracy in Louisiana. The legislative fiscal officer, who is selected by the appropriations committee in the house and the finance committee in the senate and then elected by a majority vote in both legislative chambers, heads the LFO. The LFO provides fiscal information to both the house and senate, including assistance to individual legislators and presentations to the house appropriations and senate finance committees and also to the entire legislature, and to assist other legislative staff and state agency staff.[984] Services include fiscal notes on bills,[985] economic and fiscal impact assessments of proposed administrative rules (discussed more in the section on administrative rules),[986] reports on the current state of the economy, revenue estimates, and Act 704 impact analysis reports for projects that commit $10 million or more of state funds,[987] like the package given to Monster Moto to relocate from Texas to Louisiana.[988] The LFO analyzes the proposed executive budget within seven days of its submission to the legislature, providing both the legislature and governor with a report on the proposed budget comparing it to the previous budget.[989] The LFO also produces an annual report summarizing performance standard adjustments and their own recommendation, which will be discussed further in the section on performance-based budgeting.[990] The LFO also produces four annual publications: *Focus on the Fisc* published in the interim to keep legislators informed about fiscal issues; the *Adult Correctional System Survey* provides trends in the prison population and compares them with other states; the *Comparative Data Report on Medicaid*; and the *Fiscal Highlights*, which summarizes actions taken during session and provides a computation of historic fiscal data.[991] The LFO is comprised of 15 professional staff.[992]

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[981] https://www.theadvocate.com/baton_rouge/news/article_07685364-796b-11e8-b831-232ef0cc7d82.html, accessed 12/1/18.
[982] https://www.usnews.com/news/best-states/louisiana/articles/2018-06-28/louisiana-senator-wants-action-after-critical-medicaid-audit, accessed 12/1/18.
[983] https://www.watchdog.org/louisiana/audit-reveals-louisiana-s-medicaid-system-mismanaged-open-to-fraud/article_e6525c0e-8385-11e8-bd98-0789753c1419.html, accessed 12/1/18.
[984] http://lfo.louisiana.gov/, accessed 8/15/18.
[985] http://lfo.louisiana.gov/files/forms/FiscalNoteWorksheet.pdf, accessed 8/15/18.
[986] http://lfo.louisiana.gov/files/forms/impactform.pdf, accessed 8/15/18.
[987] http://lfo.louisiana.gov/rev, accessed 8/15/18.
[988] https://businessfacilities.com/2017/03/monster-moto-celebrates-new-ruston-louisiana-headquarters/, accessed 8/15/18.
[989] http://lfo.louisiana.gov/files/reldata/LFOPurpose.pdf, accessed 12/2/18.
[990] http://lfo.louisiana.gov/perform, accessed 8/15/18.
[991] http://lfo.louisiana.gov/publications, accessed 8/15/18.
[992] http://lfo.louisiana.gov/staff, accessed 8/15/18.

In addition to the LFO, both chambers have a fiscal office with committee staff. The fourteen House Fiscal Office staff includes two legislative analysts who serve as appropriations committee staff, six budget analysts who staff standing committees, two ways and means committee staff, two central staff plus a director and an administrator. This staff drafts bills, conducts fiscal research and budget analyses, responds to requests for information from house members and makes budget presentations. The Senate Fiscal Services Office's staff of nine professionals and two secretaries is responsible for staffing the Senate Finance Committee, the Joint Legislative Committee on the Budget, the state's revenue estimating conference, the Interim Emergency Board, the Louisiana Bond Commission, and any standing or ad hoc committees producing policy with fiscal implications. Additionally, this staff is responsible for computer programs and data tracking of general appropriations and capital outlays, drafting legislation, and answering senators' requests for fiscal information. The Senate Fiscal Office reports working closely with the LLA, the House Fiscal Office, the LFO, and the Office of Planning and Budget in the executive branch.

Oversight Through the Appropriations Process

Louisiana operates on an annual budget. The process is as follows: agencies receive budget instruction guidelines in September, agencies submit budget requests in November, agency hearings are held in January and February, the executive budget presentation is made by the Division of Administration to the Joint Legislative Committee on the Budget in February,[993] either 45 days prior to the regular session or 30 days prior if the governor was newly elected in the previous year, and the new budget is typically adopted in June.[994] In practice, there have been multiple budget battles in the last couple of years that have resulted in compromises between the Democratic governor and Republican legislature.

A microcosm of the budget battle occurred over mental health spending for 2017. The Louisiana house passed a budget that would cut $235 million from the Department of Health, resulting in the elimination of mental health services for "people with schizoaffective disorder, bipolar disorder and other serious illnesses" (NOLA, 2017). The cuts were slated to go into effect March 2017, but budget battles over issues including mental health resulted in a special session. The cuts at first triggered promulgation of an emergency rule by the Department of Health to close a $2 million program providing psychosocial rehabilitation services to people under the age of 21 to avoid a deficit. As part of the administrative rule review process, the Senate Health and Welfare Committee held a hearing on the emergency rule and rejected it.[995] The Department of Health Chief said the alternative to the mental health cuts would be to cut hospice, dialysis, and prescription medications (NOLA, 2017). The senate supported a budget that restored funding, and the governor threatened to veto of any budget that cut the Department of Health by $235 million.[996] Ultimately, the budget passed on June 16, eight days after the regular session deadline. A reserve fund that the house wanted as a buffer against possible

[993] https://laddc.org/initiatives/community-living-and-self-determination/quality-assurance/current-initiatives/advocacy-101/government-the-legislative-process/the-legislative-process/, accessed 8/15/18.
[994] https://ballotpedia.org/Louisiana_state_budget_and_finances, accessed 8/15/18.
[995] https://www.nola.com/politics/index.ssf/2017/03/plan_to_end_childrens_mental_h.html, accessed 8/15/18.
[996] https://www.nola.com/politics/index.ssf/2017/05/mental_health_louisiana.html, accessed 8/13/18.

revenue shortfalls was used to reduce, although not eliminate, cuts to mental health services.[997] But this one-time fix merely kicked the problem down the road, delaying rather than resolving what the governor calls the state's fiscal cliff. This set of actions demonstrates the efforts of substantive standing committees as well as "money" committees with respect to oversight of state agency programs—in this case defending services that the agency and the senate committee considered vital for the welfare of Louisiana citizens.

The Joint Legislative Committee on the Budget (JLCB) is an important participant in legislative oversight.[998] The JLCB consists of 29 representatives (the members of the House Appropriations Committee and the chair of the Ways and Means Committee) and 19 senators (the members of the Senate Fiscal Committee and the chair of the Senate Revenue and Fiscal Affairs Committee).[999] The House Fiscal Division and Senate Fiscal Services rotate the responsibility for staffing the JLCB on a yearly basis.[1000] The JLCB can meet monthly even when the legislature is out of session. Some of their meetings are four and six hours long. The committee is important to oversight beyond the appropriations process because when the LAAC encounters agency resistance to audit recommendations it relies on the JLCB to encourage compliance.

Additionally, the JLCB reviews the Casino Support Services Contract and the budgets of various public authorities, such as the Lottery Corporation, the Louisiana Public Facilities Authority budget and the Greater New Orleans Expressway Commission. Recent issues that have involved the JLCB include $8 million for criminal justice reinvestment,[1001] a $14 million I-10 highway widening project,[1002] and $15.4 billion in Medicaid contracts.[1003] In each of these issues the committee held hearings, questioned government officials, and exercised oversight. The JLCB is also important to the monitoring of state contracts by reviewing what are known as Act 87 reports, which will be discussed on the section "Monitoring of Louisiana State Contracts."

The lengthy (nearly six hour) JLCB meeting of January 22, 2018,[1004] indicates that the legislature takes its responsibility for oversight through the appropriations process quite seriously. This hearing featured the governor himself presenting an overview of the executive budget following by agency officials. Partisan tensions were also apparent and might have motivated some of the scrutiny from legislators.

At this JLCB meeting the governor stressed that he did not like the budget he was presenting, but he had no choice because the state was facing a "fiscal cliff" in which revenue sources were expiring and had not been replaced by the legislature. He argued that the previous gubernatorial administration had left the state with a $2 billion shortfall and that cuts could only be made to a small number of discretionary budget items. He outlined the limited number of programs that were discretionary portions of the budget—health care, college scholarships among them. He chastised the legislature for its failure to advance any tax reform proposals out of the ways and means committee in the prior session. He urged legislators to propose solutions

[997] https://www.nola.com/politics/index.ssf/2017/06/louisiana_legislature_budget.html, accessed 8/15/18.
[998] http://jlcb.legis.la.gov/Docs/JLCB%20Oversight%20&%20Responsibilities.pdf, accessed 8/15/18.
[999] http://jlcb.legis.la.gov/default_Members.aspx, 8/15/18.
[1000] http://jlcb.legis.la.gov/Docs/JLCB%20Oversight%20&%20Responsibilities.pdf, accessed 8/15/18.
[1001] https://www.nola.com/politics/index.ssf/2018/07/louisiana_prison_population_sa.html, accessed 8/15/18.
[1002] https://www.theadvocate.com/baton_rouge/news/politics/article_ccf48a64-172b-11e8-892e-8b09b6761304.html, accessed 8/15/18.
[1003] https://www.nola.com/politics/index.ssf/2017/12/louisiana_medicaid_contracts_a.html, accessed 8/15/18.
[1004] http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2018/jan/0122_18_JLCB, accessed 12/4/18.

and argued that he cannot negotiate with himself—he needed partners. Legislators proceeded to ask the governor questions about the budget. Questions were quite specific and demonstrated knowledge of budget items and programs, but the questions also included political cover with support for veterans and college students. For example, one committee member wanted to know how the reduced college scholarship money would be distributed—would low-income students receive priority or would students with high test scores receive more money? The governor demonstrated extensive command of the budget and discussed the impact of increases in non-discretionary funding on the money available to fund discretionary programs. Another committee member pressed the governor on the increased revenue the state would receive as a result of the federal tax law changes. Despite several substantive questions, some committee members used the opportunity to ask questions as a forum to vent their frustrations with the governor and others used their questions to lobby for their preferred programs. The governor for his part blamed the legislature for its unwillingness to raise taxes last year to resolve the revenue shortfall.

The following examples from the same JLBC meeting illustrate various levels of knowledge exhibited by committee members, as well as their differing orientations toward problem solving versus political posturing. Despite several knowledgeable legislators, the committee also included legislators whose questions required the governor to explain how the line-item veto works and other basic information about the legislative process. For example, one committee member asked the governor what he planned to include in the likely special session to fix the fiscal cliff, to which the governor pointed out that the legislature also has the power to call a special session.

One legislator inquired about what had been done to implement the recommendations of the Streamlining Commission. The governor explained that many of those reforms had been implemented, but that some of those reforms did not save money. The governor reported cutting over $600 million in the executive branch. The same legislator inquired about why the general fund budget was increasing. The governor explained that the legislature had passed service requirements, mandatory services for agency to provide, and the cost of those service requirements increased year to year. Therefore, the general fund costs go up. The legislator continued, saying that she did not believe that the $600 million in cuts were real and asked for a list of those cuts, which the governor had repeatedly offered to provide. This same legislator alleged that the state of Louisiana was paying more for services than other states. She urged the governor to "honestly" look at cuts, commenting that she did not believe the executive had done so.

Another legislator pointed out that the debate about whether general fund spending was increasing or decreasing involved the year used as a baseline with 2008 being a "Katrina bubble." Therefore, using ten-year trends made it appear that executive branch expenditures had declined when using another baseline year (2014) made it appear that executive branch expenditures had increased. The governor in response to questions from another legislator pointed out that the legislature had not passed legislation to implement even one of the recommendations that the legislature's own tax reform commission recommended.

Another legislator asked about 500 newly authorized positions. He was told that the state took over a private prison, and those employees became state employees, and also a federal lawsuit that required that Louisiana move some people who were criminally insane to hospital facilities rather than jails. Another legislator asked about the costs of the state taking over the facility. The cost for the state prison is higher per prisoner than the private contract paid. The Commissioner of Administration, who was sitting next to the governor, explained that a private

company had walked away from its state contract because the rate the state was paying them was too low. Therefore, the state had to hire people to run the prison. The legislator seemed to have difficulty understanding this shift from a contract employee to a state employee. The committee chair asked about whether the legislative fiscal notes were available on each of the bills in the budget proposals. The governor replied that LFO was producing fiscal notes currently and that some were completed already. The committee chair continued to press the governor to produce the fiscal notes until the governor finally said, "The fiscal office works for you" (at 2 hrs. and 18 minutes).

After approximately two and a half hours the Commissioner of Administration, Jay Dardenne, began the formal presentation of the budget to the JLBC. At the conclusion of his presentation various agency heads were called upon to answer questions from committee members about specific agency budgets. These questions demonstrated more knowledge about the budget and various agency programs than did the questions legislators asked the governor. For example, one legislator asked about the specific impacts of the cuts on waivers received by people with disabilities and senior citizens. The deputy director of that agency provided details about the number of recipients that would be affected. One legislator asked the commissioner whether the revenue estimating conference forecasts met the constitutional trigger to permit the legislature to invoke a one-time tactic to permit cuts to non-discretionary budget items. The commissioner agreed that it did, but pointed out that this would again be a one-year fix that simply delayed the need to resolve the state's structural deficit. Another legislator asked about a chart that showed positions added to the department of corrections. Corrections department executives explained the items in the chart line by line. The committee members' questions triggered regular cycles of musical chairs at the witness table as staff from the agency and budget staff, all of whom were sitting in the audience, chimed in to answer questions. One senator asked about whether the administration would be open to some major structural changes to save administrative costs, such as a single university board of education instead of multiple boards, inventory tax reform, nursing home reimbursement rates, long-term managed care, and Medicaid eligibility. The commissioner indicated executive branch willingness to work on any of these suggestions to streamline government. Committee members asked various agency staff whether specific programs would be cut within the agency, for example autism services. The hearing continued for several more hours with similarly specific questions about the impact of budget cuts on various agencies.

We found substantial evidence in this joint committee hearing of knowledgeable legislative oversight through the appropriations process despite the occasional naïve question from some novice legislator (primarily in the lower chamber and more often asked during the governor's presentation). Several committee members asked very specific questions about the effect of federal changes, such as changes to health care programs, on the state budget. These questions led to exchanges with agency heads that demonstrated these legislators' extensive knowledge of specific agency budgets. The committee chair permitted legislators to engage in a dialog with the agency officials without having to request permission to ask follow up questions. Agency witnesses conversed directly with the legislators rather than answer through the chair of the committee. This provided an opportunity to a substantive discussion between agency officials and legislators exploring some "what if" scenarios. The time allotted for the meeting, nearly six hours, facilitated extensive information gathering and exploration of the impacts of budget proposals on agency programs. We believe that this hearing demonstrates that the JLBC exercises robust oversight through the appropriations process.

Oversight Through Committees

Given that Louisiana has a relatively short legislative session, its legislature relies on committees that can operate during the session interim to address pressing matters that arise between legislative sessions. Therefore, there are standing, select, and statutory committees. These include select committees and interim committees that are charged with studying the effects of specific programs or investigating specific problems. Looking at the calendar of these committee meetings during the 2018 interim indicates that there are relatively few interim oversight committees tasked with monitoring specific public entities. One of these is the Louisiana Transportation Authority. The entity is a hybrid legislative and executive commission that includes legislators (two senators and two representatives) and agency officials (the secretaries of transportation and economic development) and the governor's director of administration. It is charged with overseeing the use of bond funds for transportation infrastructure and toll revenue from transportation tolls. It met on December 13, 2018.[1005] Its first task was to approve the minute of the last meeting—May 12, 2016. This suggests that this group is not meeting even annually. The meeting lasted for approximately 35 minutes. There were two new business items on the agenda: fiscal and audit update and future tolling opportunities. The authority received a "clean" audit report, which the Undersecretary for the Department of Transportation and Development summarized for the authority. This was reportedly the fifth consecutive clean annual audit report. The members of the authority quizzed the secretary of transportation during the meeting even though he is technically a member of the oversight entity. There was some evidence of oversight and some discussion that adjustments might better be made within the authority rather than through the legislature (minute 17 of the hearing). This unusual approach to oversight suggests that Louisiana relies on a more informal approach to monitoring the work of state agencies. However, the clean audit reports indicate that this is, at least in this case, effective.

The Legislative Audit Advisory Council (LAAC) is the primary oversight committee of the Louisiana Legislature. The LAAC meets during regular sessions and during the interim to carry out its work with the LLA, receiving audit reports throughout the calendar year. The LAAC consists of five representatives and five senators, is charged with supervising the work of the LLA, and responsible for resolving audit findings identified in audit documents.[1006] The partisan division of the LAAC members[1007] is currently six Republicans and four Democrats. This means that 60% of the committee is controlled by Republicans, compared to Republican control in the chambers of 57%[1008] in the House and 64%[1009] in the senate.[1010] Agency failure to comply with audit recommendations is determined by the LAAC. To encourage compliance, the LAAC routes these issues to the JLCB and the relevant standing committee with subject matter jurisdiction. [1011] In addition to the LLA reports, The LAAC has a wide variety of tools available to determine compliance:

[1005] http://senate.la.gov/video/videoarchive.asp?v=senate/2018/12/121318LATRANSAUTH_0, accessed 1/9/18.
[1006] https://lla.la.gov/laac/, accessed 8/15/18.
[1007] https://lla.la.gov/laac/laac-members/index.shtml, accessed 8/15/18.
[1008] http://www.legis.la.gov/legis/Bios.aspx?cid=H, accessed 8/15/18.
[1009] http://senate.legis.state.la.us/senators/, accessed 8/15/18.
[1010] https://ballotpedia.org/Louisiana_State_Legislature, accessed 8/15/18.
[1011] http://jlcb.legis.la.gov/Docs/JLCB%20Oversight%20&%20Responsibilities.pdf, accessed 8/15/18.

> The Council may hold hearings; subpoena witnesses; administer oaths; compel the production of books, documents, records, and papers, public and private; order the compiling and furnishing of sworn statements; and petition, directly or through the courts, writs of mandamus. Failure to comply with any order of the Council shall constitute contempt of the Council, punishable in a manner prescribed by the Council.[1012]

Despite the importance of the duties and the tools the LAAC has at its disposal, the minutes indicate they met only four times in 2017 and averaged four meetings each year over the past decade, having as few as two (2016 and 2012) and as many as seven (2010).[1013] A review of the four 2017 meeting minutes showed that the average meeting lasted approximately three hours. During these meetings legislators spent most of the time on performance audit findings. Examining minutes of several meetings does not indicate that legislative action is taken on these meetings even when the auditors and the district attorney seem to think that legislation is needed.[1014] Our sampling and survey of the minutes did not reveal instances of an audit issue being forwarded to the Joint Legislative Committee on the Budget or any other committee. The non-compliance report on the LLA website lists local government entities only.

An example of the LAAC handling of an audit is one that exposed how the former Louisiana State Police (LSP) superintendent abused his privileges.[1015] During the December 2017 hearing on this audit,[1016] three staff from the LLA office presented findings of the audit report. The report described a long list of problems that involved the state police superintendent. These problems include: authorizing travel with recreational side trips for troopers traveling to conferences, misuse by the superintendent of hotel rooms paid for by the City of New Orleans for officers on duty for Mardi Gras to entertain their friends and family during the festival, the superintendent's use of state troopers to run errands for himself and his family and friends, and the superintendent's use of public property and state troopers' time to aid nonprofit organizations that the superintendent worked with, and living in a state residence without claiming it as a benefit (income) on his tax return. The audit report also raised questions about other perks the superintendent took advantage of,[1017] such as having his uniforms and his wife's clothing dry cleaned at the governor's mansion while claiming the $8 per day stipend to cover his dry-cleaning costs. These small amounts add up over the days he served from 2008 through March 2017.

Some LAAC committee members questioned the audit staff about whether some of these audit findings were actually problems. Specifically, the auditor's finding that it was illegal for the superintendent to use of a residence without claiming it on his tax return as income. This led some committee members to ask about the use of residences by university presidents. The auditor pointed out that other states have encountered this, and the IRS requires that the benefit of housing be reported as taxable income. Committee members also challenged the audit staff about why a federal violation was included in their report. Audit staff pointed out that they

[1012] https://lla.la.gov/laac/, accessed 8/15/18.
[1013] https://lla.la.gov/laac/laac-minutes/index.shtml, accessed 8/15/18.
[1014] https://lla.la.gov/documents/laac-minutes/2018/LAACMinutes_October5_2018_Approved11-15-18.pdf, accessed 12/7/18.
[1015] https://thehayride.com/2018/01/video-heres-wwl-tvs-update-mike-edmonson-audit-fiasco/, accessed 8/15/18.
[1016] http://senate.la.gov/video/videoarchive.asp?v=senate/2017/12/121417LAAC_0, accessed 12/5/18.
[1017] https://www.wwltv.com/article/news/local/ex-state-police-commander-lived-life-of-luxury-on-taxpayers-dime-audit-claims/289-496146272, accessed 12/5/18.

investigate illegal and unethical behavior in general not just violations of state laws. Some of the questions to the auditor displayed concern that the report was "nitpicky." When pressed, committee members acknowledged that some of the behaviors were clearly out-of-bounds, but some of their queries seemed to defend the superintendent. Compared to other states' hearings on audit reports, there were more questions challenging the judgment of the auditors and asking them to document their findings. This might reflect partisan defense of an appointee of the former Republican governor, an appointee that many Republican senators may have voted to confirm. It could also reflect monitoring of the LLA, one of the responsibilities of the LAAC.

The newly appointed LSP superintendent testified about changes made to comply with audit recommendations. He sought to assure legislators that procedures were in place to prevent future abuses.[1018] The committee chair challenged the new superintendent to tighten up the dry cleaning service procedures, suggesting that the need to report individual days of usage invited honest errors in remembering to list days when he or she had used the dry cleaners at the governor's mansion. In contrast to committee members' inclination to press audit staff, some of them seemed quite hesitant to challenge the new LSP superintendent. Moreover, there was some pushback from the new LSP superintendent about the need for troopers assigned to accompany the governor to be able to get uniforms dry cleaned during the day when they might need to change uniforms during their shift (e.g., heavy rain). An obvious solution—increasing troopers' pay so that they are not reimbursed for dry cleaning but just pay for it themselves—was never mentioned. It was also puzzling to us as outside observers that no one discussed the need for improved record keeping at the governor's mansion dry cleaners. The legislature ran out of time for the former superintendent to "defend" himself. The chair indicated that he would be given this opportunity at a later date. This is clearly an example of oversight through an analytic bureaucracy. A standing committee that is responsible for audit reports spent time ensuring that the audit findings were accurate and being addressed by the agency, the LSP. However, it does not appear that there was action taken to increase compliance or to impose sanctions. The legislature did not pursue consequences for the LSP or its former superintendent, instead the legislative auditor provided audit evidence to the attorney general and the FBI.[1019]

This reluctance to use audit findings to impose consequences on auditees was displayed in the August 30, 2018 LAAC meeting as well. Act 462 of the 2015 Regular Legislative Session empowers the LAAC to withhold funds from municipalities with three consecutive years of unresolved audit findings—the "Three-Strikes" law.[1020] The state of Louisiana relies heavily on revenue sharing by the state to fund local governments. Therefore, municipalities that repeatedly do not comply with audit findings could lose their primary source of revenue if the LAAC used its Act 462 power. Even though a report showed that three municipalities that met the criterion to lose state funds, the LLA did not recommend cutting off their funding immediately. Instead, these municipalities were "asked" to return in six months to update the committee on their compliance. This approach—asking repeat non-compliant municipalities to return again—was repeated in the October 5, 2018, meeting of the LAAC as well.[1021]

[1018] https://lla.la.gov/documents/laac-minutes/2017/LAAC%20Minutes_December%2014_2017_Approved%204-3-18.pdf, accessed 8/15/18.
[1019] https://talk1073.com/2018/01/25/legislative-auditor-on-former-state-police-commander-investigation/, accessed 12/5/18.
[1020] https://lla.la.gov/documents/laac-minutes/2018/LAAC%20Minutes_August%2030_2018_Approved%2010-5-18.pdf, accessed 12/7/18.
[1021] https://lla.la.gov/documents/laac-minutes/2018/LAACMinutes_October5_2018_Approved11-15-18.pdf, accessed 12/7/18.

We were not convinced by these examples of oversight in Louisiana that the LAAC enforcing penalties for malfeasance on the part of state agency officials. Additionally, it seems that the legislature is overseeing the work of its audit staff more vigorously than it oversees state agency and local government actors.

Oversight Through the Administrative Rules Process

Louisiana possesses ample mechanisms to perform administrative rules review. There are four opportunities for the legislature to review rules: money committees, committees with subject matter jurisdiction, Legislative Fiscal Office (LFO) review of impact statements, and concurrent resolution. The legislature may suspend, amend, or repeal any rule by concurrent resolution (section 49:969 LA R.S.).[1022] A concurrent resolution does not require the governor's signature. This power appears to have its basis in the Louisiana Constitution, Article III Section 20. Only the last mechanism, concurrent resolution, can be applied to the review of existing rules, while the others apply only to proposed rules.

A public hearing on a rule can be requested within 20 days of the notice of intent and then must be held 35-40 days from the notice of intent. A summary report on public hearings about administrative rules, including responses to public comments, is given to oversight committees. These reports can trigger a subcommittee hearing to block a rule (interview notes, 2018).

We are told by practitioners that by and large departments work closely with the LFO when making any rule or rule change. We were also told that this working relationship ensures the legislature's involved throughout the process, thereby making the exercise of other forms of legislative review less likely. Consistent with this Berry (2017) classifies Louisiana as a state with combined executive and legislative authority over administrative rule review.

In 2017, no existing administrative rules were repealed, amended or suspended by concurrent resolution. We are told by practitioners that this is to be expected (interview notes, 2018):

> Normally, if there is a need for a rule amendment, the House and Senate committees will call the agency directly and discuss. A concurrent resolution should only be used as a last resort, as it eliminates public input.

Proposed rules that are sent to the Louisiana Register[1023] to be published are also simultaneously sent to the relevant legislative committees and officers of the legislature. Fiscal and economic impact statements must accompany all proposed rules. The Legislative Fiscal Office (LFO) reviews these documents and a proposed rule may not go forward without LFO approval (Schwartz, 2010). Therefore, the review of the impact statements by the LFO functions as the initial hurdle in legislative rule review. In practice, the statements are more perfunctory

[1022] https://www.doa.la.gov/Pages/osr/Agency/Agency%20Training/LAC%20Handbook.pdf, accessed 8/13/18.
[1023] https://www.doa.la.gov/Pages/osr/reg/regs2017.aspx, accessed 8/13/18.

than detailed and rigorous study of indirect cost and benefits (Schwartz, 2010). However, practitioners repeatedly emphasized collaboration in Louisiana:

> An approved Fiscal and Economic Impact Statement is mandatory in order for an agency to initiate rulemaking. Each fiscal note is the consolidation of a cooperative effort of revisions between the agency and the LFO fiscal analyst, ensuring that all data has been reviewed and that the Fiscal and Economic Summary provides accurate information to the public . . . The House, Senate, and Governor's Office are very involved in rule-making in Louisiana . . . It's because of this involvement that we don't have many rules blocked by subcommittees and the governor. It's amazing what communication will do. I have met with many representatives from other states, and I believe that we are the only state that has been so proactive (interview notes, 2018).

All administrative rules are subject to legislative review by both the money committees—Senate Finance and House Appropriations—and the relevant subject matter committee, (Section 968.D-N LA R.S.) (e.g. House Committee on Education reviews rules promulgated by the Department of Education). [1024] The committees in each chamber have the option of forming a subcommittee, which has 30 days to review the rule. No objection constitutes approval of the rules (The Council of State Governments). The subcommittee reviewing the rule has broad authority including an "acceptability" standard (LA R.S. 49:968 (D)(3)) and only requires a majority vote of those present to block a rule (52). A single subcommittee in either chamber can block a proposed rule. Within 10 days of a subcommittee's objection, the governor can override this legislative veto and reinstate the rule. But if the governor fails to act within the time limit, then the rule is blocked and the agency is prevented from adopting a similar rule for four months.

While some states have had legal showdowns over the constitutionality of this kind of legislative review, Louisiana has not. It appears that the governor's ability to overrule the legislative veto averts one of the more typical bases for constitutional challenges under the presentment clause, although the courts have not ruled directly on the issue (Schwartz 2010). The governor can also unilaterally block a rule. The governor can also block rules within 30 days of their promulgation even when the legislature takes no action. A blocked rule or a substantially similar rule may not go into effect for at least the next four months (LA R.S 49:968 (G)).[1025] In 2017, neither the legislature nor the governor blocked any proposed administrative rules. Judicial review can take place on the basis of adoption without substantial Administrative Procedures Act (APA) compliance, constitutional provision, or exceeds statutory authority. Adoption without substantial APA compliance must be determined by the court within two years of a rule taking effect (interview notes, 2018).

Emergency rules (LA R.S. 49:953(B)(1)) and environmental rules (LA R.S. 953.(F)(3)(i)) are subject to a special review process that places a greater burden on the legislature (52). Environmental rules give the legislature only a 10-day window to give notice of their intent to

[1024] https://www.doa.la.gov/pages/osr/lac/books.aspx, accessed 8/13/18.
[1025] https://www.doa.la.gov/Pages/osr/reg/regs2017.aspx, accessed 8/13/18.

exercise oversight by subcommittee. Emergency rules have a special template for submission of notice to the legislature and publication in the Louisiana Register.[1026] Emergency rules are adopted without review during the proposal stage, but once adopted both the legislature and executive may veto a rule within two to 61 days[1027] under the acceptability standard and report their finding to the agency within four days (The Council of State Governments).[1028]

The lone example of an Emergency Rule review in 2017 by the legislature is discussed in the section titled Oversight Through the Appropriations Process, where the Department of Health created an emergency rule in the face of budget cuts. The Department of Health warned that if the budget bill passed, they would have to cut the psychosocial rehab program which provides behavioral services to individuals under 20 years of age. In response, on March 22nd, 2017, the Senate Health and Welfare Committee held a hearing on the emergency rule and no one opposed the motion to reject the rule (1 hour 47 minute mark).[1029] Ultimately a subsequent session would provide stop-gap funding to keep the program. The two hour-long hearing[1030] itself demonstrated both a capacity and a willingness on the part of the legislature to engage in rules review. Typically, all parties recognized the value of the program, and it was in the breach of that understanding that the program's importance was made clearest (52-minute mark):

> Senator: What are the services? . . . Are we counseling these kids that are suicide risks? Are we counseling kids that just don't like the kind of music their parents are playing? . . . I'd like to talk about what's going on and what we are doing…
>
> Administrator: . . . Youth PSR is mainly a community based service . . . [it] helps individuals with daily living skills, help them recognize triggers that might cause them to be angry [or] to be anxious, that help them recognize their own symptoms, feelings, and thoughts and develop some skills at self-management so that they might help regulate their behavior . . . instead of blowing up . . . an example of the service might be say a ten year old boy with depression, anxiety, anger problems, maybe some school problems say fighting at school, that sort of thing, and the psycho-social rehab for youth would complement therapies . . . individual, family, or group counseling . . .
>
> Senator: . . . Do we save children and young people's lives?
>
> Administrator: I would say yes. That in some cases some of the skills they develop would help them improve their symptoms of depression not feel as depressed, not feel as anxious, function better in school.

[1026] https://www.doa.la.gov/Pages/osr/Agency/Agency%20Training/LAC%20Handbook.pdf page 57-60, accessed 8/13/18.
[1027] http://house.louisiana.gov/slg/PDF/Chapter%202%20Part%20L%20-%20Administrative%20Procedure.pdf, accessed 8/13/18.
[1028] http://knowledgecenter.csg.org/kc/system/files/Table_3.26.pdf, accessed 8/13/18.
[1029] https://www.nola.com/politics/index.ssf/2017/03/plan_to_end_childrens_mental_h.html, accessed 8/15/18.
[1030] http://senate.la.gov/video/videoarchive.asp?v=senate/2017/03/032217H~W_0

In contrast, the benefits of the program were most commonly cited: 44,000 youths served, program cost-efficiency compared to alternatives, harm mitigation, personal testimonials, demand for services in light of the state's "mental health" crisis, projected 10,000 additional youths to be serviced in the coming year, and expansion of provider supply creating jobs. Most in the hearing asserted the programs value with one stating "I can't do this to kids. We are hurting the least among us (11-minute mark)."

The basis for the emergency rule, the budget cuts in the recently passed budget bill, were the source of many questions focused on efficiency improvements. Several facts came to light as a result: cuts would drive up spending elsewhere in the form of other, more expensive behavioral treatments, hospitalizations and in patient care, the department had already cut in other places including a wrap around services for addicts in recovery (43-minute mark), per unit cost of behavioral treatments (42-minute mark), and that cost containment could conceivably occur over time through improved management. Improved management was the focus of several specific and direct questioning, covering issues like ensuring non-licensed practitioners are sanctioned and better detected (38-minute mark), department-provider teleconferences geared toward cost reductions (27- and 47-minute mark), and improved diagnoses and criteria to ensure more cost-effective application of treatment (31 minute mark).

Some legislators believed behavioral cuts could be realized in other programs and asked administrators questions to that effect, but neither the legislator nor the administrator could point to anything specifically worth cutting. The opposing argument was stated by a legislator "some people think you can always do more with less, but at some point you are going to do less with less," which became an often repeated rhetorical device throughout the hearing. One legislator told the administrator that he needed to do a better job engaging with service providers, indicating that he had spoken to the service providers and understood that the administrator did not have a firm enough handle on actual practitioner licensure (1 hour 42 minutes).

The hearing indicated some legislators were working long hours to understand the emergency rule, the program at stake, the process to exercise a legislative veto, and came prepared to the hearing to problem solve (37-minute mark):

> I don't know the answers to these questions but I've gotten a lot of information in a short period of time because, you know, you announce on Friday afternoon that you're going to eliminate this program it puts me in bind because instead of enjoying one of the few weekends I had to enjoy before I had to come back to Baton Rouge to be in session, I got to be on the phone all weekend trying to learn about this process because we have this very important hearing.

Despite the Louisiana legislature's capacity to review rules, Schwartz (2010) and our examination of 2017 rules finds that there are few instances of actual oversight through the rules review process. The Louisiana Register provides monthly online documents that summarize new administrative rules and changes to existing rules. For 2018, the Louisiana Register indicates that of the 344 rules, 225 amended existing rules, 74 created new rules, eight repromulgated a rule,

and 37 repealed a rule.[1031] Repromulgation of a rule is correcting a grammatical error, misspelling, or incorrect citation in a rule. Given the rule activity and the insight from practitioners that the legislature is proactively engaged in the rulemaking process, there is potentially a fair amount of less visible, e.g. informal communication between legislative and executive entities, legislative oversight taking place.

Oversight Through Advice and Consent

While several of Louisiana's state administrative officials are constitutionally elected (e.g., agriculture, insurance, treasury), the governor appoints, typically with senate confirmation, heads of many key executive branch agencies, including but not limited to commerce, corrections, economic development, environmental protection and state police. We found no evidence in state media outlets to suggest that sitting Governor John Bel Edwards, elected 2016, had difficulty in receiving confirmation from the senate for his appointments despite control of the senate by the opposite political party.

We identified two examples of appointees receiving scrutiny in connection to the senate's powers to advice and consent. One of these is an appointment in 2012 of Education Superintendent, John White, made by the Board of Elementary and Secondary Education (BESE) and approved by the senate (Gyan, 2017). BESE consists of 11 members, three appointed by the governor and eight elected to represent a geographic district and voted on by citizens of that district. Superintendent White has clashed with educators, some tea party politicians, [1032] Governor Edwards and his predecessor, Gov. Jindal, over White's implementation of Common Core standards (Gyan, 2017). Teachers union endorsed candidates, including Edwards[1033] and some Democratic senators who are in the senate minority, have promised ousting White during their 2016 campaigns.[1034] In 2016, White did not receive the eight BESE votes needed to reappoint him pending senate approval, but there were not enough BESE votes to dismiss him, either. As a result, White is serving on a month-to-month contract. The Senate Education Committee killed a 2018 bill that would have forbade a Superintendent of Education from serving more than two regular sessions after the board who appointed him left office, pending a confirmation reappointment vote from the senate.[1035] One of the opponents of the bill said it may result in leaving the seat open for as many as four years (Gyan). White has also survived two lawsuits, both were rejected by the courts on the grounds that only the governor, senate president, attorney general, and East Baton Rouge District Attorney had standing to challenge his seat. It would seem that none of the relevant actors wish to risk a senate appointment vote on either the current office holder or some other candidate. While the superintendent's hold on the

[1031] https://www.doa.la.gov/Pages/osr/reg/Regs2018.aspx, accessed 12/8/18.
[1032] https://www.the74million.org/article/john-whites-last-stand-inside-the-campaign-to-bring-down-louisianas-school-reform-champion/ accessed 12/12/18.
[1033] https://medium.com/education-reform/the-madness-of-john-bel-eeeaafa8f459, accessed 12/12/18.
[1034] https://www.the74million.org/article/john-whites-last-stand-inside-the-campaign-to-bring-down-louisianas-school-reform-champion/, accessed 12/12/18.
[1035] https://www.kalb.com/content/news/Bill-to-remove-La-Superintendent-of-Edu-John-White-denied-478935233.html, accessed 12/12/18.

office is tenuous without actually receiving the senatorial confirmation, it is difficult to conceive of the situation as a lack of oversight capacity on the part of the senate. In its absence, the maneuvering and convoluted politics surrounding the superintendent position suggests that advice and consent powers are recognized by the actors as a powerful tool for achieving compliance.

Dr. Rebekah Gee's appointment to chief of the Department of Health, despite outcry from anti-abortion groups (Ballard, 2016), was confirmed by the senate. As chief of the Department of Health, she played an important role in the aforementioned promulgation of prescription drug benefits under Medicaid. Aside from these instances, of the 26 appointments that require senatorial approval, none of the other nominees encountered challenges that triggered media attention.

The governor created 33 executive orders in 2017 including but not limited to orders that create commissions,[1036] create task forces,[1037] disaster response to explosions on military bases,[1038] suspension[1039] of early voting,[1040] put flags at half-staff, a carry-forward bond allocation,[1041] and the authorization for the replacement of certain heater units with offender labor.[1042] The governor also has the power to reorganize state agencies using executive orders. The legislature does not have the power to review executive orders including those involving agency reorganization (Book of the States). The courts, however, rule from time to time on the constitutionality of executive orders. An April 2016 executive order that would have provided protections to LGBT employees of state contractors was deemed unconstitutional by an appeals court. The decision cited executive usurpation of legislative functions.[1043] The Louisiana State Supreme Court decided on a 4-3 basis to not consider an appeal. Thus the executive order was nullified to preserve separation of powers. The court rulings are considered a victory for the Republican attorney general and his allies in the legislature who have refused to take up legislation to protect LGBT employees.[1044]

Oversight Through Monitoring of State Contracts

The Office of State Procurement (OSP) is a unit under the executive branch Division of Administration and is tasked with oversight of state procurement generally.[1045] The executive branch is the primary actor involved in monitoring state contracts, but the Louisiana legislature has built capacity to examine contracts in both the Louisiana Legislative Auditors (LLA) office

[1036] http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-31.pdf, accessed 8/16/18.
[1037] http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-30.pdf,accessed 8/13/18.
[1038] http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-29.pdf, accessed 8/13/18.
[1039] http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-27.pdf, accessed 8/13/18.
[1040] http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-28.pdf, accessed 8/13/18.
[1041] http://gov.louisiana.gov/assets/ExecutiveOrders/JBE17-03.pdf, accessed 8/13/18.
[1042] http://gov.louisiana.gov/assets/ExecutiveOrders/JBE17-08.pdf, accessed 8/13/18.
[1043] https://ogletree.com/shared-content/content/blog/2017/november/louisiana-court-finds-executive-order-extending-protections-to-lgbt-employees-of-state-contractors, accessed 8/13/18.
[1044] https://www.nola.com/politics/index.ssf/2018/03/louisiana_lgbt_supreme_court_r.html, accessed 8/13/18.
[1045] https://www.doa.la.gov/PAGES/OSP/INDEX.ASPX, accessed 8/15/18.

and in the Joint Legislative Committee on the Budget (JLCB). In 2016, facing a budget crisis, the Louisiana house passed legislation that would require the governor's office and other statewide elected officials plus the commission of higher education to review and justify to the JLBC all of their contracts with outside vendors.[1046] As a result of pressure from both the legislature and Gov. John Bel Edwards, the number of state contracts decreased from 14,125 in July of 2016 to 10,551 in July of 2018. The number had grown precipitously under former Gov. Jindal as he tried to privatize state government. Gov. Edwards' office said that when he took over the executive branch no one really knew how many contracts agencies had, and they were not required to report all of them. A 2015 auditor's report estimated that there were 5,000 contracts that were not tracked by the Jindal administration. After an executive order issued by Gov. Edwards regulating contracts, an executive branch inventory of them, and instructions from the legislature to cut back on contracts, the situation has improved, but there is more work to be done. [1047]

The LLA deals with procurement issues so often[1048] that it has a variety of FAQs and memos to assist staff and the public in understanding the relevant issues.[1049] A perusal of the reports shows that they often address contracting issues. Legislative auditor recently found issues with Medicaid contracting and was critical of the way the program is being run by the Louisiana Department of Health.[1050] This report and other issues have sparked a task force to review the efforts that started under Gov. Jindal, a Republican, to privatize contracts that have so little monitoring that the sitting Department of Health Chief stated:[1051]

> I frankly do not have the staff that I should have to manage the number of contracts I do… If I ran a private business, if I ran a Google, there is no way I would do it with so few people because it's wasteful.

In 2015 the legislature passed Act 87, which requires the OSP to provide the JLCB a monthly report of certain contracts.[1052] JLCB reviews Act 87 contracts monthly (interview notes 2018).[1053] The review is occurring during monthly JLCB hearings, including questioning by legislators, but archived recordings of hearings indicate that the review is limited.[1054] We could not find any instances of an Act 87 contract report that triggered an investigation or the rigorous

[1046] https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_a93120ad-cc36-585b-9c47-7c12ccf8b5a4.html, accessed 12/2/18.
[1047] https://www.theadvocate.com/baton_rouge/news/politics/article_1e3b2bb6-b9cb-11e8-8161-87a51886fa28.html, accessed 12/2/18.
[1048] https://app.lla.state.la.us/llala.nsf/27670DBD4E563BE986257AC2004F9253/$FILE/Louisiana%20Procurement%20Code.pdf, accessed 8/15/18.
[1049] https://lla.la.gov/legal-faqs/public-purchasing/, accessed 8/15/18.
[1050] https://www.theadvocate.com/baton_rouge/opinion/article_4c2bd292-8144-11e8-a4e3-ebfb69ba6698.html, accessed 8/15/18.
[1051] https://www.shreveporttimes.com/story/news/2017/10/29/analysis-louisianas-medicaid-contracts-get-new-scrutiny/811998001/, accessed 8/15/18.
[1052] http://digital.state.lib.la.us/digital/collection/p267101coll4/id/26969, accessed 8/15/18.
[1053] http://jlcb.legis.la.gov/default_Archives2018.aspx, accessed 8/15/18.
[1054] http://jlcb.legis.la.gov/, accessed 8/15/18.

discussion and analysis of a particular contract by the JLCB. However, the Act is rather expansive and grants the legislature a relatively new tool to monitor contracts. According to an interviewee, legislator's questions are often informed by legislative audits—both financial and performance audits—but more often these audits will be program audits. Aside from Act 87, RS 39§1615 requires contracts regarding "professional, personal, consulting, or social services entered into for a period not more than five years but" over three years to be approved by the JLCB (interview notes, 2018).

Oversight Through Automatic Mechanisms

Louisiana has a comprehensive sunset review law—one of only 10 states in the country that uses an automatic sunset law so extensively. As a result of this law, the LLA annually reports to the legislature on "Boards, Commissions, and Like Entities" (Louisiana Revised Statute (R.S.) 24:513:2E). The version of this annual report produced on June 30, 2018[1055] reported that the number of these entities in the state had increased by 13 in the previous year, producing a total of 477. This reflects 20 newly created entities and seven entities abolished during the previous year. In this report it listed three entities that did not respond to the auditor's request for information despite a legal requirement that all these entities do so (R.S. 24:513.2F). In this same report, the LLA makes the understated recommendation that "[t]he legislature may wish to consider taking some action against Boards that fail to comply with the reporting requirements in state law" (p. 4). It also identified 14 inactive entities with a recommendation that the legislature abolish all 14. Finally, it tabulated the costs of each of the 477 entities arises from salaries (total $1.7 million), travel expenses (total $2.1 million), and per diems (total $1.3 million). The costs and activities for each entity are publicly available through a database provided by the Division of Administration[1056] in response to Act 12 of 2009. More than two thirds of the 477 entities had no per diem, travel or salary costs. Of the 134 that did report expenditure in these categories, a few, such as a Gaming Control Board and the Tax Commission, were quite expensive (more than $300,000 annually), while others, such as the Polygraph Board, were quite inexpensive (less than $1,000 annually). Finally, this report reveals that the legislature acts on LLA reports. During the Regular Legislative Session of 2018 it passed Act 661, which abolished seven entities that the LLA labeled as inactive in previous iterations of this annual report (p. 3).

In addition to its annual review of boards, commissions, and like entities, Louisiana's state agencies are reviewed every six years to decide whether to terminate them. There is a one-year phase out period for terminated state agencies, which involved shutting down all offices within the agency. In December 2017 the House and Government Affairs reportedly started working on 12 sunset reviews of state agencies that the committee would need to complete by July 1, 2018. The first agency that the committee scrutinized was the Louisiana Department of State. Testifying before the committee, Secretary of State Tom Schedler explained that the only activities for which is department still received general fund dollars were

[1055] https://www.lla.la.gov/PublicReports.nsf/6A1477D749483C5B862583220069104 3/$FILE/0001A9B5.pdf, accessed 12/2/18.
[1056] https://wwwcfprd.doa.louisiana.gov/boardsandcommissions/selectBoard.cfm, accessed 12/2/18.

overseeing and running elections and running 18 museums, seven of which he had transferred to local entities. He planned to transfer four more museums out of the state department. But he reported that the state needed to buy new voting machines.

Preliminary examination is conducted by the standing committees of the two houses with subject matter jurisdiction. The scope is considered comprehensive, i.e. it requires all statutory agencies to be subject to a sunset review once per review cycle. Performance evaluation is another oversight mechanism in law. Agencies can have a life cycle of up to six years and the phase out period is one year. The act provides for termination of a department and all offices in a department. Finally, the Joint Legislative Committee on the Budget conducts a sunset review of programs that were not funded during the prior fiscal year for possible repeal (Book of the States).

Oversight Through Performance-based Budgeting

The Office of Planning and Budget is an executive branch agency and has the primary responsibility for implementing performance-based budgeting. A variety of approaches are taken: long and short term financial analysis, operating budget development, monitoring and control, policy development, planning, accountability, and other management services including the maintenance of a statewide performance database and integration of performance data into the budget process (Louisiana Performance Accountability System).[1057,1058] The Legislative Fiscal Office produces an annual report summarizing performance standard adjustments and providing their own recommendation.[1059]

Methods and Limitations

We were able to interview four people in Louisiana. Archived recordings of committee hearings are available. Minutes are posted separately from the recordings, but are available. Minutes are exceptionally detailed.

[1057] https://wwwcfprd.doa.louisiana.gov/lapas/view/viewframe.cfm, accessed 8/29/18.
[1058] https://www.ncsc.org/topics/financial/budget-management/state-links.aspx?cat=State%20Budget%20Offices#Louisiana, accessed 8/29/18.
[1059] http://lfo.louisiana.gov/perform, accessed 8/15/18.

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Deslatte, 2017. Retrieved from, http://www.apalachtimes.com/news/20171031/opinion-louisianas-medicaid-contracts-get-new-scrutiny

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Legislative Oversight in Maine

Capacity and Usage Assessment

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

Summary Assessment

Maine's legislature appears to have the capacity to conduct oversight of the executive, but this occurs only on a case-by-case basis. There is no requirement that audits are reviewed. There does not appear to be an explicit use of audit reports in the appropriations process, although the limited availability of information on hearings makes it hard to assess this with certainty. The State Auditor performs only fiscal audits and not performance audits. The Office of Program Evaluation and Government Accountability (OPEGA) performs performance audits at the request of the Government Oversight committee, but it is a small office with limited resources. As a result it has filed only 38 reports since 2010 (eight years), fewer than five per year, and moreover these reports are not extensive. The report mentioned earlier concerning DHHS responsibility in the death of two girls was only 9 pages long. Reports on similar problems in other states led to full-scale performance audits or investigative reports that stretched to dozens of pages with numerous recommendations for agency changes. As the report correctly announces, it is an "OPEGA Information Briefing". This is not a full-scale audit. Although the legislature could play a substantial role in administrative rule review, in practice, it merely delays adoption of rules.

Major Strengths

The Government Operations Committee is nonpartisan, with equal numbers of legislators from both major political parties. We found examples of vigorous oversight conducted through the Government Operations Committee. Both the State Auditor and OPEGA appear to provide strong capacities for oversight, but we note that they lack the funding and staff needed to produce full-scale performance audits. Written questions submitted to the governor and state agency directors by the Joint Committee on Appropriations and Financial Affairs along with other substantive joint committees demonstrate strong capacity for oversight. The use of joint committees across chambers and also collaboration between substantive and finance committees appears to be an efficient use of the scarce committee staff resources. The example of cooperating in a proactive fashion across partisan lines relating to the environment and potential

mining operations shows that Maine can and often does conduct police patrol oversight rather than simply reacting to crises.

Challenges

Four challenges were identified that prevent the Maine legislature from conducting more rigorous oversight. First, the institutional pushback the legislature receives from executive agencies is a deterrent, especially with a more aggressive governor like Gov. LePage. Second, Maine has a citizen legislature that does not meet frequently and when it does legislators' time is consumed with the lawmaking process of considering and producing bills. Third, the presence of term limits does not give legislators enough time to fully understand all that state government does. One elected official lamented that after eight years, "I finally have a handle on state government and I'm done." Finally, while the staff who aid legislators at the committee level have a great deal of expertise and knowledge of state government functions, few have experience with oversight.[1060]

Relevant Institutional Characteristics

According to the National Conference of State Legislators (NCSL), Maine has a part-time "lite" legislature (Kurtz & Weberg, 2017) that meets for only half the year, from December through June. The legislators were paid $14,271.00 for their first regular session and receive more than $4,000.00 less for the second regular session of their term; earning only $10,158 for that session (Moncreif & Griffin, 2017). The legislature is bicameral, comprised of a senate and a house of representatives. Both senators and representatives serve 2 year-terms. Legislators may not serve more than eight years (or four terms) consecutively (NCSL, 2015a). Maine has a large legislature for such a small state with the upper chamber comprised of 35 Senators and the lower chamber comprised of 151 Representatives.

In 2015 the legislature employed 206 staffers, of which 171 were permanent (NCSL, 2015b). Maine's staffing levels are comparable to other New England states like New Hampshire with 150 overall staffers and Vermont with 92.[1061] Maine provides central non-partisan and partisan staff to legislators, with only the presiding officers, speaker of the house and senate president having dedicated staff. The partisan offices provide legislative aides to their respective caucuses. On average, one legislative aide is assigned to 7 or 8 representatives and one aide for every 4 or 5 senators.[1062] In cases where legislators would need technical consulting on audit reports, legislators are likely to rely on the non-partisan central office staff.

Since Maine is a non-professional part-time legislature, it is reasonable to expect legislators to have a difficult time conducting oversight of the executive branch and related agencies. With little assistance from a professional staff, short terms, and term-limits, it is difficult to envision legislators developing substantive expertise on the job in any area of policy

[1060] Interview notes from 7-18-18

[1061] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 7/10/18

[1062] Interview notes, 7/13/18.

that would allow them to effectively monitor the states specialized administrative agencies. Maine ranks as the 41st most professional state legislature (Squire 2017).

Maine's governor has an average amount of institutional power--ranked as the 29th most powerful governor in the United States (Ferguson 2015). As is the case in many states, the Governor of Maine his limited tenure potential, serving no more than two four-year terms in office (The State of Maine, 2013). Maine's governor may use the line-item veto on appropriations bills, but it only takes a simple majority vote of the general assembly to override a line-item veto.[1063] However, on other bills where the governor cannot use the line-item veto, the legislature needs a 2/3rd majority to override the governor's veto. Maine's governor has limited appointment control over other major executive agencies-- empowered to make 18 political appointments out of nearly 50 positions listed in the Book of the States (CSG 2014, Table 4.10) 16 of which require legislative approval. In Maine, the Secretary of State, State Treasurer, Attorney General, and the State Auditor are elected by a joint ballot of the legislature (not the voters) to serve 2-year terms, with a term limit of 4 consecutive terms. While it is not clear if this makes these top executive branch officials more responsive to the legislature, at times it produces uneasy relationships with the governor because there is often a mixture of Democrats, Republicans, and Independents serving in these positions.

As recently as 2015, Governor LePage attempted to change the selection method of executive officials by the legislature. He proposed eliminating the secretary of state and shifting those duties to a newly created office of the lieutenant governor. Maine is currently one of five states with no lieutenant governor.[1064] Additionally, LePage proposed that the attorney general, treasurer, and auditor general become gubernatorially-appointed offices with consent of the Senate. Not surprisingly, the Maine legislature rejected LePage's constitutional proposals.[1065]

Political Context

Currently Maine is more competitive than other New England states, with Republicans and Democrats capable of winning statewide offices and control of the legislature. Part of this competition reflects the strength of independent and third-party candidates. The state clearly had divided government from 1992 through 1996. Divided government returned again in 2013 through 2018. At the state level, control of the state Senate and House of Representatives has been divided between Republicans and Democrats since 2015.[1066]In 2018, Maine's legislature was divided with Republican's narrowly controlling the Senate 18 to 17 and Democrats narrowly controlling the House 74 to 70, with an additional 7 legislators from other parties or classified as independents.

This level of partisan competition was not evident during the early 2000s. From 2003 to 2010 Democrats controlled both legislative chambers and the governorship. Republicans gained control of all three of these from 2011-2012. The partisan composition of the legislature and executive branch is ambiguous from 1997 through 2002 depending on how one classifies

[1063] http://bangordailynews.com/2015/06/19/news/state/senate-addresses-lepages-124-line-item-vetoes-with-lightning-speed/, accessed 9/26/18.
[1064] http://bangordailynews.com/2015/01/22/politics/lepage-to-propose-adding-lieutenant-governor-dropping-secretary-of-state/, accessed 7/17/18
[1065] http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280056885, accessed 7/17/18
[1066] http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx, accessed 7/17/18

Independent Governor Angus King, who currently caucuses with the Democratic Party in the U.S. Senate. If he is classified as a "leaning Democrat," then the Democratic trifecta expands to include 1997 through 2010, more than a decade.

As a potentially competitive state Maine does not enjoy the same extreme low levels of partisan polarization in the general assembly that other New England assemblies do, like Massachusetts, Connecticut, Rhode Island, and Vermont for instance. [1067] This is evident in Shor & McCarty's (2017) polarization data, which ranks the Maine house of representatives the 13 most polarized state house and its senate the 19 most polarized upper chamber. As a result, the two approximately equal parties face off much more frequently in the legislature.

Despite this level of partisan polarization, Maine's legislators have joined forces to rein in its current governor. Governor LePage has made extensive use of his veto powers vetoing 642 bills and line-items to date, which is more than all of Maine's previous governors combined.[1068] The legislature has responded by overriding his vetoes at a historically high rate for Maine with 302 of LePage's vetoes overridden, a rate of nearly 53%. While the legislature has been primarily divided or under Democratic control for most of LePage's tenure, the practical impact of his vetoes has effectively made it necessary for any bill to have the support of 2/3rd of the legislature.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The principal analytic bureaucracy in Maine is the Office of the State Auditor (OSA), a legislative agency. It is headed by the state auditor who is elected to the position by a joint ballot of the legislature. The auditor may be elected to two four year-terms. According to statute, the state auditor performs three services: First, the OSA provides auditing services for municipalities and court districts. Second, the OSA performs post audits by request of either the legislature or the governor. In this capacity, the agency may provide staff support for an investigation requested by the legislature or the governor into any agency or organization that receives state funding. Third, the OSA performs an annual single audit of the state. The OSA's audits are confined to reviews of agencies spending practices.[1069]

For example, in 2016 the OSA performed a post audit of the state's Social Service Block Grant program and found that the state was transferring federal TANF funds to the Social Services Block Grant in a way that was likely out of compliance with the federal TANF transfer program.[1070] The Maine Department of Health and Human Services responded by calling the OSA (a legislative agency) overly partisan. Since 2005, the OSA has only performed 17 such post audits of individual departments/programs. Eight of those 17 audits were performed in 2013. The OSA is required to send reports, such as the 2016 DHHS report mentioned, to all

[1067] http://www.centerforpolitics.org/crystalball/articles/registering-by-party-where-the-democrats-and-republicans-are-ahead/, accessed 7/19/18

[1068] https://bangordailynews.com/2018/07/16/politics/how-lepage-and-his-veto-pen-remade-maine-politics/, accessed 7/17/18

[1069] Interview notes 7/17/18

[1070] https://www.maine.gov/audit/osa-reports/UseofTANFTransferstotheSSBG.pdf, accessed 7/17/18

relevant committee chairs as well as to the governor's office. In addition to post audit reports of state programs, the OSA conducts an annual state audit, as well as budget and annual audits of all of Maine's counties, municipalities, and its unorganized territories.[1071] The audits of the Maine's local government subunits constitute the bulk of the OSA's published reports and are contracted out to private accounting firms. The overall budget for the OSA in FY 2015 was $3.1 million of which approximately $1.3 million was a state appropriation (NASACT 2015). It employs a staff of 28, 26 of whom are audit professionals.

In addition to OSA the Joint Government Oversight Committee (GOC) is supported by the non-partisan Office of Program Evaluation and Government Accountability (OPEGA). OPEGA exists to support the Legislature in monitoring and improving the performance of State government by conducting independent, objective reviews of State programs and activities with a focus on effectiveness, efficiency and economical use of resources. Within this context, OPEGA also evaluates compliance with laws, regulations, policies and procedures. It produced six reports in 2018, two of which were briefs. The reports appear to be thorough evaluations.

Aiding the Joint Committee on Appropriations and Financial Affairs (AFA) is the Office of Fiscal and Program Review (OFPR). The OFPR's activities are directed by the Legislative Council which is an administrative committee that manages the entire legislature. It is comprised of legislators holding house and senate leadership positions. The Council is balanced evenly on a partisan and institutional basis.[1072] The non-partisan OFPR staff consists of a director plus eight analysts and two administrative support staffers. In addition to staffing committee hearings related to budget issues, OFPR collects, researches, and analyzes fiscally-related information for legislators and committees whose primary policy area is taxation, revenues, and appropriations. The OFPR also projects revenue and expenditure—representing the legislature on the Revenue Forecasting Committee. Its primary responsibility, however, analysis of the governor's budget, other appropriations requests, and the fiscal impact of any introduced bill or amendment.[1073]

The OFPR has "program review" in its title suggesting that it conducts some type of auditing or reviews of program effectiveness, however in conversations with the OFPR it was stated that the office's name is a vestige of former responsibilities of the legislative agency. Rather, the OFPR's main purpose is to guide legislators through the budgetary process, draft budget amendments, and issue fiscal reports on revenue.[1074]

Oversight Through the Appropriations Process

The Maine legislature attempts to use its power of the purse to check the executive branch efforts to control the budget. The governor's line-item veto power is easily overcome by a simple majority vote, so the legislature can engage in effective bargaining with the executive branch. In 2017 a budget standoff, which led to a short 3-day government shutdown in Maine, illustrates this balance of power. The budget standoff in Maine hinged on a tax increase. To provide some budgetary context Maine's budget for the 2016-2017 biennium was approximately $7 billion. The Democratically controlled house in Maine proposed cutting back a new, voter approved, 3% surtax on income over $200,000 for the state's education fund to 1.75% and

[1071] https://www.maine.gov/audit/county/index.html, accessed 7/17/18
[1072] http://legislature.maine.gov/execdir/legislative-council/9071, accessed 7/17/18
[1073] http://legislature.maine.gov/ofpr/, accessed 7/17/18
[1074] Interview notes 7/17/18

additionally increasing the state's lodging tax from 9% to 10.5%. House Republicans and Governor LePage preferred eliminating the surtax entirely. So LePage vetoed the budget approved by the legislature until July 1st when the government shutdown. Three days later, on July 4th, the Governor signed a budget which eliminated the increase in the lodging tax, but also included an increase in the use of federal TANF funds for early childhood education and a two-year moratorium on changes to mental health funding, both priorities of the house Democratic caucus.[1075]

In addition to the use of checks and balances to influence the state's budget, Maine's legislature engages in traditional forms of oversight through its appropriations committees.[1076] One way that oversight of expenditures is codified is the review of financial orders by the appropriations committee.[1077] Following the appropriations and allotment process, agencies and departments formulate financial plans, often referred to as "work programs," that map out the agency's spending plan for the legislative appropriation.[1078] The judiciary and each department submit their work plans to the governor who then consolidates all work plans into a financial order, which his office must approve.[1079] In some cases the appropriations committee has thirty days to approve the financial order before it is implemented, thereby allowing the Legislature, through the appropriations committee, to review any work programs that may significantly deviate from the original "work plan and the intent of the legislature."[1080]

While the Maine Legislature provides access to live sessions, it only recently began utilizing audio recordings of some committees. However, there are few recordings to date since the program was only recently implemented. Additionally, the audio recordings that have been complied are only available through FOIA requests.[1081] Since audio recordings of hearings are sporadic and just beginning, an examination of committee agendas indicates that executive branch officials make presentations to various appropriations committees and subcommittees. Without recordings of these sessions, we cannot tell how and to what extent committee members engage in questioning executive branch officials. We did, however, find a list of questions that the Joint Committee on Appropriations and Financial Affairs and Joint Standing Committee on Health and Human Services compiled after the two committees met together along with the Legislative Council on January 5, 2018 to consider whether to fund and approve a new 21-bed "step-down" facility that would provide care for people transitioning from a forensic mental health hospital to less expensive in-patient care. This group of legislators submitted these questions to Gov. LePage with copies to commissioners of the Department of Health and Human Service and the Department of Administration and Financial Service. The questions from committee members are exceptionally detailed and extend to four pages of single-spaced typed questions. Additionally, the committee attached three-pages of typed questions from stakeholders—patients at the Upper Saco Unit at the Riverview Psychiatric Center. The following is typical of the questions sent to the governor and agency commissioners by committee members:

[1075] https://bangordailynews.com/2017/07/03/politics/lepage-looms-large-over-stalled-budget-talks-as-shutdown-drags-through-third-day/, accessed 1/21/18
[1076] Interview notes 7/17/18
[1077] http://legislature.maine.gov/doc/147, accessed 11/2/18
[1078] http://legislature.maine.gov/doc/147, accessed 11/2/18
[1079] http://legislature.maine.gov/doc/147, accessed 11/2/18
[1080] http://legislature.maine.gov/doc/147, accessed 11/2/18
[1081] Interview notes 11/1/18

> How and at what point in the process does the Administration intend to solicit and Incorporate stakeholder input, especially mental health advocacy perspectives? And how will the Department incorporate input from the Consumer Council System of Maine, NAMI, Disability Rights Maine and other critical stakeholders into each phase of the Riverview Secure Rehabilitation Facility project's development, including vendor selection, site location, building, staffing and care.

The governor's reply to these questions was a series of accusations directed at the legislations asking the questions. These accusations were dismissive and insulting.

We found a similar list of questions about a gubernatorial proposal to restructure Maine's county jails. Key questions in the written list sent to the governor were, "If your report is approved, who will pay for it?" and "How does the funding work exactly?"[1082] In the cover letter accompanying this list of questions from the committees (Joint Standing Committee on Appropriations and Financial Affairs and Joint Standing Committee on Criminal Justice and Public Safety), it appears that the governor set as a condition of appearing before the committee a written list in advance of the questions committee members would be asking.

In conversations with people familiar with the appropriations process, we were told that Appropriations and Financial Affairs (AFA) committee actions and oversight efforts were largely contingent on the personalities of committee leadership.[1083] For example, previously the AFA often used the interim to hold hearings and highlight issues relating to excessive spending or inappropriate use of appropriated funds. The process of holding a hearing on these types of issues was often enough to effect change in the agency in question. Recently the AFA holds fewer interim hearings. Knowledgeable observed attributed this change to the makeup and personalities on AFA, which change frequently due to term limits. In fact, the AFA has not held an interim hearing for nearly three years.

Oversight Through Committees

The Maine legislature makes extensive use of joint committees, and as our discussion of oversight through the appropriations process indicates, joint standing committees with jurisdiction over substantive policy areas often meet in tandem with the Joint Standing Committee on Appropriations and Financial Affairs when a proposed change will impact the state's budget. The Joint Rules of the Maine Legislature establish 16 joint standing committees, and allows for the creation of other joint committees as the legislature deems necessary.[1084] Currently there are 23 listed joint standing committees in the 128th Legislature.[1085] These joint committees are responsible for the bulk of the lawmaking and policy formation in the Maine legislature, and the standing committees that are exclusive to one chamber do not contribute greatly to the lawmaking or oversight process.[1086] The heavy reliance on joint committees creates a unique committee dynamic not commonly seen in other legislatures. Since the House is the larger chamber its membership dominates joint committees which are made up of 13

[1082] http://legislature.maine.gov/doc/2159, accessed 9/26/18.
[1083] Interview notes 7/17/18
[1084] http://legislature.maine.gov/house/jr_frame.htm, accessed 7/18/18
[1085] http://legislature.maine.gov/committee/#Committees, accessed 7/18/18
[1086] Interview Notes from 7-18-19.

members, usually with 3 Senators and 10 Representatives, with exception of the Government Oversight Committee, which is equally comprised of Senators and Representatives. Further complicating the joint committee dynamic is the current divided control of Senate and House. As a result, Democrats currently hold a one vote majority on all the committees. The structure of joint committees gives the House of Representatives the potential to dominate committee business and lawmaking.[1087] However, since all legislation is dependent on passage through both chambers, an individual senator wields greater influence on the composition of bills than the average representative. In essence, representatives can dominate committee activities, and senators can dominate the floor debate and amendment process.[1088] In the end the somewhat unique joint committee environment requires a great deal of cooperation in the lawmaking process.

Oversight can be conducted through each joint standing committee with the appropriate jurisdiction. Experts in the state, however, indicate that most legislators do not have the time for oversight.[1089] As a result, the only committee that consistently conducts oversight is the Joint Government Oversight Committee (GOC) with the support of the non-partisan Office of Program Evaluation and Government Accountability (OPEGA). The GOC is comprised of twelve members with an even partisan and institutional split. Interestingly, the GOC is one of the few joint committees where membership is not dominated by the larger House of Representatives, but is made up of six senators and six representatives.

The GOC directs activities of OPEGA by selecting topics and setting the scope of OPEGA's investigations, while working to ensure that OPEGA has access to the information it needs to conduct reviews.[1090] OPEGA's authority is outlined in statute and they may access and use confidential information during the review process. After OPEGA completes a report the GOC allows for public comment on the report by various stakeholders in response to the report' findings or recommendations. At that point the GOC meets in a work session to endorse or reject the report, make legislative recommendations, or refer portions of the report to the appropriate committee for their consideration. The GOC continues to monitor all legislative action regarding the report, which is relatively easy considering the OPEGA staff is the primary support staff for the GOC. Since 2010, OPEGA has conducted 38 reports on a wide range of issues, which is a sizable number considering OPEGA has only ten staffers.

Recently, there was a high-profile failure of Maine's child protective services, where, in separate instances, two young girls were killed while the Department of Health and Human Services knew of the abuse.[1091] The GOC instructed OPEGA to conduct a review of the monitoring practices of the DHHS and make recommendations for action. After initial resistance on the part of the governor to allow the DHHS Commissioner to testify and a subpoena by the GOC to compel the commissioner to testify, the GOC and governor began to work more closely to resolve issues that OPEGA identified as contributing factors in the deaths of the young girls.[1092] Specifically, the governor is attempting to get ahead of the OPEGA report by proposing legislation that focuses on the need for more caseworkers and increases in pay to

[1087] Interview notes from 7-17-18.
[1088] Interview notes from 7-18-18.
[1089] Interview notes 7-18-19.
[1090] http://legislature.maine.gov/doc/2249, accessed 7/18/18
[1091] https://www.pressherald.com/2018/07/10/dhhs-chief-says-agency-will-urge-hiring-of-75-more-child-protective-workers/, accessed 7/19/18
[1092] http://www.wmtw.com/article/official-says-lepages-bill-tackles-child-welfare-system/22106854, accessed 7/19/18

attract and retain state caseworkers.[1093] However, the initial report from OPEGA suggests the underlying causes of deaths of the two girls may differ. In their report, OPEGA determined that in one instance established procedures and policies of protective services were not followed and the actions of the caseworker were not properly supervised. In the second instance there was appropriate follow-up and information sharing but perhaps not enough reassessment of information that might have prompted different approaches to identifying risks to the child.[1094]

However, in Maine not all oversight is reactionary or "fire alarm" type oversight. In 2017 Maine completely revised laws regulating the mining industry, even though there were no major mining operations occurring in Maine. Several legislators recognized that the laws on the books were outdated and did not adequately protect Maine's environment. Furthermore, while there were no major mining operations in Maine, there was some interest from Canadian mining firms to conduct geological assessments of what resources were present and the difficulty in accessing those resources.[1095]

The reforms included changing the administrative rules process related to mining, where under the normal process any substantive rule changes that are not blocked by legislation automatically take effect. The new mining reform bill reversed that process, stating that any new rules relating to mining had to be approved by the legislature before taking effect and the agency could not proceed with the rule even when the legislature failed to act on the proposed rule. Another reform was to require all mining operations to be shaft mines, effectively banning open pit mines and requiring mining companies to provide financial assurances upfront to pay for any environmental damage or accidents that may occur during mining operations.[1096] The support for the bill was overwhelmingly bipartisan, with the measure passing the Senate 34-0 and the House 121-14 and serves as an excellent example of bipartisan proactive oversight.

Oversight Through the Administrative Rules Process

In Maine, under state law agencies must submit all newly proposed rules to the legislature for adoption. There is no review of existing rules. For any rule classified as a major substantive rule to become permanent, the agency must submit rules to the legislature in the form of a bill that the legislature must pass and wait for the governor to sign it.[1097] If the rule is classified as a routine technical rule, then the agency can submit it along with a "fact sheet" to the Legislative Council, who may send it on a the committee with substantive jurisdiction over the agency for an optional review. If the legislature takes no action on a rule by the end of the legislative session in which the agency submitted the rule, then the rule takes effect.

For major rules changes, the Legislative Council may call a public hearing and the agency must submit information on financial impacts. If a group with at least 100 voters among its members contacts the Legislative Council about a rule, the council must hold a public hearing. These major rule changes are also accompanied by economic and fiscal impact statements. But

[1093] http://www.wabi.tv/content/news/DHHS-Commissioner-testifies-in-front-of-Government-Oversight-Committee-487821251.html, accessed 7/19/18
[1094] http://legislature.maine.gov/doc/2315, accessed 7/19/18
[1095] Interview notes from 7/18/18
[1096] https://www.pbs.org/video/environmental-issues-facing-the-state-of-maine-vp3gss/, accessed 7/18/19
[1097] Schwartz 2010 p. 250-251, accessed 7/18/18

these are often vague, incomplete, and inconsistent, so they do not facilitate quality analysis of administrative rules (Schwartz 2010).

In practice, due to limited staff resources and the part-time nature of the legislature very few rules are actually reviewed. Rules take effect if the legislature fails to act, which is what typically occurs.[1098]As a result, while the Maine legislature can stop or modify rules, the infrequent use of this prerogative dilutes the power of the legislature to merely a temporary postponement of the rule.

Oversight Through Advice and Consent

Gov. LePage is responsible for making 18 political appointments, 16 of which require legislative approval. In Maine, the joint committee with jurisdiction over the relevant state agency reviews the governor's nominees. For example, if nominating someone to be the Commissioner of the Department of Economic and Community Development, then the Joint Committee on Labor, Commerce, Research, and Development would consider the nomination. The joint committee then votes favorably or unfavorably of the nomination and the Senate can only overturn the committee's ruling by a 2/3rd vote. In conversations with sources familiar with the advice and consent process, the review by the senate of the governor's nominees is *pro forma*. The person interviewed could only recall one instance in recent memory where a governor's nominee was rejected by a joint committee, and the senate was unable to overturn the unfavorable report.[1099]

The power of Maine's governor to issue executive orders is implied rather than explicitly stated in either statute or in the state's constitution. The legislature has no power to review these orders nor is there any requirement that they comply with the state's administrative procedures act. Moreover, there is no requirement that the public be notified or that the orders be filed or published. That said, the governor's website lists all executive orders issued from 2011 onward. And, with so little restriction on the use of these orders, the state's governors have not issued as many of these orders as some other states' governors do. Also, the governor has the authority to initiate agency reorganizations via an executive order (Beyle, 2008).

Oversight Through Monitoring of State Contracts

Monitoring of state contracts appears to be done through the Office of the State Controller (OSC), which is in the executive branch under the Department of Administrative and Financial Services.[1100] There does not appear to be a centralized system for monitoring state contracts. Rather the OSC sets the policies and procedures for procurement through contracts and leaving the monitoring of those contracts to the individual agencies. Regardless, there is little legislative involvement in this process.[1101]

[1098] Schwartz 2010 p.252, accessed 7/18/18
[1099] Interview notes from 7/18/18
[1100] https://www.maine.gov/osc/aboutus.shtml, accessed 7/19/18
[1101] https://legislature.maine.gov/doc/1818, accessed 9/26/18.

Oversight Through Automatic Mechanisms

There is no regular sunset mechanism in Maine. Agency review occurs as an ad hoc process and agencies, which do have reporting requirements in their authorizing statutes, have them in a similarly ad hoc fashion (Baugus and Bose 2015). However, Maine unlike most New England states also has an extensive "sunrise" mechanism which places the burden of demonstrating that new rules and regulations do not unnecessarily burden the economy on agencies before the bill may be enacted.

The state's Administrative Procedures Act requires that each agency submit annually to the legislative committee with jurisdiction over its substantive area a "regulatory agenda." This agenda consists of a list of rules the agency anticipates proposing, but also a list of any rules that the agency has adopted on an emergency basis during the past year. Committees are required to meet to review any regulatory agendas they receive. The committee may then propose legislation to make adjustments to rules adopted in the previous year. This effectively circumvents the restriction against agency review of existing rules—at least during the first year after a rule is adopted.

Methods and Limitations

Maine does not provide archival recordings of committee hearings. It also does not provide extensive minutes or other resources that document the questions and discussions that occur in committee hearings. It is, therefore, difficult to determine how effectively legislators perform oversight. We interviewed three people out of the five people we contacted by oversight in Maine.

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Legislative Oversight in Maryland

Capacity and Usage Assessment

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

Summary Assessment

The State of Maryland has extremely well-funded, highly professional legislative support staffs that produce a wealth of information and evidence for the legislature. The legislature and the Office of the Legislative Auditor (OLA) work collaboratively to ensure that state agencies implement audit recommendations. Several oversight functions are performed by joint committees, which could lead to bipartisan balance in oversight if partisan control of the chambers were split (it is not currently).

Major Strengths

Maryland's legislature is especially good at using its relationships with other units (support staff or agency staff) to improve government performance. Moreover, it is willing to use the "sticks" at its disposal at least sometimes to impose consequences when "carrots" do not work. The legislature uses the OLA to conduct follow up audits to determine whether agencies have improved their performance after an audit report. If there is no improvement, the legislature sometimes appears to "adjust" the agency's budget. Maryland's legislature makes occasional use of sunset review to determine whether licensing and regulatory entities should continue to exist. It does eliminate some of them, but not often. More typically, the legislature uses its rule review authority to work collaboratively with agencies to make adjustments to administrative rules without formally blocking or delaying them. This collaborative approach may reflect the governor's power to overrule legislative objections.

Challenges

The senate uses its confirmation authority to challenge gubernatorial appointments, but the governor has thwarted this form of legislative oversight by using recess appointments to install nominees that the legislature had already challenged. This conflict appears to arise from partisanship between the Republican governor and Democratically controlled senate rather than from a sense of institutional checks and balances. The legislature appears poised to pass a law

prohibiting this challenge to its prerogatives. Despite the legislature's desire to improve the contracting and procurement processes, Maryland's legislature, as is the case in most states, has limited direct methods to oversee state contracts. It is using OLA audits wherever possible to monitor contracts. Based on a legislative audit of the procurement system, the state is centralizing and standardizing this process. The role of the legislature in this new system is minimal. The legislature's rule review determinations can be overridden by the governor.

Relevant Institutional Characteristics

Despite a short legislative session, Maryland's General Assembly is rated by Squire (2017) as the 10th most professionalized state legislature in the country.[1102] The duration of the general assembly's regular session is approximately 3 months. In 2014 it spent 69 days in regular session and 71 days in 2013.[1103] This compares favorably to states with no limits on session length, as Squire finds that very few of these states exceed 70 actual session days. Committees meet in the interim between sessions. The Legislative Policy Committee, a joint committee composed of 14 senators and 14 delegates, can hold hearings and subpoena witnesses, as well as prepare legislation and refer matters to other interim committees throughout the year. Moreover, Maryland has extensive staff resources, and legislators receive fairly generous pay—especially for a chamber with limited session length. As of 2015, the general assembly had 773 total staff members, 656 of whom were permanent.[1104] All members of the general assembly receive annual salaries of $47,769, with the exception of the Senate President and Speaker of the House, who each receive $62,044; all members receive an additional $45 per day for meals, $103 per day for lodging, and $0.535 per mile driven.[1105] Assembly members are not term-limited.[1106] Based on the Council of State Governments' Governor's Institutional Power GIPI Index, Maryland's governorship is tied with Ohio as the third most powerful among the fifty states.[1107] Maryland's governor is limited to two consecutive terms.[1108] The Maryland Governor has extensive powers with respect to the annual appropriations process and as a result is responsible for providing an initial budget proposal to the state legislature. Once the legislature has that proposal they may only make cuts. They may not transfer proposed spending between agencies or provide greater funding to an agency than is being requested by the Governor (Council of State Governments, 2016).The governor has line-item veto authority with respect to the budget, but the general assembly may override a gubernatorial veto with a three-fifths vote in both chambers.[1109]

[1102] Squire, Peverill (2017). A Squire Index Update. *State Politics & Policy Quarterly 2017, Vol. 17(4) 361 –371*; Retrieved from: http://journals.sagepub.com.proxy.lib.wayne.edu/doi/full/10.1177/1532440017713314
[1103] Ibid.
[1104] National Conference of State Legislators (2016). Size of State Legislative Staff: 1979, 1988, 1996, 2003, 2009, 2015. Retrieved from: http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf
[1105] National Conference of State Legislatures (2017). 2017 Legislator Compensation Information. Retrieved from: http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx
[1106] National Conference of State Legislators (2015). The Term Limited States. Retrieved from: http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx
[1107] Council of State Governments, The (2015). *The Book of the States*. Table 8-4; p. 252. Lexington, KY
[1108] Ballotpedia. Governor of Maryland. Retrieved from: https://ballotpedia.org/Governor_of_Maryland
[1109] Ballotpedia. Maryland General Assembly. Retrieved from: https://ballotpedia.org/Maryland_General_Assembly

Maryland has a much smaller than average proportion of its citizens working in state and local government employment—10.2% compared to 11.3% nationally. This means that it is in 42nd place nationally. The areas in which its percentage of workers is much smaller than other states are education and welfare. The proportion of its population employed in safety and service also lag the national average for state and local government employment, but only slightly.

Political Context

In 2018 Maryland had a divided state government—a Republican governor, with Democratic control of both chambers of the general assembly. As of March 2018, the Democrats held a 33-14 advantage over the Republicans in the senate. In the lower chamber, the Democratic advantage is 91-50.[1110] Democrats have held majorities with "veto-proof margins--in both chambers since 1922."[1111]

Despite the Democrats' historical dominance of the general assembly, substantial political disagreements exist within the party's membership. This is particularly the case between progressive Democrats—including many members of the general assembly's Black and Latinx caucuses—versus conservative Democrats, often from districts won by Republican Governor Larry Hogan. State progressive groups, including some Democratic assembly members, have recently called for primary challenges to Democrats who have sided with Republicans on issues including immigrants' rights, cash bail, and medical marijuana.[1112] Despite these internal factions, according to Shor and McCarty's (2015) criteria Maryland Senate Democrats are the ninth-most liberal in the country, while its house Democrats are the 11th-most liberal.

Maryland's Republican assembly members are less conservative than Republican legislators in other states. Senate Republicans are only the 43rd most conservative in comparison to their counterparts in other states, while house Republicans are the 26st-most conservative (Shor and McCarty 2015). Despite this liberal tilt in both parties, Maryland's Senate and House, as a whole, are rated as the 13th and 9th most politically polarized, respectively, in the country.[1113]

[1110] Ballotpedia. Maryland General Assembly. Retrieved from: https://ballotpedia.org/Maryland_General_Assembly
[1111] Hicks, J. (5/7/17). How Md. Republicans plan to break the state senate's supermajority in 2018. *The Washington Post.* Retrieved from: https://www.washingtonpost.com/local/md-politics/how-md-republicans-plan-to-break-the-state-senates-supermajority-in-2018/2017/05/07/91ad978c-2e99-11e7-8674-437ddb6e813e_story.html?utm_term=.b66b23bfd139
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[1113] Shor, B. & McCarty, N. (2015). "Aggregate State Legislator Shor-McCarty Ideology Data, June 2015 update", doi:10.7910/DVN/K7ELHW, Harvard Dataverse, V1, UNF:6:l5O+/whNdgWGB1Vt4nEheA==

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Maryland Department of Legislative Services (MLIS) is the principal bureaucracy tasked with providing support to the legislature. MLIS was created as the central agency for all analytic legislative needs via statute under chapter 635 and 636 of 1997. The department provides analytical, legal, and ethical services to the legislature. The MLIS houses several legislative agencies including the Office of the Executive Director, The Office of Legislative Information Systems, the Office of Policy Analysis, and the Office of Legislative Audits (OLA). The Office of Legislative Audits (OLA)—which is analogous to the Office of the Auditor General in many other states—plays a key role in legislative oversight. Even though the OLA is part of the MLIS, it reports directly to and is directed by the legislature's Joint Audit Committee (JAC), performing 1) fiscal audits, 2) follow-up reports, 3) performance audits, as well as other 4) special reviews and investigations. The OLA has a large nonpartisan staff of 115 and a FY2018 budget of $14,315,855.[1114] This is an increase over its $13.2 million appropriation for 2015 (NASACT 2015). Nearly all these staff members perform some analytical function for the OLA. The OLA does not audit local governments (NASACT 2015).

In the 2017 fiscal year the OLA, released 43 fiscal audits and follow up reports and 8 non-fiscal audits; including 2 performance audits and 6 special audits. In 2016 the OLA released 61 fiscal audits and 15 performance audits; 11 of which were special audits. Upon completion audits are distributed to the Office of the Governor, the legislative leadership, to relevant agency heads, and to the Joint Legislative Audit Committee (JAC). The JAC then is responsible for reviewing the audit reports. After the JAC reviews the audit reports—as well as any responses from the affected agencies— the JAC submits a formal review of the audit report to the general assembly. Follow up reports may occur after a fiscal or performance audit when either the auditors or the legislators want to make sure agencies implement audit recommendations and come into compliance.

Fiscal audits serve as the principal tool of the legislature for overseeing agency spending, including agency procurement and review of agency contracts. These audits are scheduled and performed regularly by OLA although they may be formally requested by the legislative leadership and informally by the Office of the Governor, agencies, and legislative staffs.[1115] Performance audits, like fiscal audits, are typically performed on a regular schedule because they are required by statute. Unlike fiscal audits, performance audits pay greater attention to the efficient implementation of public programs in Maryland and not to the agencies' ledgers. Performance audits are conducted less frequently than other audits—only 2 were performed in 2017 and only 4 were performed in 2015. Instead, the legislature appears to prefer using the 'special' report mechanism to evaluate the performance of public programs.

A review of special reports between 2015 and 2017 revealed that these audits regularly take two practical forms: 1) either as a non-audit alternative to performance audits or as 2) a type of investigation preceding a performance audit. Special reports—unlike performance audits—do not offer recommendations on how to improve program/agency performance. Instead, when

[1114] http://msa.maryland.gov/msa/mdmanual/07leg/legser/html/legser.html#audits, site visited 4/17/2018.

[1115] Fiscal audits are additionally described in greater detail in the section on *Oversight through State Contracts.*

acting as a non-audit review of an agency, the report appeared to be more narrowly focused and exclusively fact-finding. Special reports of this nature are frequently utilized to "follow-up" with agencies that have continually failed to come into compliance with the recommendations made in prior performance audits. In these cases, the legislature regularly associates some of the agencies' administrative appropriations with a satisfactory report by the OLA. This practice of tying administrative appropriations to satisfactory OLA reports is an effective tool among state auditors and a powerful mechanism of legislative oversight in Maryland.

According to one knowledgeable source, performance and special audits are becoming increasingly popular amongst legislators. This source hypothesizes that this increased interest is a result of new generations of legislators who have substantial experience working as bureaucrats and as legislative staffers in nearby Washington D.C. (Interview A 2018).

Oversight Through the Appropriations Process

While finances in Maryland are good (the state has a AAA bond rating), budget battles nevertheless ensue along partisan lines between the governor and the legislature. In 2017, Republican Governor Hogan proposed a 2018 budget that was approximately $20 million less than the 2017 budget. He argued that this cut would not result in any loss of public services, however Democrats were skeptical and believed services would inevitably be cut under the proposed budget. Additionally, Democrats accused Governor Hogan of misleading the Marylander's into believing he had reduced spending by reducing the state budget and then "inappropriately" dipping into the state's "rainy day" fund, "even though it isn't raining."[1116]

To exercise greater influence over the state budget, the legislature relies less on the regular appropriations process choosing instead to include funding in statutes. This limits the funds that are subject to the governor's budgetary powers and/or to the governor's administrative discretion. Additionally, the legislature utilizes Budget Reconciliation and Financing Acts (BRFAs). These are passed via the normal legislative process as statutes and are therefore not subject to the governor's budget powers. Although the governor may still veto the bills, the legislature may be able to override the veto. While these statutory funding mechanisms have become increasingly popular, the Democratic Party in the legislature needs to maintain a veto-proof majority to pursue their priorities using these tools. Moreover, these tools do not help the legislature adjust gubernatorial budget amounts upward (Interview D 2018).

Though the governor is proving to be an effective barrier to increasing the budget of state agencies, the legislature retains substantial authority to cut agency funding. One example of this is in the case of the Department of Human Resources. In 2014, the legislature passed an act creating a program designed to encourage the creation and maintenance of savings accounts for children in the foster care system. The legislature passed a statute that included funding for the new program, but after two years the department had yet to implement the program. The legislature responded to this failure to implement policy by eliminating the funding the department was set to receive for the program (Interview D 2018).

Another way appropriations committees attempt to stay apprised of the performance of the agencies within their jurisdiction is by holding audit hearings in conjunction with the

[1116] https://wtop.com/maryland/2017/01/maryland-lawmakers-say-rainy-day-funds-help-budget-holes/, accessed 10/4/18.

agencies budget hearing. An example of this can be found in the Department of Juveniles Services (DJS), where the Joint Audit Committee and appropriations committees from each chamber all held their own hearings into the agency's performance. The audio/visual from these hearings demonstrates legislators asking DJS staff about audit recommendations, agency performance, agency needs as they relate to services, personnel issues including retention and burnout, and specifics regarding operations. The details are discussed further in the section titled "Oversight of Procurement and State Contracts" and the section's vignette.

In addition to the BRFAs and statutes that simultaneously create programs and appropriate money, the legislature ties administrative appropriations to agency performance. As discussed earlier, special evaluations performed by the Legislative Auditor's office, which are done as "follow-ups" to previous performance audits, regularly tie some amount of administrative appropriations to a satisfactory finding by the auditor. Most frequently $100,000 or $200,000 in appropriations is leveraged against the agency's non-compliance (The Office of Legislative Audits, 2017). These "follow-up" reports increase the risk of budget cuts for bureau chiefs and provide additional tangible incentives for departments to implement legislative priorities.

Oversight Through Committees

The Maryland Senate is organized into six standing committees. Four cover substantive areas of public policy and two concentrate primarily on oversight activities. The substantive committees are: 1) *The Education, Health, and Environmental Affairs Committee*, 2) *The Judiciary Proceedings Committee* 3) *The Finance Committee* and 4) *The Budget & Taxation Committee.* The two oversight committees are: the *Executive Nominations Committee,* which reviews the Governor's appointments, and the *Rules Committee,* which is responsible for the internal rules of the Senate. Similarly, three of the seven committees in the lower chamber have explicit oversight roles: *The Appropriations*, *Health and Government Operations*, and *The Rules and Executive Nominations* Committees. Additionally, the Maryland legislature is organized into 17 joint committees, six of which are designated to perform a specific oversight function, the remaining 11 are organized around either narrow policy areas or around legislative services. Special joint committees, as the following vignette demonstrates, can be formed to investigate poor performance by executive branch agencies.

Vignette: Voter Registration IT Programming Error

On July 12th, 2018, an interim joint legislative committee of legislators from the House Committee on Ways and Means and the Senate Education Health and Environmental Affairs Committee (interview notes 2018) held a hearing to investigate voter registration errors affecting tens of thousands of Maryland voters. Officials from the Motor Vehicle Administration (MVA), Board of Elections, and Department of Transportation were quizzed about what had gone wrong. Several individuals also provided testimony on the effect the errors had on polling places. The hearing demonstrates that standing committees in Maryland can collaborate to leverage their expertise and authority to oversee state agencies.

The problem involved voters whose changes to their voter registration were not processed correctly and had been told at their polling place that they were not registered. At the

start of the hearing, the chair summarized the issue and provided the various conflicting explanations that had been given up to that point:

> Trampling on the constitutional rights of individuals who vote, I'm totally appalled by it… I've heard three versions of what actually happened, which I'm utterly amazed this is probably more distorted facts than in my state senate race… The first thing that we heard was that it was an oversight—alright, possible. The second was—initially it wasn't a computer glitch and then now it's a computer glitch… The third was, that the state board actually omitted to read their emails, and I find that quite interesting that the state board actually omitted to read their emails when they were forwarding the necessary information.

The chair called on officials from the MVA and its parent organization, the Maryland Department of Transportation, to provide testimony and answer questions. The head of the MVA explained that citizens were affected by an IT programming error. Citizens updating their address using the MVA website or kiosk and choosing to update their voter registration without purchasing an ID card or driver's license were never forwarded on to the State Board of Elections to have their registrations updated. The official apologized for the error and defended the digital system, stating that while this error occurred, there were issues in the past with paper registrations getting lost and lauded the digital system's efficiency and overall improved customer service.

The official stated that the error was uncovered by a single complaint by an MVA employee checking their registration, which triggered an internal investigation. It took about a week from the initial complaint to uncover the issue in its entirety. All the emails associated with the error were given to the Maryland Department of Elections so that they could contact the individuals. In response to Chair Conway's concern that the number of errors kept changing, the official stated that in their haste to send out the list, they hadn't scrubbed for duplicates and on another occasion, they accidentally used an "AND" instead of an "OR" in a search query, resulting in a much smaller list. Questions by legislators focused on the exact count of errors including requests for a written briefing with the final counts including an explanation for how they were determined.

Aside from questions about the error itself, legislators had three broad concerns: how would the MVA prevent a similar error, questions about the MVA broadly (personnel and culture), and questions about the impact the error had on the election. Some legislator's questions focusing on corrective action. These included: What audit procedures have been introduced? What kind of testing has been conducted of your IT systems? and Have you terminated any employees responsible? One exchange involved a former computer programmer turned legislator who focused on the specific operations of the software testing and details about the updated software. Another series of questions teased out the audit procedures before and after the error. Legislators also wanted to know what they could do to improve the MVA systems.

The official assured legislators that they had reviewed all their processes as a first step, conducted an IT Division review, identified single points of failure, corrected software, and added regular auditing that included manual audits of the information sent to the State Board of Election. This was part their response to an audit that was held by the MVA with an emphasis on investigating anomalies. The official initially stated they

would not discuss personnel issues, but later did say it was a contractor who was responsible for the error. The official often cited the use of aging software running on COBOL, IT systems dating back to the 1970s, 228 software applications, and 44 databases running on a variety of programs. Legislators were generally sympathetic to these difficulties although little attention was paid to addressing these deeper issues, such as monitoring the performance of contractors and appropriating money to pay for upgrades to IT hardware and software.

Legislators also asked questions about the MVA broadly. These questions probed topics such as whether the culture and organization of the MVA is appropriate to handle elections; questions about the appropriateness of certain questions on MVA application forms; questions about the voter registration application process; and general questioning about the management of the MVA. One legislator stated "this has been one of the most mismanaged administrations I've seen in state government (42 minute mark)" and expressed concerns about key personnel decisions. The official refused to answer personnel questions at the hearing. The official assured legislators of their commitment to provide the Department of Elections and State Board of Elections with critical voter registration information and work with them on improving application forms.

The issue of greatest concern was whether the outcome of the election was in anyway altered by the error. The official stated every provisional ballot was checked against their list to ensure every eligible vote counted. Regarding the consequences the error had on voting, the official stated:

> We certainly understand that voting by provisional ballot was an inconvenience for some Maryland voters, and we deeply regret the inconveniences this programming error occurred, but the most important thing at the end of the day for us was making sure every vote counted.

Legislators asked whether citizens were turned away from the polls, what actions were taken to ensure everyone who was not properly registered because of the error were informed and able to vote, whether provisional ballots suppressed the vote of those asked to cast them, and wanted to know how many people were impacted, how many provisional ballots, how many polling locations, questions about voter suppression in particular those of minorities, what auditing systems are in place, and questions about the voting process. Legislators often shared anecdotes from constituents about the suppressing effect the incident had on the vote and two individuals testified at the end of the hearing on this point. The official stated that after removing duplicates, the number of people whose voter registration address wasn't updated due to the error was about 71,000. Of those 71,000, 3,500 cast provisional ballots and another 5,000 effected voters were able to vote through normal means. Neither the MVA nor State Board of Elections officials would comment on whether voting provisional ballot suppressed the vote, although the latter did say they would share some studies with the legislature after doing more research. No one seemed to point out the fact that the 8,500 voters who cast provisional ballots (3,500) or voted some other way (5,000) is approximately 12% of the 71,000 voters affected by the error--an exceptionally low voting rate for the 2016 general election.

The State Board of Elections chair explained their main effort was to educate voters and that they did this through the media, their website, word of mouth, and by emailing

those individuals effected by the error. She testified their intervention resulted in an increased usage of their online website that allows voters to determine their registration status and polling location. The official stated that usage of their website doubled, an indication that their efforts to get the message out on the error bore fruit. Although 90.6% of provisional ballots were counted in full or in part, the official could not say how many people were turned away from the polls who did not cast a provisional ballot. She stated that in the future they would conduct election-judge training that emphasized giving out provisional ballots when in doubt.

It is apparent that Maryland's legislators are capable of asking tough questions when agencies fail and that committees and the two chambers can work together to investigate problems. Even though legislators asked pointed and probing questions about this performance failure, potential legislative solutions such as same day registration or money to upgrade hardware and software were not discussed. It is not clear what consequences or corrective actions, if any, were forced upon the agencies at fault. Moreover, the contractor does not appear to have been called out publicly or to have suffered consequences for this error. Indeed, agency officials seemed reluctant to reveal the contractor's involvement and responsibility.

Oversight Through the Administrative Rules Process

In Maryland, all proposed regulations are reviewed by the 20-member Joint Committee on Administration, Executive, and Legislative Review (AELR) and the Department of Legislative Services (DLS) (Schwartz 2010). The committee's powers are largely advisory, and AELR does not appear to meet often. In 2015, it met twice: once in March and once in December.[1117] The committee consists of ten senators and ten delegates appointed by the leaders of their respective chambers. While the committee may vote to oppose the adoption of a regulation—if they find that it contradicts the law or its intent—the governor may override such opposition, allowing the regulation to go into effect. Emergency regulations, however, require explicit committee approval.[1118] DLS staff prepares a monthly synopsis of the rules for committee members to aid in their review of dozens of proposed rules.[1119]

The rule review process has several steps. (See Figure 1.) First, the promulgating agency submits the proposed regulation to the AELR, at which point the DLS performs a fiscal and legal analysis, which is then presented to the committee. After a period of at minimum 15 days, the proposed regulation is published in the *Maryland Register*. The agency must also estimate the economic impact of the proposed rule for the state, including its impact on business and taxpayers. If the economic impact is substantial, then the agency must prepare a full economic impact statement. The AELR then has 45 days to formally review the proposed regulation,

[1117] http://mgaleg.maryland.gov/Pubs/legislegal/2015-Hearing-Schedules-and-Addendums.pdf, accessed 10/4/18.
[1118] Joint Committee on Administration, Executive, and Legislative Review (website). Regulation Review Process. Retrieved from: http://mgaleg.maryland.gov/webmga/frmAELR.aspx?pid=aelrpage&stab=04&id=aex&tab=subject7&ys=2018RS
[1119] http://mgaleg.maryland.gov/pubs/committee/aelr/2018-AELR-synopses-regulations-received-1-15-2018-through-2-8-2018.pdf, accessed 10/4/18.

including a 30-day public comment period, in which members of the public may submit their opinions directly to the proposing agency. During the 45-day review period, the committee may conduct hearings; if it finds that the regulation violates the law or its intent, it may vote to oppose the regulation; it may also place the regulation on hold, pending further discussions with the proposing agency. The Department of Legislative Services assists the AELR in this. If the committee does not take any action, the agency may adopt the regulation after the 45-day review period ends.[1120]

According to someone familiar with the regulatory review process (interview B, 2018), there is generally a high degree of cooperation between the promulgating agency and the committee (Interview A 2018). For instance, the initial publication of a proposed regulation frequently reflects changes agreed upon during informal discussions between the committee and proposing agency, prior to the official review period. "Agencies tend to be receptive" to committee concerns, and in general, "are very good about communicating" with the committee. While disagreements do occur between agencies and the committee, staff characterizes the oversight conducted by the AELR as "very effective, with respect to the regulatory process."[1121] If, however, the AELR does vote to oppose adopting a rule, then the agency cannot adopt the rule unless the governor overrides the legislature.

Oversight Through Advice and Consent

The Maryland Senate conducts oversight of the executive branch through its constitutionally-stipulated "advice and consent" powers.[1122] Each of the 19 cabinet-level executive branch agency heads appointed by the governor requires approval by the senate.[1123] According to the Senate Executive Nominations website, "For all appointments made by the Governor which require Senate advice and consent, the Committee reviews and interviews gubernatorial appointees. The Committee then reports its recommendations on those nominations to the Senate."[1124] This committee met 10 times during 2018. Its first meeting of the year, January 29th, 2018, which featured 19 nominees, lasted for one hour.[1125] The chair opened the meeting by stating that there was a "light" schedule for the first meeting. This suggests that nominees are typically considered in batches of 20 or more. Most of the nominees were for judicial positions, such as district court judge. A legislator introduced each nominee, the nominee spoke for a minute or two, and typically there were no questions for any nominee from any committee members. Only one nominee, Secretary of the Department of Health, involved more discussion. Several committee members spoke in support of his nomination. He had previously served in the legislature. His statement laid out four tasks for the department and discussed his vision. There were a few substantive questions about the relationship between the department

[1120] Ibid.
[1121] Interview D, Personal Interview. 8 March 2018.
[1122] *Maryland Constitution* (2015). Article II, Sections 10-14. Retrieved from: http://mgaleg.maryland.gov/pubs-current/current-constitution-maryland-us.pdf
[1123] Maryland Manual Online. Maryland at a Glance. Executive Branch. Departments. Retrieved from: http://msa.maryland.gov/msa/mdmanual/01glance/html/mdgovt.html
[1124] Maryland Manual Online. Senate. Standing Committees. Executive Nominations Committee. Retrieved from: http://msa.maryland.gov/msa/mdmanual/05sen/html/com/03execf.html
[1125] http://mgahouse.maryland.gov/mga/play/6c81c4b3-c494-4a7b-b5f4-127b163df5e2/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c, accessed 10/3/18.

and the legislature. In general, the questions were friendly rather than aggressive, and several legislators clearly knew the nominee well.

Not all meetings of the Senate Executive Nominations Committee are as uneventful as this one. Maryland's senate regularly fails to consent to political nominees of all levels from bureau chiefs to commissioners (Interview D 2018).

Scrutiny of gubernatorial appointments by this committee has resulted in the increased use of recess appointments by Governor Hogan.[1126] A particularly controversial example of such practice occurred during last year's general assembly recess, when Hogan reappointed two cabinet-level department heads who had been previously rejected (one by committee vote, the other by absence of a hearing) by the Senate Executive Nominations Committee.[1127] Democratic lawmakers argued that these reappointments were unconstitutional, and accordingly, the general assembly passed a budget in which neither of the two unconfirmed, "acting" cabinet secretaries were provided salaries.[1128] Republicans countered that because neither appointee was formally rejected by vote of the senate as a whole, the governor's recess reappointments were legal.[1129] Ultimately, a county circuit court judge ruled that the two acting secretaries be paid their salaries.[1130]

Gov. Hogan has since used similar methods—using recess appointments, followed by immediately withdrawn nominations at the beginning of subsequent legislative session—to place three appointees on the Handgun Permit Review Board without senate confirmation. At the January 29th, 2018 hearing, the committee chair mentioned these nominees and said that the governor was looking for people to replace them.[1131] The committee expressed its frustration with the fact that these "rejected and to be withdrawn" appointees were still sitting on the Handgun Permit Review Board while the governor's office looked for replacements. This, according to committee members, is making a mockery of the committee, and senate Democrats said that they planned to pass legislation to prohibit this practice.[1132] This ongoing episode illustrates the lengths to which both the governor and the general assembly are willing to

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[1126] Washington Post Editorial Board (7/16/17). A partisan brawl in Maryland. *The Washington Post.* Retrieved from: https://www.washingtonpost.com/opinions/a-partisan-brawl-in-maryland/2017/07/16/c634c75e-65a9-11e7-8eb5-cbccc2e7bfbf_story.html?utm_term=.7e6ca9dfde6a

[1127] Dresser, M. & Cox, E. (3/13/17). Maryland Senate panel rejects Hogan appointee. *The Washington Post.* Retrieved from: http://www.baltimoresun.com/news/maryland/politics/bs-md-hogan-appointment-rejected-20170313-story.html

[1128] Cox, E. (7/7/17). Maryland attorney general: No paychecks for unconfirmed members of Hogan cabinet. *The Baltimore Sun.* Retrieved from: http://www.baltimoresun.com/news/maryland/politics/bs-md-hogan-appointees-paycheck-20170707-story.html

[1129] Gaines, D. (4/12/17). Governor reappoints Peters as state planning secretary after lack of confirmation. *The Frederick News-Post.* Retrieved from: https://www.fredericknewspost.com/news/continuing_coverage/annapolis_2017/governor-reappoints-peters-as-state-planning-secretary-after-lack-of/article_ce01130f-0410-5783-bfc2-54b375bc4b89.html

[1130] Watkins, O. (12/14/17). Judge rules Maryland Treasurer must pay disputed Hogan appointees. *The Washington Post.* Retrieved from: https://www.washingtonpost.com/local/md-politics/judge-rules-maryland-treasurer-must-pay-disputed-hogan-appointees/2017/12/14/aea0c11a-e0fb-11e7-89e8-edec16379010_story.html?utm_term=.8bcde1a70815

[1131] http://mgahouse.maryland.gov/mga/play/6c81c4b3-c494-4a7b-b5f4-127b163df5e2/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c, accessed 10/3/18.

[1132] Gaines, D. (1/29/18). Confirmation questions arise in Maryland Senate again, this time related to Handgun Permit Review Board. *The Frederick News-Post*. Retrieved from: https://www.fredericknewspost.com/news/politics_and_government/confirmation-questions-arise-in-maryland-senate-again-this-time-related/article_99b4d6b7-3064-585c-aad7-a5eeeb622418.html

go to assert their respective prerogatives with respect of executive branch appointments.

Although the CSG State of the States report lists Maryland among the few states that require their governor to submit executive orders to the legislature, we find no evidence of any legislative review. The only legislative action with respect to gubernatorial executive orders is that they are published by Department of Legislative Services.[1133]

Maryland is also among the states in which the governor uses the power of executive orders to make policy, and this has raised constitutional questions and led to public outcry. For example, Governor Hogan issued an executive order prohibiting state agencies from entering into contracts with companies the boycott Israel.[1134] This action is widely criticized as overstepping his authority. But even executive orders that are not likely to elicit oversight from the judicial branch, such as changing the start and end dates for all public schools in the state[1135] can trigger checks on gubernatorial power. After Gov. Hogan issued an order requiring states to start the year after Labor Day and end it before June 15th, the legislature responded to public outcry over this by passing a bill (with veto-proof majorities in both chambers) to allow school districts "flexibility" and control over their school calendar. It appears that this is the only power the legislature has to rein in gubernatorial executive orders, however.

The Maryland constitution (Section II Article 24) stipulates that reorganization of executive branch agencies can be enacted by the governor.[1136] If such reorganization is "inconsistent with existing law, or create[s] new governmental programs", it requires an executive order, subject to rejection "by a majority vote of all members of either chamber of the general assembly."[1137] This is special sort of EO that is subject to legislative review. There are several rules that govern the use of these special EOs. "They must be submitted during the first 10 days of the legislative session, and the General Assembly has 50 days to disapprove of the EO by issuing a Resolution and getting a majority vote of all members" (personal correspondence 10/4/18). Agency reorganization seems to occur periodically; the most recent substantive executive reorganization occurred in 2008, with the creation of the Department of Information Technology, which had previously been an office in the Department of Budget and Management.[1138]

Oversight Through Monitoring of State Contracts

The state legislature has few mechanisms that allow it to effectively intercede in matters of contracts and procurement (Interview A 2018, Interview C 2018). The principal tool available to the legislature to monitor procurement and contracts is the fiscal audit mechanism performed

[1133] http://dlslibrary.state.md.us/publications/OED/A/EO_2006.pdf, accessed 10/4/18.
[1134] https://www.nbcwashington.com/news/local/Maryland-Governor-Signs-Order-to-Block-Boycotts-of-Israel-452530273.html, accessed 10/4/18.
[1135] https://www.washingtonpost.com/local/md-politics/maryland-general-assembly-moves-to-give-flexibility-to-local-school-districts-creating-school-calendars/2018/03/28/acdd25ec-32b0-11e8-94fa-32d48460b955_story.html?utm_term=.d4a6fa9303d4, accessed 10/4/18.
[1136] *Maryland Constitution* (2015). Article II, Section 24. Retrieved from: http://mgaleg.maryland.gov/pubs-current/current-constitution-maryland-us.pdf
[1137] Ibid., p. 24.
[1138] Maryland Manual Online. Maryland at a Glance. Executive Branch. Departments. Retrieved from: http://msa.maryland.gov/msa/mdmanual/01glance/html/mdgovt.html

by Maryland Department of Legislative Services' (MLIS) Office of Legislative Audit (OLA). Additionally, the MLIS has policy analysts dedicated to reviewing the state's procurement process.

In 2014, MLIS at the request of the governor performed an in-depth review of the state's procurement system. The report concluded that Maryland's procurement process was generally opaque, often failed to comply with existing practices, and was not in line with the best practices exhibited in some other states. Specifically, Maryland's procurement process lacked centralization and a modern "*e*Procurement" system. An earlier report from the Urban Institute stated that this decentralization made contracting with the state unnecessarily difficult for nonprofit organizations, which had to manage a wide array of contract requirements and dates from various out-contracting state agencies (de Leon, Pettijohn, & Nemoff, 2013).

The 2014 MLIS report made two principal recommendations: first, that Maryland create a Chief Procurement Officer (CPO) with the authority to design specialized procurement procedures as necessary and second, to standardize the state's procurement system. By implementing both primary recommendations—as well as the reports additional, secondary, recommendations—Maryland's procurement process would become more centralized and procurement would follow a single standard process except for narrowly identified special exceptions (Department of Legislative Services, 2014). After the publication of the 2014 MLIS report, the governor formed a special commission led by the lieutenant governor, and comprised of bureaucrats and private experts to produce additional recommendations. The commission concluded in 2016 making additional recommendations but essentially maintaining the principal 2014 MLIS recommendations (Commission to Modernize State Procurement, 2016).

Following the 2016 commission report, the state passed a series of bills reforming procurement by creating branch wide standards and appointing a Chief Procurement Officer (CPO) who is responsible for "overseeing" all the executive agencies contracts. The intention is that this will result in a clearer and less *ad hoc* procurement processes. While the CPO position created is subject to the 'advice and consent' powers of the legislature, these reforms generally failed to create any new points of access for the legislature to oversee contracts. Instead, the reforms only improved the internal oversight of the executive branch (Interview A 2018).

The reforms did, however, reinforce the legislature's authority to advise and consent with respect to the appointed CPO—whose position moved power slightly further from the governor. This may result in the legislature at least structurally gaining some additional influence over the state's procurement practices. So, while procurement reform centralized procurement "oversight," the executive branch by-and-large retained its autonomy in this area.

To assert some oversight of the contract and procurement processes, the legislature once again turned to its analytic bureaucracy, using the fiscal audit mechanism vested in the Office of Legislative Audits. Through this mechanism, the OLA has been in some instances able to identify "misappropriations" and inefficient procurement within the judicial branch. In 2017, the OLA performed a fiscal audit that discovered that the judiciary was procuring services from vendors that did not offer the lowest bid or a better product. The judiciary did this without any explanation. The audit additionally determined that the judiciary had been misreporting its spending (Office of Legislative Audits, 2017). It is unclear whether the legislature reacted to this misuse of appropriations. The 2018 appropriation for the judicial branch was 14% lower than the judiciary requested, but still 3% higher than the year before. (Maryland State Archives 2017, Maryland State Archives 2018, Donovan and Marbella 2017).

In a similar instance, a 2018 OLA fiscal audit report found that the Department of Information Technology (DOIT) paid the state's new centralized "*e*Procurment" system's vendor a large no-bid contract, which included approximately $750,000 in questionable charges. The release of the OLA report coincided with DOIT appropriations hearings. The 2019 budget includes increases for the agency of $40 million or about 60% more than the 2018 DOIT appropriation (Maryland State Archives, 2018; HB 160, 2018). This does not indicate that DOIT's past behavior had consequences.

While it is very common for fiscal audits to uncover instances of individual malfeasance, i.e., misuse of state credit cards, (Interview D 2018), these misappropriations of state resources are relatively "small" in their scope. It is less common for a fiscal audit to uncover "big" misappropriations of state dollars, such as these cases involving the Judiciary and the DOIT. In the "smaller" instances, the legislature does little of substance to respond to the malfeasance. Generally, an appropriations sub-committee or a substantive standing committee will hold a hearing where agency leaders testify and assure the committee that the bad behavior will stop. Committee members scold agency leaders but generally no additional punitive measures are taken.

Vignette: Department of Juvenile Services

The Office of the Legislative Audit (OLA) does occasionally find evidence of more severe violations of the state's procurement rules. A 2017 audit report of the Department of Juvenile Services (DJS) found that the department had been intentionally structuring millions of dollars in payments to state contractors to avoid the state's competitive bidding requirements.[1139] *In Maryland contracts for services that exceed $15,000 require a competitive bidding process and must be approved by the State Board of Public Works—headed by the governor—to ensure the state is receiving maximum services for dollars spent. Additionally, Maryland requires that if agencies anticipate that contracts will be between $5,000 and $15,000, then the agency must solicit at least two bids.*

However, the OLA discovered that of the total $9 million spent on outside services by the DJS $7.5-million was in contracts of $15,000 dollars or less, with one unnamed private contractor receiving 202 such contracts totaling about $1.5 million.[1140] *The State Legislative Auditor Thomas Barnickel explained, "Now, you would think you could bundle those up very easily, and if they were bundled up, then they would have had to go through the central procurement office… What also made it suspicious is that these were routine types of goods and services that you could buy locally, but yet these companies were being awarded contracts to provide these services many miles away" (Baye, 2017).*

In another instance regarding a set of approximately $264,000 worth of contracts, the contracts had been structured as being less than $15,000—therefore requiring a minimum of two bids on the contract. However, in these instances both required bids solicited by the DJS were from private contractors that are owned by the same person. And lastly, the audit report found that in numerous instances the contractor had subcontracted out services, effectively acting as a middle-man[1141]*, raising the question: did the state truly receive the most cost-effective services if the contractor itself was able to get a better deal elsewhere? When asked about this by WYPR*

[1139] https://www.ola.state.md.us/Reports/Fiscal%20Compliance/DJS17.pdf
[1140] ibid
[1141] ibid

Baltimore, the Department of Juvenile Services Secretary claimed the point of the smaller contracts was to allow smaller businesses more ability to compete. He also claimed that many of the small contracts were for emergency maintenance, which inflated the number of small contracts but resolved an immediate necessity.

In addition, to the dramatic procurement violations the report additionally found that the agency had failed to recover all the federal funding that it was entitled to, failed to provide appropriate upkeep of facilities, and finally failed to take appropriate steps to disburse court-ordered restitution collected by the agency. The audit findings were distributed to the legislature's JAC, the Office of the Governor, and the DJS. The DJS Secretary responded to the report by saying his agency has since made reforms on bidding but denies splitting contracts. The legislature has referred the report to the state's attorney general's office, which has opened its own investigation into the agency.

The audit came up in several hearings: once at the JAC,[1142] once at the House Public Safety and Administration[1143] Subcommittee[1144] of the House Appropriations Committee; and once at the Senate Public Safety, Transportation and Environment[1145] Subcommittee[1146] of the Senate Budget and Taxation Committee. Legislators were interested in learning about the audit recommendations and to be briefed on the "actions taken to address the audit findings." Most audit issues received only single, direct question-response, with no follow up questions. For example, DJS staff was asked by a legislator in the senate hearing about the attorney general's investigation into the invoice splitting. The staff stated that they have no details to give and are awaiting further information like everyone else. It appeared that the direct question-answer approach legislators were taking was at least in part to get staff on the record and then to follow up at a subsequent hearing. For example a previous JAC hearing was referenced by both a legislator and DJS staffer during an exchange in the house hearing.

Invoice splitting featured prominently in both house and senate hearings. The DJS official was asked either directly about the invoice splitting or about repeat audit issues by the chairs of the subcommittees, (1 hour, 44 minute mark house; 59 minute mark senate). The officials responded that invoice splitting is somewhat subjective. One noted that OLA staff at the JAC hearing agreed with the claim to some extent, and both DJS staffers gave the example of asphalt repairs at a facility. Asphalt repairs maybe able to be bundled and bid all at once to get the best deal in some areas of government. But leaving cracked asphalt at a juvenile justice facility for any length of time is a safety risk because someone could use the cracked pieces as projectile weapons. The officials went on to say that they believe the issue won't come up on a future OLA audit because they now have the appropriate controls in place. There were no follow up questions.

[1142] I am having a hard time tracking the A/V down. However, since it is brought up in the other hearings, I know that one happened and some of what took place.

[1143] https://dbm.maryland.gov/budget/FY2019Testimony/V00.pdf accessed 9/26/18 we were sent these documents by a source. The source used these documents to identify the appropriate hearing.

[1144] http://mgahouse.maryland.gov/mga/play/4fbd3bf5-3349-4d8b-8cb6-d6d664b98790/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c accessed 9/24/18

[1145] http://mgaleg.maryland.gov/Pubs/BudgetFiscal/2019fy-budget-docs-operating-V00A-Department-of-Juvenile-Services.pdf accessed 9/26/18 we were sent these documents by a source. The source used these documents to identify the appropriate hearing.

[1146] http://mgahouse.maryland.gov/mga/play/389b8a18-d52b-4955-b5a0-fe0b37310293/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c accessed 9/24/18

Interest amongst policy makers in overseeing the procurement and state contracts has generally been low, but it has increased in recent years (Interview A 2018). This increasing interest in oversight of state contracts and procurement could reflect the interests of newly-elected state legislators with significant public finance and procurement oversight experience gained on Capitol Hill (Interview A 2018). Alternatively, it could reflect the increasing privatization of government services, which generates more contracts with private and non-profit vendors.

Oversight Through Automatic Mechanisms

Maryland has a "sunset" mechanism, the Regulatory Review and Evaluation Act, which examines whether licensing and regulatory agencies and their practices and standards are still needed and are not obsolete (Schwartz 2010). Baugus[1147] and Bose categorize this form of sunset mechanisms as 'Regulatory Sunset Mechanism.' Although the agencies and the governor are the primary actors in this process, the Administrative, Executive, and Legislative Review Committee (AELR) does review the reports that the agencies prepare, and it can call public hearings to solicit input. Additionally, Baugus and Bose note that, in Maryland between 2007 and 2012, the AELR performed 47 Administrative reviews. Of these reviews, 3 resulted in either the reviewed regulations or boards being eliminated, while 45 reviews resulted in the existing regulatory institutions being retained. (Baugus & Bose, 2015). As Schwartz (2010) reports, the AELR has limited power in this process.

Methods and Limitations

We interviewed four people in Maryland out of nine people that we contacted to inquire about legislative oversight. The state legislature provides archival recordings of committee hearings that are readily available and easy to navigate.

[1147] Baugus was previously employed for five years by the MD Department of Legislative Services performing primarily sunset reviews.

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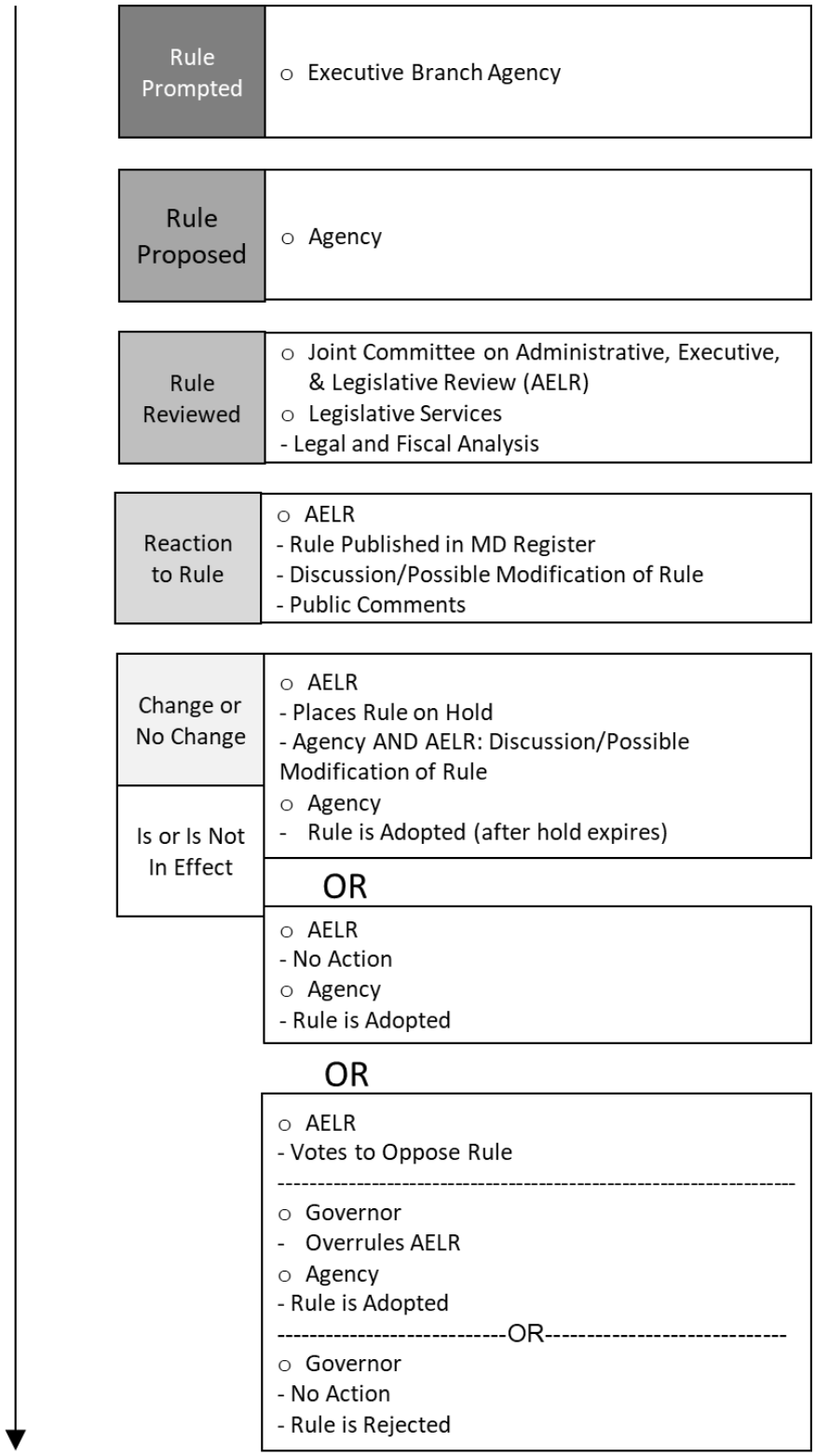
Figure 1

Maryland's Promulgation of New Rules Process



Legislative Oversight in Massachusetts

Capacity and Usage Assessment

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

Summary Assessment

Massachusetts does not provide a strong example of legislative oversight of the executive branch. The governor wields exceptional power, and there are few tools available, short of acts voted upon by the entire general court, to check the executive branch. In many of the domains that we have analyzed, including contract oversight, sunset provisions, advice and consent, and administrative regulation review, oversight appears to be limited. Where oversight does exist, such as in the appropriations process and in committees, lack of committee minutes or of recordings of committee hearings makes it difficult to ascertain the degree to which it functions in an effective manner.

Major Strengths

While much of the responsibility for auditing lies in the hands of a separately elected state auditor, the House and Senate Post Audit and Oversight Committees conduct some audits. The latter spearheaded the investigation into the Mount Ida closure, and both the committee's hearings and its final report were widely reported in the media. As a result of the Mount Ida controversy, the governor has proposed a plan to prevent a similar crisis from occurring (Dumcius, 2018a).[1148] Nevertheless, short of voting on statutory changes, there are not many options available to legislators for prompting change in executive agencies. The current state auditor, however, has been fairly active in proposing legislation that increases oversight of executive branch functions, so this could change in the future.

[1148] https://www.masslive.com/news/index.ssf/2018/07/massachusetts_gov_charlie_bake_30.html, accessed 7/30/18.

Challenges

Numerous issues prevent Massachusetts from achieving a strong degree of oversight. There is an almost complete lack of legislative involvement in the administrative rules process. Minutes, transcripts, and video or audio archives of most committee hearings are not available online, making it difficult for members of the public to assess legislators' activities. The opaque nature of legislative hearings in Massachusetts has prompted attempts at reform, since the same exemptions also apply to the executive and the judiciary. Thus far, however, little headway has been made in this domain (Schoenberg, 2018).[1149]

Relevant Institutional Characteristics

Massachusetts' legislature, originally known as the Great and General Court of the Commonwealth of Massachusetts, is referred to as the general court. This moniker is based on its colonial era authority to rule on judicial appeals. The general court currently consists of 40 senators and 160 representatives.[1150] It is the only highly professional legislature in New England and one of the most professionalized in the United States. The National Conference of State Legislators (NCSL) (Kurtz and Weberg, 2017) considers Massachusetts to be a "full-time lite" legislature,[1151] but the Council of State Governments (2017) ranks it at 2nd nationally, after California's legislature. Massachusetts legislators receive an average annual salary of $62,548, which is below average for professional legislatures[5] and especially modest considering the high cost of living in Massachusetts. Nearby New York legislators, a state with a similarly high cost of living, earn an average $79,500 annually plus a per diem, and Michigan legislators earn $71,685 plus over $10,000 for business expenses in a state with a much lower cost of living (Moncreif and Griffin, 2018). Not surprisingly, according to Haider-Markel (2008), "over half of the state's legislators supplement their income with other employment, such as a part-time law practice." The legislature as a whole had a permanent staff of 759 in 2015, a decline of roughly 150 positions since 2009.[6] The average legislative staff size in Massachusetts is four and a half permanent staffers per legislator (more than double that of Rhode Island, but less than Michigan) (NCSL, 2015). Legislators in Massachusetts are not term-limited,[1152] and both house and senate members serve two-year terms. The general court meets every year beginning on the first Wednesday in January, but its formal business must be completed by the third Wednesday in November in odd-numbered years and by the last day in July in even-numbered years. "[E]ven when not in session, legislators are often engaged in committee work or constituent activities in their home districts" (Haider-Markel, 2008). This is referred to as sitting "in an informal

[1149] https://www.masslive.com/politics/index.ssf/2018/07/public_records_commission_meet.html, accessed 7/30/18.
[1150] Prior to 1978, the lower chamber had 240 members.
[1151] htttp://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 7/24/18. [5] http://www.ncsl.org/research/about-state-legislatures/legislator-compensation-2018.aspx, accessed 7/24/18.[6] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 7/24/18.
[1152] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 7/24/18.[8] https://pioneerinstitute.org/better_government/time-to-end-legislative-exemptions-from-public-records-open-meeting-laws/, accessed 7/30/18.

session." There is very little transparency in the operation of the general court because "[u]nder Massachusetts law, the state legislature is not considered a 'public body' in the traditional sense, and therefore enjoys exemptions from open meeting and public records laws."[1153]

Massachusetts also has one of the most powerful governorships in the United States.[9] Ferguson (2013) rates the state at 5th in terms of gubernatorial power. The governor initiates the budget process and has a line-item veto. It takes a two-thirds vote in both chambers to override a veto, and the general court must be in session to hold an override vote. Governors have only ten days in which to veto a bill if the legislature is in session, otherwise the bill takes effect without a gubernatorial signature. Therefore, Massachusetts governors sometimes can use a pocket veto by waiting until the legislature adjourns in order to reject a bill without vetoing it. Governors serve four-year terms and are not subject to term-limits. This means that they could remain in power for substantial periods of time, but in recent years this has not happened often. Since 1991, when Michael Dukakis left office after eight years, only Bill Weld (1991-1997) and Deval Patrick (2007-2015) have served for more than one term.

Political Context

Politics in Massachusetts is dominated by the Democratic Party. In 2018, Democrats held supermajorities in both chambers: 31 senators out of 40 and 117 of 160 house members.[1154] Massachusetts Democrats, moreover, are characterized by their "strong liberal leanings" (HaiderMarkel, 2008). Nevertheless, the Republican Party remains competitive in statewide elections by adopting moderate stances in comparison to Republicans elsewhere in the country. Shor and McCarty (2015) report that Massachusetts had the 39th least polarized lower chamber. Presently, government in Massachusetts is divided. After Democratic Gov. Deval Patrick retired in 2015, Republican Charlie Baker won the office and ended a seven-year-long Democratic trifecta.

Massachusetts is not only a ballot initiative state, but it is the only state in the U.S. that allows a citizen to introduce legislation through his or her representative or senator—"the right of free petition."[1155] The clerks of each chamber assign these bills, which number in the thousands, to the appropriate substantive committees. The committees then spend most of January and February holding hearings on and debating these bills.

[1153] https://pioneerinstitute.org/better_government/time-to-end-legislative-exemptions-from-public-records-open-meeting-laws/, accessed 7/30/18.
[1154] http://www.ncsl.org/Portals/1/Documents/Elections/Legis_Control_071018_26973.pdf, accessed 7/24/18.
[1155] https://www.massbar.org/advocacy/legislative-activities/the-legislative-process, accessed 10/13/18.

Oversight Through Analytic Bureaucracies

The Massachusetts Office of the State Auditor (OSA) is an independent executive agency headed by an elected state auditor.[1156] According to statute, the OSA is "organized in five divisions, namely, the division of state audits, the division of authority audits, the division of federal audits, the division of contract audits and the division of local mandates."[1157] It conducts audits of "the accounts, programs, activities, and functions directly related to the aforementioned accounts of all departments, offices, commissions, institutions, and activities of the commonwealth."[1158] All agencies are required to submit to a standard post financial audit at least every three years or as often as the state auditor deems appropriate. Financial post audits of this sort have a relatively narrow focus, examining principally the financial behavior of agencies. The Office of the Comptroller hires CPA firms to conduct the state's single audit and to audit basic financial statements (NASACT, 2015). The OSA has a staff of 228 of which only 25 are non-professional support staff (NASACT, 2015). In 2015 it had a budget of slightly more than $18 million, all of it through a state appropriation (NASACT, 2015). The OSA conducts performance audits and sunset reviews based on its own decisions, at the request of the legislature, as mandated by law, but not at the request of the governor (NASACT, 2015). Additionally, the OSA also conducts audits of the MassHealth system and the education system, IT audits, audits of the judiciary, law enforcement and other public safety agencies, contracts, and housing and other independent authorities.[1159]

The OSA audits generally identify areas where agencies can adopt better practices or where they are not in compliance with their statutory authority. The state auditor is required to transmit copies of her report to the general court, to the governor's office, and to affected agencies, in addition to posting the reports prominently on the OSA website. Moreover, "On or before April 1 of each year, the state auditor shall submit a report to the house and senate committees on ways and means which shall include, but not be limited to, (a) the number of audits performed under this section; (b) a summary of findings under said audits; and (c) the cost of each audit."[1159] The state auditor may choose to audit the agencies independently or as a part of a larger organizational audit. In 2017, 52 audits were conducted; in 2016, 86. Many of these audits focus on commissions, public authorities, or regional governments rather than state agencies. For example, of the more than 60 audits conducted in 2018, it appears that approximately a dozen were audits of state agencies, and some of these seem to focus more on fiscal accountability than on program performance. One of the OSA's 2016 performance audits won the National State Auditors Association Award for Excellence in Accountabilities. The award-winning audit, which examined MassHealth's administration of managed care organizations and of fee-for-service payments, found that the state had been charged for

[1156] https://www.mass.gov/orgs/office-of-the-state-auditor, accessed 7/25/18.
[1157] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter11/Section6, accessed 7/25/18.
[1158] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter11/Section12, accessed 7/25/18.[15]
https://www.mass.gov/audit-reports, accessed 7/25/18.
[1159] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter11/Section12, accessed 7/25/18.

unnecessary services, improperly billed, and that cost-cutting opportunities had been missed.[1160] This indicates that this analytic support agency produces high quality evidence and information that legislators could use to oversee the work of state agencies as well as monitoring other government entities.

The state auditor also proposes legislation based on problems revealed in our work and also takes action to promote accountability and transparency in Massachusetts' state government." In the
2017-2018 legislative session, State Auditor Suzanne Bump proposed an "Accountability Agenda," "which aims to build public trust in government by improving accountability, and leveraging the power of data and technology," to the legislature.[1161] These measures included laws designed to increase the OSA's ability to conduct oversight of the Department of Revenue, enhancing its ability to review auditees' digital data, giving the State Comptroller more power to pass regulations and new requirements for agencies. None of these proposals have yet made it through committee. However, several other pieces of legislation prepared by the state auditor have been signed into law over the years.[1162] Most of these laws involve access to information for the state auditor or mandate that state agencies report problems to the state auditor. For example, in 2011 the legislature added a clause to an existing law that provides the OSA with access to "accounts, books, records and activities related to the service it provides" (Chapter 172).[1163] The state auditor also provides testimony to the legislature, either during committee hearings or through written correspondence. During 2017, she testified seven times and, as of October 2018, has testified five times.[1164] Her most recent 2018 testimony encouraged legislators to support local governments' water infrastructure needs.

The Massachusetts General Court is the only state legislature that does not have any centralized research service bureaus, either fiscal or general research.[1165] The legislative leaders' offices appear to manage staff services for their respective chambers. Fiscal support staff appears to work with the Ways and Means Committees of each chamber, but even basic information such as this cannot be confirmed using public information. Such information would typically be available on the legislature's website in other states.

Performance audits and audits of program compliance with statutes are performed by two separate legislative agencies: the House and Senate Post Audit and Oversight Bureaus. These bureaus "serve under and at the discretion of the senate committee on post audit and oversight and the house of representatives committee on post audit and oversight." [1166] The heads of these bureaus, known as legislative auditors, are appointed by their respective committees, which also direct their activities: "The committees shall oversee the development and implementation of legislative auditing programs to be conducted by the bureaus with special emphasis on performance auditing. The committees receive the reports of the department of the state auditor

[1160] https://www.mass.gov/news/bumps-office-accepts-nsaa-excellence-in-accountability-award, accessed 10/13/18.
[1161] https://www.mass.gov/service-details/learn-about-auditor-bumps-accountability-agenda-legislative-package, accessed 7/30/18.
[1162] https://www.mass.gov/service-details/laws-authored-by-the-office-of-the-state-auditor, accessed 7/30/18.
[1163] https://malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter172, accessed 10/14/18.
[1164] https://www.mass.gov/lists/testimony-from-the-office-of-state-auditor-suzanne-m-bump#2018-testimony-, accessed 7/28/18.
[1165] https://ballotpedia.org/State_legislative_research_service_bureaus, accessed 10/14/18.
[1166] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter3/Section64, accessed 7/25/18.

and the legislative auditors and shall determine what remedial measures, if any, are necessary."[1167]

A recent investigation carried out by the Senate Post Audit and Oversight Committee examined the acquisition of Mount Ida College by the University of Massachusetts Amherst. The investigation was triggered by a senate order requesting that the committee "explore the merits of the acquisition."[1168] According to one lawmaker, UMass's takeover of Mount Ida was a "hasty acquisition," and another complained that UMass "'cut a deal and most of us read about it' in the media" (Dumcius, 2018b).[1169]

The study found a number of gaps in accounting and oversight that required redressing as Mount Ida transitioned into the UMass system, including the continuance of certain programs, the integration of Mount Ida students and faculty, and ineffective accreditation and financial reporting policies. The report was the outcome of six hours of hearings held in May 2018,[1170] during which committee members took testimony from the Mount Ida Board of Trustees, the Massachusetts Department of Higher Education Commissioner, and various groups representing faculty, students, and other concerned citizens. During the hearings, legislators inquired about financial transparency at the college, how the school wound up in such dire financial straits in the first place, and why a planned merger with another college fell through before Mount Ida was bought by UMass (Tidwell, 2018).[1171] Although Mount Ida's president was slated to give testimony, neither he nor the school's Chief Financial Officer attended, leading some lawmakers to consider issuing subpoenas to compel them to appear before the oversight committee (Stendahl, 2018).[1172]

Neither the House nor Senate Post Audit and Oversight Committees, however, seem to hold hearings very often. Since January 2017, the senate committee has held three hearings, including those pertaining to the Mount Ida College acquisition, a hearing regarding the proposed privatization of three bus lines, and an executive meeting during which the committee voted to approve the report on Mount Ida. We cannot find evidence that the house committee held any hearings during this period.[1173] A source familiar with these committees noted that, while they do not often conduct major investigations or hold lots of hearings, they are nevertheless active "behind the scenes" and occasionally produce policy briefs for use by legislators (interview notes, 2018). An example of a policy brief is a March 14, 2012 review of the indigent defense counsel program consisting of 116 pages. The brief covered a wide range of topics including but not limited to a lack of available data about the program, the strain that the $200 million program places on the state budget, analysis of program costs, sources of program waste (e.g. individuals incorrectly receiving indigence status), verifying indigence status, and a comparison with similar programs in other states. In the cover letter accompanying the report,

[1167] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter3/Section63, accessed 7/25/18.
[1168] https://malegislature.gov/Reports/6795/st02580.pdf, accessed 7/25/18.
[1169] https://www.masslive.com/news/boston/index.ssf/2018/04/oversight_hearing_on_mount_ida.html, accessed 7/15/18.
[1170] https://malegislature.gov/Events/Hearings/Detail/2967, accessed 7/25/18.
[1171] https://www.gazettenet.com/Senate-oversight-committee-seeks-detail-on-Mount-Ida-acquisition-17523011, accessed 7/15/18.
[1172] https://www.bizjournals.com/boston/news/2018/05/16/mount-ida-president-skips-senate-hearing-amid-ag.html, accessed 7/25/18.
[1173] https://malegislature.gov/Events/Hearings/List/1-1-2017/7-31-2018/, accessed 7/25/18.

the chair of the House Post Audit and Oversight Committee (HPAOC), Rep. David P. Linsky, stated that he requested this report from the House Post Audit and Oversight Bureau based on his concerns about the cost of the program. Based on the report, the HPAOC made three recommendations: expand a pilot program, implement recommendations of the Civil Infraction Commission, and amend the law so that counsel is not provided for people charged with misdemeanors because jail time is not sought in these trials. Appendix G of the brief provides language proposed to amend current statutes. Clearly, the committee and the bureau work together, and the reports requested by the committee chair are used by the legislature to alter state agency programs.

Oversight Through the Appropriations Process

Once the governor submits a budget proposal, it is examined by the House Committee on Ways and Means, which "releases its own recommendations for the annual budget for deliberation by the House of Representatives." After the house passes a final version of the budget, it is sent to the Senate Committee on Ways and Means, where both it and the governor's proposal are considered. Once the senate passes its final, amended version of the budget, the Joint Committee on Ways and Means (also called a "Conference Committee") consisting of three members from each chamber of the general court, including one member of the minority party, meets to "reconcile the differences between the house and senate proposals" This committee holds frequent hearings during the budget-making process. These hearings are devoted to hearing testimony from representatives from the various executive agencies.

With the current political composition of the state, the governor has a fairly limited set of tools to "check" their initiative—mainly his veto power. Consequently, Massachusetts' governor appears willing to use his veto power with some frequency. For example, he vetoed 31 line items in fiscal year 2018 and also proposed changes to 137 items in the budget passed by the legislature. The governor also vetoed "a package of pay raises" that the legislature had, in the words of one observer, "hustled through" (The Republican Editorials, 2018). In response, however, the legislature "steamrolled" (Metzger, 2017) through a series of override votes that undid the majority of the governor's vetoes, including that of the pay raise, and even "approved some supplemental funding." One Joint Committee on Ways and Means hearing is regularly devoted to hearing from constituents and other concerned members of the community. These hearings are quite substantial, often lasting four to six hours, and, unlike other committee hearings, this public testimony was streamed online and archived.

Additionally, the Senate and House Ways and Means Committees seem to hold meetings that are specifically devoted to oversight issues. In January 2018, for example, the Senate Ways and Means Committee held an "oversight hearing relative to the Medical and Behavioral Health Procurement for employee health insurance coverage by the Group Insurance Commission." No archived videos, transcripts, or minutes exist for these hearings, however. Therefore, we cannot determine the extent to which legislators use the budget process to exercise oversight.

In recent years, there have been some disagreements over the budget between the governor and the state legislature. The fiscal year 2018 budget passed by the legislature was subjected to multiple line-item vetoes by the governor, totaling $320 million. The majority of these vetoes

pertained to changes that the governor wished to implement in the MassHealth system. This is part of a larger set of policy changes that the legislature rolled out in 2017. In an October 17, 2017, committee hearing that was really a one and half hour press briefing on the Senate Health Care Report, the Senate President mentioned in his opening remarks that the governor's office had made some proposals, but that the senate did not have time to include those in the proposed bill. He continued to say, however, that the senate had promised the governor that they would consider his proposal in the future. The implication of this is that the general court has veto-proof majorities in both chambers and can proceed to restructure a major government program, MassHealth, without necessarily relying on the executive branch agencies or negotiating with the governor.

This press briefing provides valuable insights into the legislative process in Massachusetts. Senators who spoke at the press briefing responded to questions from the press corps with a level of detail that would typically be demonstrated by state agency officials with deep expertise in program details. The senators, according to their prepared statements at the briefing (which collectively lasted for 45 minutes) described working groups that met around the state with various stakeholders. The senators themselves participated in these working groups, a process that lasted for nearly two years. That responsibility was not delegated to legislative and agency staff, although legislative staff was thanked for its involvement and support in the process of developing the "best practices" codified in the bill. The level of expertise of the senators suggests that they do not need to rely on agency officials to understand program details. They are in a position to work more independently than most legislators we have observed.

Oversight Through Committees

The general court's leaders are quite powerful, because "[t]hey have extensive control over committee assignments, the assignment of bills to committees, the appointment of committee chairs, the allocation of staff among members, and even legislators' parking spaces." The leadership's control over legislative committees is quite important since committees, and especially the policy-specific joint committees, are supposed to play a role in legislative oversight.

The house and senate rules governing the activities of joint committees, of which there are more than 20 in Massachusetts, specify a number of explicit oversight responsibilities. These include the "review and study, on a continuing basis, the implementation, administration, execution and effectiveness of those laws, or parts of law, the subject matter of which is within the jurisdiction of that committee," as well as related administrative regulations and programs. Joint committees are also charged with determining "the necessity or desirability of enacting new legislation within the jurisdiction of that committee."[1174]

Despite this responsibility, people familiar with the legislature report that these committees are only sometimes concerned with oversight activities, and usually this is when there is a clear problem in state government (interview notes, 2018). The Mount Ida acquisition controversy discussed earlier was mentioned as a good example of how standing committees will get involved in oversight. That hearing is one of the few recorded general court hearings.[1175]

[1174] https://malegislature.gov/Laws/Rules/Joint, accessed 7/25/18.

[1175] https://malegislature.gov/Events/Hearings/Detail/2967, accessed 10/14/18.

Legislators asked questions about the financial arrangements of the acquisition and about the impact on the students. As noted in the Oversight Through Analytic Bureaucracies section, the audit report appears to have been instrumental in this hearing. But legislators also were quite persistent in their questioning of the witnesses.

The other noteworthy example of an oversight hearing was held by the Joint Committee on Transportation.[1176] Those hearings examined ongoing problems at the Massachusetts Bay Transportation Authority (MTBA), also known as "the T" as another example of how standing committees might get involved in oversight in the event of controversies. In 2015 and 2016, MTBA was wracked by service interruptions (WBUR Newsroom, 2015),[1177] aging equipment and infrastructure (Enwemeka, 2015),[1178] and lax accounting (Sullivan, 2016).[1179] This led to the creation by the governor of a new Fiscal Management Control Board for the MTBA (Jessen, 2015),[1180] a move that was approved by the legislature as part of the fiscal year 2016 budget, despite the fact that members of the Transportation Committee remained "skeptical" of the plan (Murphy, 2015).[1181] Subsequently, the legislature has continued to exercise oversight over MTBA's affairs, with the Senate Post Audit and Oversight Committee "grilling" MTBA officials in 2017 over plans to privatize certain maintenance garages to save money. During one hearing, the oversight committee chair specifically noted that the plan "gave me great pause, and I thought that specifically merited oversight and more public scrutiny" (Mohl, 2017).[1182]

It appears from the comments of informed observers and from media reports that standing committees of the general court engage in fire alarm oversight. Given the absence of recordings of committee hearings, we cannot determine whether they also conduct routine, ongoing oversight.

Oversight Through the Administrative Rules Process

Most of the rule review process in Massachusetts is conducted within the executive branch. The Massachusetts General Court has minimal oversight power in the administrative regulations process. Using executive orders, Gov. Deval tasked Attorney General Martha Coakley with reviewing existing rules to identify those that were deemed unnecessary, burdensome, inconsistent or hindering investment and development in the state. Schwartz (2010) faults Massachusetts for ignoring non-economic costs and benefits of rules or regulations.

According to statute, "[e]ach executive office shall publish on its website a list of statutes passed in the previous 24 months for which regulations are required and for which regulations have not been adopted, identifying the session law in which the statutory authority was passed and containing a brief statement as to the agency's plan to adopt the regulations. Semi-annually,

[1176] https://malegislature.gov/Committees/Detail/J27, accessed 8/1/18.

[1177] http://www.wbur.org/news/2015/02/03/boston-february-historic-snowfall, accessed 8/1/18.

[1178] http://www.wbur.org/news/2015/02/13/mbta-fixes, accessed 8/1/18.

[1179] https://commonwealthmagazine.org/transportation/mbta-says-it-cant-reconcile-fares-cash-deposits/, accessed 8/1/18.

[1180]https://blog.mass.gov/transportation/mbta/governor-baker-appoints-5-member-mbta-fiscal-management-control-board/, accessed 8/1/18.

[1181] http://www.wbur.org/news/2015/05/20/house-speaker-deleo-backs-creation-of-mbta-control-board, accessed 8/1/18.

[1182] https://commonwealthmagazine.org/transportation/senators-grill-t-officials-privatization/, accessed 8/1/18.

the plan shall be updated on the website and filed with the clerks of the house and the senate and the chairs of the joint committee on state administration and regulatory oversight." Public hearings are "required prior to the adoption, amendment, or repeal of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; or, (b) a public hearing is required by the enabling legislation of the agency or by any other law; or, (c) a public hearing is required as a matter of constitutional right." Regulatory changes are referred to the appropriate standing committee, which can request changes from the agency in question. Agencies must then respond to the request. However, while agencies cannot simply ignore requested revisions, the legislature cannot unilaterally block the adoption of new administrative rules (interview notes, 2018).

Although the Joint Committee on State Administration and Regulatory Oversight exists "to consider all matters concerning competitive bidding on public contracts, public construction, open meeting laws, state regulations, state agencies, lobbyists' reporting laws and such other matters as may be referred," it seems not to be involved in the actual promulgation of rules. Rather, committee activities seem largely centered around considering legislation. The committee's "regulatory review" hearings pertaining to proposed legislation that would affect rules and regulations that have already been adopted rather than to new rules.

There is some evidence that this may be changing. Bill H.1675, which was introduced in January 2017, would require agencies to file a copy of an adopted rule with the Joint Committee for review. Then, "[n]ot later than 30 days after receiving a copy of an adopted rule from an agency under section 72, the committee may: (a) approve the adopted rule or regulation; (b) disapprove the rule or regulation and propose an amendment to the adopted rule or regulation; or (c) disapprove the adopted rule or regulation." This bill, however, is currently under study.

Oversight Through Advice and Consent

The legislature in Massachusetts does not confirm gubernatorial appointees to cabinet positions or other executive branch positions (Wall, 2014, Table 4.10). Many gubernatorial appointments in Massachusetts are confirmed by the Executive Council rather than the legislature. The Executive Council consists of eight members who are elected biannually from districts throughout the state. The council meets weekly to provide "advice and consent on gubernatorial appointments, pardons and commutations, and warrants for the state treasury."[1183] These gubernatorial appointees include judges as well as other executive branch officials and members of a wide range of boards and commissions. Several members of the governor's cabinet do not require confirmation of the executive council. Rather, they are named outright to their positions by the governor without any requirement for approval.

The governor has the power to reorganize agencies via executive order. According to the Massachusetts Constitution, however, reorganization plans must be referred to the appropriate legislative committee, which then holds a public hearing on the matter within 30 days. The committee then has ten days to approve or disapprove the reorganization plan. Regardless of whether the committee approves, agency reorganizations "shall have the force of law upon expiration of the sixty calendar days next following its presentation by the governor to the general court, unless disapproved by a majority vote of the members of either of the two

[1183] https://www.mass.gov/orgs/governors-council, accessed 10/14/18.

branches of the general court present and voting."[1184] If the legislature disapproves, then the reorganization is blocked (interview notes, 2018).

Massachusetts' governor can issue executive orders for emergencies, disasters, to create councils and commissions, to reorganize state government, to respond to federal requirements, and for personnel administration. The legislature has no power oversee these orders other than passing legislation. During his eight years in office, Gov. Deval issued an average of approximately seven orders per year, while Republican Gov. Baker has issued an average of approximately 10 orders during his first three years in office. This suggests that a governor dealing with a legislature controlled by the opposite political party might rely a little more on executive orders than would a governor facing a legislature controlled by members of his own political party. But this difference is not extremely large. Even though the governor can reorganize government through executive order, the Massachusetts General Court does participate in some of these reorganization efforts. In 2009, the legislature passed a bill consolidating some transportation authorities (the turnpike authority and the Massachusetts Bay Port Authority) into a Department of Transportation (see SB 2087 of 2009).

Oversight Through Monitoring of State Contracts

Contracting and procurement in Massachusetts is governed by 801 CMR 21.00 (Procurement of Commodities or Services), including Human and Social Services, which "[a]bsent a superseding law or regulation . . . covers the acquisition of all commodities and services by departments within the executive branch." This law says little about the legislature, save to note that any contract funded by appropriations is subject to re-approval by lawmakers in each fiscal year. Most contracts are administered by the Operational Services Division (OSD), which operates COMMBUYS, "the only official procurement record system for the Commonwealth of Massachusetts' Executive Departments." Contract review is under the purview of the Joint Committee on State Administration and Regulatory Oversight. As in the case of administrative rules, however, the committee's involvement appears to be limited to considering legislation pertaining to various aspects of the contracting process, such as hiring practices, definitional clarifications in already-existing statutes, etc. According to one person familiar with the process, the legislature only really gets involved in contract oversight in cases where there is evidence of malfeasance. But he called this a "grey area" and indicated that it is rare for legislators to do so (interview notes, 2018). The state auditor has the authority to investigate state contractors "to assess their performance and recommend improvements," and the state comptroller (one of the executive branch officials chosen by the governor without any advice and consent) also conducts oversight of state contracts through its administration of the Massachusetts Management Accounting and Reporting System (MAARS).

Oversight Through Automatic Mechanisms

Massachusetts is one of three states, the others being Iowa and North Dakota, that have never had any sunset laws (Baugus & Bose, 2015). It also has no sunrise provisions. Individual

[1184] https://malegislature.gov/Laws/Constitution#articlesOfAmendment, accessed 7/26/18.

statutes, however, may have sunset provisions attached to them. As noted earlier, by executive order, Gov. Deval assigned the state's attorney general with responsibility for reviewing existing rules and regulations. This, of course, does not involve legislative oversight, but does contribute to the elimination of unnecessary or obsolete rules and regulations.

Methods and Limitations

We contacted 12 officials and spoke with two, who said "we don't respond to questions or surveys." The inability or unwillingness on the part of actors to answer questions combined with the overall lack of publicly accessible records for the legislature, (e.g. audio visual of hearings, meeting minutes) made it is very difficult to find information that would normally be publicly available.

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Legislative Oversight in Michigan

Capacity and Usage Assessment

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

Summary Assessment

Michigan possesses extensive resources that could facilitate legislative oversight of the executive branch, especially its highly professional, well-funded Office of the Auditor General. Yet, evidence suggests that legislative oversight is generally lax. The use of Michigan's oversight resources is highly dependent on the vigor of committee chairs, which appears to vary widely. Whether oversight will be non-partisan and evidence-based is similarly subject to the preferences of the committee chairs. There are apparently no reports that specify legislative actions taken in response to audit reports. This is part of the oversight process in higher performing states, and something like this might improve Michigan's performance. Moreover, a closer relationship between the OAG and the legislature might increase the use of audit reports in the appropriations process.

Major Strengths

Michigan has extensive legislative staff resources, not just in the OAG, but also in its nonpartisan chamber fiscal agencies. The state has extremely comprehensive reporting requirements. The appropriations process features reports, called boilerplate reports, that number in the hundreds annually. State agencies produce many of these reports, but fiscal agency staffs also participate in writing these reports. Staff members rather than legislators typically read these boilerplate reports. Media attention or other public attention seems to force problems identified in audit reports onto legislators' oversight agenda—police patrol oversight.

Challenges

During periods of one-party government, there is no mechanism to ensure that the minority party can participate effectively in oversight of the executive branch. The preferences of committee chairs is a major ingredient of legislative oversight in Michigan, and with the state's extremely stringent term limits most chairs lack the necessary expertise to conduct oversight effectively—although some of them appear to take the responsibility very seriously. We found it

interesting that the House was more vigorous than the Senate in holding public hearings about a handful of issues identified by the OAG. Given that both chambers are controlled by Republicans, a simple explanation of partisan loyalty is inadequate. It appears, as we noted earlier, that the level of initiative taken by individual legislators, especially committee chairs, may more accurately explain the level of oversight. Only a few legislative committee members demonstrate knowledge and familiarity with state government programs that they are responsible for monitoring. Some mechanism to education legislators could help them perform more effective oversight, but that is difficult to achieve with high levels of turnover.

Relevant Institutional Characteristics

Michigan has a highly professional legislature, recently ranked as the fifth most professional in the nation (Squire 2017). This reflects the legislature's unlimited session length and extensive resources, including staffs to support their work and salaries that permit legislators to devote all their work time to the job of legislator. Michigan's legislature has extensive non-partisan professional staffs—the chamber fiscal agencies and the Legislative Services Bureau (LSB)—in addition to partisan staff, committee staff, and personal staff.

The institutional capacity of Michigan's legislature, however, has declined in recent years, as stringent term limits have reduced legislator experience. Enacted in 1992, these term limits consist of a lifetime ban for legislators after serving 6 years in the lower and 8 years in the upper chamber.[1185] Moreover, according to NCSL, staff resources have declined. There were 815 permanent staff members in 2015, down from a high of 1,404 in 1996.[1186] Legislator compensation for 2016 was $71,685 plus 54 cents/mile driven and $10,800 in expenses associated with the job[1187] an amount that is high enough for legislators to work full-time.

Many states with a strong legislature have a weak governor. Michigan is unusual—having both a powerful executive and a powerful legislative branch. Its governor's office is tied with Minnesota for the sixth most powerful governor in the country (Ferguson 2015). Michigan's executive branch also benefits from extensive staff resources that support a strong governor. The governor has the line-item veto for budget items, and it takes a vote by 2/3^{rds} of the elected legislators in each chamber to override gubernatorial vetoes.

Despite its robust resources for elected officials, Michigan has a smaller than average share of local and state government employees as a percentage of its workforce. These state and local government employees comprise only 10.6% of Michigan's workforce, while the national average is 11.3% (CATO Institute 2006). Of these employees, a slightly higher than average share work in K-12 education (6.6% for Michigan compared to 6.1% nationally). The state and local bureaucracy in Michigan is extremely small in the area of services (e.g., highways and transit, parks and natural resources, sewage and solid waste). Michigan is tied with Connecticut for last place in this category at 0.8% of its workforce compared to a national average of 1.3% (CATO 2006). Moreover, Hackbarth (2016) reports that Michigan was the only state in the

[1185] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 6/25/18.
[1186] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 2/12/18.
[1187] http://www.ncsl.org/Portals/1/Documents/legismgt/2016_Leg_Comp_Session_Per%20Diem_Mileage.pdf, accessed 2/12/18.

nation that spent less on municipal government and the services during the decade from 2002 to 2012.[1188]

Michigan's legislative term limits are the most stringent in the nation. As noted above, this is a lifetime ban with only 6 years permitted in the lower chamber. Consequently, turnover, especially in the lower chamber, is extremely high, and state representatives have little time to learn the more complex parts of their job. Exercising oversight by monitoring state agencies is something on which term-limited legislators report spending very, very little time (Sarbaugh-Thompson et al 2010). Although their predecessors also gave this activity little time and attention, the problem has become worse after term limits (Sarbaugh-Thompson and Thompson 2017) with more legislators unaware that oversight is even one of their duties. One interview respondent with nearly 25 years of experience working in or with the legislature said that term limits increase the power of the bureaucracy because the imbalance of knowledge and experience favors the power of bureaucrats and weakens the legislature (interview notes 2018).

Political Context

Divided government characterized Michigan's state government during the latter half of the 20th century, punctuated only occasionally with single-party control (e.g., briefly in 1983 Democrats controlled both legislative chambers and the governor's office—a trifecta--until recall elections shifted control of the State Senate to Republicans, and in 1995-96 Republicans had a trifecta). In the first decades of the 21st century, one-party Republican control prevailed. From 1999—2002 and 2011--2018, Republicans controlled both chambers of the legislature and the governor's office, as well as the secretary of state and the attorney general offices.

The Democratic Party in Michigan is an alliance, and often an uneasy one, between labor and liberals. Historically many of Michigan's Republicans were moderates, often business pragmatists who worked well with their Democratic colleagues (Brown & VerBerg, 1995). With decades of changing partisan control of government, these veteran legislators spent time and effort "building coalitions across party lines to pass legislation" (Sarbaugh-Thompson &Thompson, 2017). But in 1992, Michigan adopted term limits. Veterans were purged from office beginning in 1999 in the House and in 2003 in the Senate. After term limits, much more conservative Republicans and somewhat more liberal Democrats gained control of Michigan's legislature (Sarbaugh-Thompson & Thompson, 2017). The result is more partisan polarization. Recent data rank Michigan's House as the 12th most polarized lower legislative chamber and its senate as the 4th most polarized upper chamber, based on differences between median roll call votes for each party in each chamber (Shor and McCarty 2015).

[1188] http://blogs.mml.org/wp/inside208/2016/04/22/revenue-sharing-budgets-positioned-for-initial-action-senate-cuts-statutory-by-1-5/, accessed 6/26/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

With a staff of 142 employees (on September 30, 2017) and a state budget appropriation of about $15 million,[1189] Michigan's Office of the Auditor General (OAG) is a major actor in legislature oversight. Michigan's Constitution in Article IV, Section 53 requires that the legislature appoint an auditor general who is responsible for conducting post audits of financial transactions and the accounts of the state, including all branches, departments, offices, boards, commissions, agencies, authorities and institutions. This same section of the constitution also charges the auditor general with conducting performance post audits of this same list of entities. Furthermore, the constitution requires that the OAG report annually to the legislature and to the governor and may report more often if either the governor or the legislature deems it necessary. The OAG also performs some audits of state contracts. Although the OAG is described as an independent agency that creates its own audit plan (interview notes 2018) and legislators state that they can only suggest investigations informally,[1190] the Michigan Constitution allows the legislature to direct the auditor general to conduct investigations pertinent to the conduct of audits. In practice, it appears that the OAG has latitude to manage its own audit priorities, but is responsive to areas of public and legislative concern. Financial audits are mandated on a specific schedule, so it is primarily in the area of performance audits that the OAG is able to set its own priorities. The demands of financial audits sometimes occupy 50% of the OAG's time, but if these audits can be completed more efficiently, then the OAG is able to meet its goal of a 40/60 split between financial audits and performance audits (interview notes 2018).

In its Annual Report to the state legislature, the auditor general describes five types of audits performed. These include financial and government operations audits, statewide single audit, and three types of performance audits: environmental and information technology performance audits, health, safety and regulatory performance audits, and service, assistance, and educational performance audits. Each of these five types of audit is performed by a separate subunit within the Bureau of Audit Operations, housed in the auditor general's office. [1191] During fiscal year 2017 the OAG completed 81 reports, which included 41 performance audits (including 9 follow up reports), 19 financial audits, and 16 contract audits.[1192]

Michigan's Constitution specifies that the auditor general (AuG) serves for an eight-year term, unless removed from office for cause by a two-thirds vote of members of both chambers of the legislature. The AuG is constitutionally prohibited from being assigned duties not specified in the constitution and is described as independent and non-partisan, despite being appointed by the legislature. The AuG, the deputy AuG, and one other OAG staff member are non-civil service positions--another constitutional requirement. The remaining OAG staff consists of civil servants, most of whom (120) have professional degrees in accounting, business, internet security, and similar fields.[1193] Nearly half of these professionals are CPAs.

[1189] NASACT 2015, The National Association of State Auditors, Comptrollers and Treasurers, *Auditing the States: A Summary*, 2015 Edition.

[1190] http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-011818.mp4, accessed 6/20/18.

[1191] https://audgen.michigan.gov/wp-content/uploads/2017/10/2017-Annual-Report.pdf, accessed 2/1/18.

[1192] https://audgen.michigan.gov/archive/archive-2017/ accessed 2/1/18.

[1193] NASACT 2015, The National Association of State Auditors, Comptrollers and Treasurers, *Auditing the States: A Summary*, 2015 Edition.

In its last five triennial reviews, the National State Auditor Association ranked Michigan OAG at its highest level of performance and an external peer review of the OAG determined that the office has "no impairments affecting its independence."[1194] The quality of Michigan's OAG is indicated by its 2017 Excellence in Accountability award from the National State Auditors Association for the audit of the Grand Rapids Veterans' Homes (one award is given nationally in that category).[1195] Unlike many states in which a legislative committee tells the audit agency what to investigate, in Michigan the OAG is independent, as noted above. It formulates its own audit plan using a matrix of items such as the size of the budget, size of the program population, prior audit findings, and the risk to the public or public impact of the program (interview notes 2018). Audits that the OAG thinks might generate change are prioritized (interview notes 2018). The OAG shares its six-month plan with the chamber leaders from both political parties and with the governor's office (interview notes 2018).

In its Annual Report, the OAG says that it notifies legislators as well as the audited entity and the governor's office the day prior to the release of any reports. All audit reports are publicly available, and the auditee has two weeks to respond.[1196] Changes in agency behavior are often negotiated between the agency and the auditor general's office (interview notes 2018), but the OAG lacks formal enforcement power. Therefore, legislative intervention can be necessary. The auditor general's 2017 annual report describes two situations in which state agencies refused to comply with the legal mandate to provide the auditor general's office access to data needed for audits. According to that report, this is the first time in its history that the auditor general's office had to issue subpoenas to obtain this sort of information. The dispute involves a state law that forbids the Department of Health and Human Services from providing access to adoption records versus the constitutional prerogatives granted to the auditor general to have access to all documents and records relevant to an investigation. In March of 2017, the House passed a bill (107 to 0) to provide the auditor general with access to all confidential state records. More than a year later the senate has not acted.[1197] Currently the OAG lawsuit about access to the adoption records is being heard by the Michigan Court of Claims.[1198]

When an audit report is released (posted publicly on the OAG website) each legislator is sent an e-mail link to the report. The reports are also referred to the Senate Committee on Government Operations (interview notes 2018). The OAG employs a State Relations Officer to facilitate relationships with individual legislators, legislative committees, and legislative fiscal agencies, as well as the media, and executive branch. The OAG extends to legislators an offer to brief them individually or provide testimony in committees about audit reports or other issues, and evidence indicates that the OAG regularly makes presentations to legislators and participated in committee hearings (interview notes 2018). During the past four years the OAG has made 14 presentations to the legislature in 2015, 13 in 2016, 4 in 2017 and 3 during the first half of 2018. The number of presentations tends to fluctuate for various reasons, such as election years and the scope and topic of specific audit reports (interview notes 2018).

[1194] https://audgen.michigan.gov/wp-content/uploads/2017/10/2017-Annual-Report.pdf, accessed 2/1/18
[1195] http://www.nasact.org/accountability_awards, accessed 2/1/18.
[1196] NASACT 2015, The National Association of State Auditors, Comptrollers and Treasurers, *Auditing the States: A Summary*, 2015 Edition.
[1197] https://www.lansingstatejournal.com/story/news/local/capitol/2018/06/04/michigan-auditor-general-takes-historic-fight-court/663946002/, accessed 6/22/18.
[1198] https://www.lansingstatejournal.com/story/news/local/watchdog/2018/01/12/michigan-auditor-general-sues-dhhs-release-adoption-records/1027921001/, accessed 6/23/18.

The OAG also, according to its annual report, responds to requests for audit services from legislators. But a veteran staff member with extensive experience claims never to have requested an OAG report and did not know what the procedure to do so would be (interview notes 2018). The OAG also emails a monthly newsletter to all legislators and to the governor describing the status of various audits and investigations (Annual Report, 2017, OAG). Moreover, given the public availability of these reports, any legislator who wanted a report, even if he or she was not on the official distribution list, could simply have staff obtain a copy of the report (interview notes 2018).

Despite the availability of audit and boilerplate reports,[1199] interviews with legislators provide mixed evidence about the time and effort committees devote to them. A legislator reported receiving somewhere between 1 and 12 reports per week and reading 1 to 2 of them per week. (interview notes 2018). It appears that legislators concentrate their attention on reports in one or two areas of their own policy interest rather than the dozen or so reports per week that they receive (interview notes 2018). Staff is more likely to read or at least scan the broader range of reports available (interview notes 2018). Staff acknowledges that the legislature should probably spend more time on oversight (interview notes 2018). A legislator, who personally described reading some of the reports, estimated that legislators only spend about 5% of their time or less overseeing the work of state agencies (interview notes 2018).

To examine legislative actions arising from performance audits, a search on the state legislature's website for key words appearing in a small sample of Auditor General Reports rarely provided a link to legislation or hearings on these topics. It appears that the audit process revolves around interaction between the OAG and the agency. Yet sometimes the legislature is motivated to act on these reports. News media coverage of an auditor general report frequently triggers legislative action in Michigan. This is a pattern found widely throughout the states (Brown 1979). Consistent with this, one highly knowledgeable observer of Michigan government and one legislator told us that the Michigan Legislature appears to be following what the media reports rather than the media following what the legislature does (interview notes, 2018).

The Grand Rapids Veterans Homes audit is an example that illustrates the interaction between legislative action and a scathing audit report, triggered by media attention.[1200] The report revealed that the Homes were not taking care of veterans properly. In this case, the legislature appropriated $100 million to build two new state-of-the-art veterans' facilities (SB 800).[1201] Triggering events such as substandard care of veterans may produce an audit report that Brown (1979) describes as providing evidence that the legislature needs to take action that it already wanted to take, with synergistic effect of legislators' interest and OAG reports.

Another trigger for legislative follow up is involvement of federal agencies. Many of the reports produced by the OAG and the state agencies provide information required by federal statutes and rules. For example, Bovine TB detected in several counties in Michigan resulted in federal inspections and legislative hearings and funds appropriated. Oversight related to Bovine TB is described in greater detail below in our discussion of *Oversight Through the Appropriations Process*.

[1199] Boilerplate reports outline specific compliance requirements. Staff describes them as more specific than a statute and a way to gain agency compliance with legislative intend. They are described in more detail in the section of *Oversight Through the Appropriations Process*.

[1200] http://www.freep.com/story/news/local/michigan/2016/02/18/draft-audit-michigan-veterans-home/80556304/, accessed 8/17/2017.

[1201] http://legislature.mi.gov/doc.aspx?2016-SB-0800, accessed 3/2/18.

In addition to the OAG, oversight activities in Michigan's House and Senate are supported by staff in chamber specific non-partisan analytic bureaucracies: the House Fiscal Agency (HFA) and the Senate Fiscal Agency (SFA). A governing board comprised of six Representatives, three from each political party, appoints the HFA Director and oversees HFA's work. Its budget is approximately $3 million annually. Staff (approximately 25 professionals)[1202] falls into three categories: fiscal analysts, economists, and legislative analysts. Each of these professionals is assigned to specific areas of substantive responsibility, such as corrections, the lottery, tax analysis, and so on. The HFA posts dozens of current and recent reports on its website, adding more than new 30 reports per year. These range from revenue estimates to legislative analysis to appropriations bill summaries.

The SFA is the companion non-partisan support agency for Michigan's upper legislative chamber. Its governing board consists of five Senators: the Majority and Minority Party Leaders, the Chair of the Senate Appropriations Committee, and one Senate Appropriations Committee member from each political party appointed by the Appropriations Committee Chair subject to approval by the Senate Majority Leader. It too provides legislative analysis, (including but not limited to budget bills) and economic and budget forecasts. Additionally, the SFA analyzes state ballot proposals, produces a quarterly publication on state issues (*State Notes*), tracks lawsuits involving the state, and analyzes the governor's budget proposals. Its staff serves as clerks for Appropriations Subcommittee meetings and acts as liaisons with state agencies. Its budget is approximately $3 million annually, and it employs about 25 professional staff along with a very small support staff. With the advent of term limits in Michigan, fiscal agency staff is described as the source of institutional knowledge in the legislature (interview notes 2018).
A major difference between the OAG and fiscal agency staffs is the direct contact that fiscal agency staff has with legislators. Additionally, the OAG has a set cycle of reports that they must produce, so their ability to respond to legislators' requests is constrained. Responding to legislators' needs is the primary purpose of fiscal agency staff (interview notes 2018).

Oversight Through the Appropriations Process

Prior research on the Michigan Legislature identifies the Appropriations Committee as the locus of the Michigan House of Representatives oversight activities (Sarbaugh-Thompson et al 2010). Video recordings of house committee and subcommittee meetings are archived and available.[1203] The same research identifies the Senate Joint Committee on Administrative Rules (JCAR) as well as the Senate Appropriations Committee as the major actors on legislative oversight. Audio recordings of many senate committee and appropriations subcommittees meetings are also available.[1204] Each chamber's fiscal agency staffs rather than OAG work more closely with the appropriations committees and their subcommittees (interview notes 2018). Boilerplate language in appropriations bills provides additional opportunities for legislative oversight in Michigan. Boilerplate is described to restrict spending and articulate reporting requirements that is less restrictive than a statute. This means that changes in

[1202] https://en.wikipedia.org/wiki/Michigan_House_of_Representatives#House_Fiscal_Agency, accessed 6/17/18.
[1203] http://www.house.mi.gov/MHRPublic/videoarchive.aspx, accessed 6/18/18.
[1204] http://www.senate.mi.gov/committeeaudio/2017-2018.aspx, accessed 6/18/18.

spending can be made more efficiently by changing boilerplate reporting requirements (interview notes 2018). Fiscal agency staff actively participates in writing boilerplate language (interview notes 2018). Writing boilerplate requirements is one way to motivate agencies to comply with the wishes of the legislature (interview notes 2018). For example, staff might include a reporting requirement with teeth in boilerplate language, such as you must report on X within 30 days, otherwise we'll cut your budget by 1% (interview notes 2018). And the threat from a legislator to an agency that he might have to "unroll" the agency's budget (e.g., publicly discuss and vote on every line item) will generally get an agency to comply with the legislator's request. But on the whole, at least for legislators from the governor's party, the assumption is that the agency is doing what it is supposed to, unless you are "smacked in the face" with evidence to the contrary, such as in the case of the Flint water crisis (interview notes 2018).

The list of boilerplate reports required in the 2016-17 Appropriations Act is very long—more than 600 reports.[1205] This list shows that a diverse set of actors, (state agencies, boards, commissions, universities, community colleges and other similar state entities), produce these reports, many of which are mandatory. Occasionally reports are required from grantees or other independent actors engaged in public service provision. And some boilerplate reports are produced by the Michigan House and Senate Fiscal Agencies. The list of boilerplate reports also shows that these reports are typically sent to appropriations committee and subcommittee chairs, as well as the chambers' fiscal agencies. But some of the reports are posted publicly or submitted to specific entities such as the State Budget Office. Once again, it appears that staff scans a wider range of these reports than legislators do (interview notes 2018). Staff, however, admit that they simply do not have time to read all the reports that flow into their legislator's office (interview notes). Given how closely fiscal agency staff works with legislators on appropriations subcommittees, they are able to synthesize and summarize information from the reports for legislators and their staff members.

A search of legislative committee websites for non-partisan issues that could lend themselves to evidence-based oversight identified a 1.5 hours hearing by the Senate Appropriations Sub-Committee on Agriculture and Rural Development on a topic covered by a boilerplate report—Bovine Tuberculosis (TB).[1206] Bovine TB is a major problem primarily in four or five Michigan Counties, but the number of counties infected ebbs and flows. It puts farm families at risk of contracting the disease and also leads to the destruction of dairy herds. The federal government mandates reporting on Bovine TB and may quarantine products from states or regions within a state in which Bovine TB is found. Increases in Bovine TB were discovered in Michigan in the mid-1990s, and it has been a chronic problem since then. It is endemic in some Michigan deer herds. Contact with the deer can transmit the disease to cows, and contact with the cows can transmit the disease to human. It is, therefore, a serious health problem as well as an economic problem for farmers in the affected regions of the state. Until February 2018 it appeared to be concentrated in a small portion of the state –"located around the four corners where the counties of Montmorency, Alpena, Oscoda and Alcona meet", according to the Michigan DNR. In February 2018 two cows in Ottawa County exhibited the disease. A public meeting was held on June 12th, 2017 in Alcona County, in the district represented by the chair of the Appropriations Sub-Committee on Agriculture and Rural Development, Senator Stamas.[1207]

1205 https://www.house.mi.gov/hfa/PDF/Alpha/boilerplate_report_fy16-17.pdf, accessed 1/24/18.

1206 http://www.senate.michigan.gov/committeeaudio/2017-2018/Agriculture/Iron%20River%20Committee%206%2012%202017.mp3, accessed 1/29/18.

1207 http://www.senatorjimstamas.com/media-advisory-senate-agriculture-committee-holding-meeting-in-alcona-county-about-bovine-tb/, accessed 1/29/18

Prior to this meeting, there are other committee hearings and press releases on this issue. In addition to the federally mandated boilerplate report, there is a 2017 Auditor General Report on this topic.[1208] That report identified some problems with procedures governing the transportation of cows from the affected counties in Michigan. The June 12th hearing appears to have been well attended by farmers in the area. About half of the time in the hearing was spent with agency staff, both Michigan Department of Agriculture and Rural Development (MDARD) and the Michigan Department of Natural Resources (MDNR). Agency staff provided information to the senators and others in attendance about the problem. Although Bovine TB had received some media attention and had been discussed in prior committee hearings, none of the senators appeared to know enough to really quiz the agency witnesses. The farmers, however, quizzed the agency witnesses. The chair asked the farmers to be sure to give him their names after the hearing. He wasn't calling on the farmers as witnesses, the typical practice in hearings. The farmers were talking directly to the DNR and the MDARD witnesses. There was a lively give and take discussion going on that did not often involve the senators, although occasionally a senator made a comment or asked a question. This was not a typical committee hearing where legislators drive the agenda and the chair controls the questioning. The DNR representative, who had previously worked in Minnesota, explained that Minnesota had successfully used a bounty on deer to exterminate the affected deer herd and to quickly contain the disease.

The House Appropriations Subcommittee on Agriculture and Rural Development also held hearings at which Bovine TB received some attention. At the March 16th 2017 hearing of this subcommittee, the state veterinarian explained the need for money requested in the governor's budget for monitoring the spread of Bovine TB. A representative who raises cattle inquired about the risk of human infection and also about what was being done to deal with the disease in the deer population in the four consistently affected counties in the state. As he described it, Michigan is observing and monitoring a wildfire—trying to keep it from spreading—rather than trying to put it out. He wanted farmers to be able to shoot deer on their property at any time. The state veterinarian pointed out that MDNR is in charge of that and that that agency had tried to "incentivize" deer hunting in the affected area.

No one at this hearing mentioned the successful program in Minnesota in which, using a bounty on deer, the state eliminated Bovine TB by exterminating the affected deer herd. Moreover, a quick examination of the internet demonstrates that the DNR already is allowing farmers to shoot deer on their own land—the suggestion of the representative—but that it is not reducing the size of the herd.[1209] No one provided this information during the hearing. Moreover, neither the house standing committee on MDNR (15 meetings in 2017) nor the corresponding DNR House Appropriations Subcommittee (2 meetings in 2017) mentioned Bovine TB. This indicates a lost opportunity to follow up publicly about deer eradication efforts. The gubernatorial budget proposed $1 million in additional funds for Bovine TB prevention, and the final budget preserves these funds for the MDARD, but it is not clear how effectively these funds will be used and whether anyone will follow up on Bovine TB eradication.

[1208] https://audgen.michigan.gov/wp-content/uploads/2017/01/rs791011016-2277.pdf, accessed 2/1/18.
[1209] http://www.michigandnr.com/FTP/wildlife/NRCMaterials/DMU%20Narratives/NLR%20Narratives/DMU_001.pdf, accessed 6/20/18.

Also, in the same House Appropriations Subcommittee meeting (March 16th 2017), one minority party representative did refer to the OAG audit[1210] when asking a question during a presentation by the state veterinarian.[1211] Basically, the OAG found that MDARD needs to work more closely with law enforcement to detect illegal transportation of cattle from the affected counties—a recommendation that the agency accepts. The veterinarian responded about the audit report findings that the department was revising the animal transit procedures to comply with the OAG recommendations. But the answer by the state veterinarian did not provide specific information, and he and the representative agreed to continue the conversation outside the hearing. It appears that these informal outside conversations are frequently used to discuss and negotiate about state agency activities (interview notes 2018).

Our conclusion after listening to hearings about this issue is that there are ample formal procedures and opportunities for the Michigan's legislators to exercise oversight through the appropriations subcommittee process, but very few of them are knowledgeable enough about the issues to hold anyone's feet to the fire. They are providing a forum for agency dialogue with concerned citizens and are learning about what's happening by listening to the agency and citizens interact. Although this information dissemination and discussion forum is probably very useful to the affected participants, it may not constitute legislative oversight of state agencies or their programs. It did not address the issue of policy change with respect to "managing" deer herds infected with Bovine TB, despite the potential public health risks and economic damages to the state's cattle industry, and the costs to state government of containing the disease ($145 million over the 20 years from 1995 to 2005).

The legislature approved a one-time increase of one-million-dollar gubernatorial budget recommendation for Bovine TB management. MDARD personnel described the need for this money to the senate and to the House Subcommittees on Agriculture and Rural Development in its initial presentation of the governor's budget (committee hearing 2/21/17).[1212] The final language in the state budget follows:

> 6. Enhanced Wildlife Risk Management. Governor and Senate recommended one-time funding of $1.0 million GF/GP for local conservation districts in Alpena County to assess cattle farms and implement practices to prevent the spread of bovine tuberculosis.[1213]

This suggests that federal mandates, which generate boilerplate reports, can lead to a response from both the executive and legislative branches of Michigan's government. Additionally, the issue of Bovine TB illustrates the overlapping efforts of the OAG (an audit report), the executive branch (both the agency and the governor request resources to contain the spread of this disease), responsiveness to citizen concerns of relevant appropriations subcommittees, and last, but not least, monitoring by the federal government with the potential to impose restrictions that impact family farms. Although these processes provide multiple

[1210] https://audgen.michigan.gov/wp-content/uploads/2017/01/r791011016-2277.pdf, accessed 6/20/18.
[1211] http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=APPR-SAGR-031617.mp4, accessed 6/20/18.
[1212] http://www.senate.mi.gov/committeeaudio/2017-2018/Approps%20Subcommittees/Agriculture%20and%20Rural%20Dev/AgriRuralDev-02-21-2017_0301PM_11_21.mp3, accessed 6/19/18.
[1213] http://www.legislature.mi.gov/(S(1yw4v23c1wvlpq51h3nbg1dd))/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-0139-F.pdf, accessed 1/29/18.

opportunities for oversight, the duplication of presentations by agency staff and the paucity of knowledgeable legislators in either chamber does not appear to produce high-quality oversight. Time could be used more efficiently if there were at least some joint chamber committee hearings. Joint committee meetings might expose legislators to their rare colleague with knowledge on this subject. Moreover, given the limited institutional knowledge of this issue and the disjointed response to an issue that spans the jurisdiction of several agencies and committees, a more coordinated approach might help legislators see the larger picture and better assess the limitations of the current approach, which contains rather than eliminates the disease. A solution to the problem involves both agriculture and natural resources agencies.

Oversight Through Committees

According to the chamber rules, all standing committees can hold oversight hearings, but there is also a House Oversight Committee that reviews audits (6 members) and a corresponding five-member Senate Oversight Committee.[1214] The House Oversight Committee is one of the 25 standing committees designated in Rule 33 of the Standing House Rules.[1215] This same document specifies in Rule 36 that this committee reviews reports from the auditor general "and, if appropriate, refer the reports to the appropriate standing committee for consideration." Moreover, this rule specifies that referring a report to the appropriate standing committee does not restrict an individual house member from initiating action in response to reports from the auditor general. Although any legislator may contact the OAG, requests for the OAG to present to a committee must go through the committee chair, because the chairs control the committee agenda (interview notes 2018).

The journals for the chambers indicate receipt of audit reports by oversight committees.[1216] But a search for the key words "auditor general" merely indicates that the clerk of the chamber announced that a specific report had been received. Any actions taken by the legislature in response to these reports seems not to be routinely reported in the legislative journals. Committee hearings for the Oversight Committees indicate that after reviewing these reports they are sometimes referred to the standing committees. It appears that a copy of the agency compliance plan in response to audit investigations is sent to relevant house and senate committees and to the chambers' fiscal agencies. We base this on the distribution list on the cover letter accompanying the reports.

Video recordings of the House Oversight Committee demonstrate that this committee meets and that staff from the OAG presented audit report findings to the committee three times during 2017 through May of 2018. One committee hearing, discussed in detail below, occurred approximately two months after media coverage of the subject of the audit report--problems at a state psychiatric hospital. [1217] Another oversight committee hearing for 2017-2018 that featured a presentation from the OAG examined limited efforts of the Veterans Affairs Agency to identify veterans eligible for federal benefits. This hearing occurred one month after media coverage of that audit report.[1218] And the third Oversight committee hearing occurred about one

[1214] https://www.legislature.mi.gov/documents/publications/rules/house_rules.pdf, accessed 1/24/18.
[1215] https://www.legislature.mi.gov/documents/publications/rules/house_rules.pdf, accessed 1/30/18.
[1216] http://www.legislature.mi.gov/(S(5lf4k53lrkjewtyk1qtbmv5w))/documents/2017-2018/Journal/House/pdf/2017-HJ-02-01-009.pdf, accessed 1/24/18.
[1217] https://www.detroitnews.com/story/news/local/wayne-county/2017/11/14/westland-psych-hospital-staff-audit/107676392/, accessed 6/22/18.
[1218] http://detroit.cbslocal.com/2018/02/10/audit-michigan-could-save-money-by-steering-veterans-to-va/, accessed 6/22/18.

month after media coverage of the cybersecurity risks to the state.[1219] An internet search for media coverage of four other performance audit reports completed by the OAG during the same time period as the three reports presented to the committee did not yield media coverage of those reports, and at this point in time this committee had not held any publicly available hearings on these other auditor general reports. Media coverage appears to be a catalyst for legislative oversight activity in Michigan.

Vignette on Oversight of the Walter P. Reuther Psychiatric Hospital

On January 18, 2018, the OAG staff presented an audit of the Walter P. Reuther Psychiatric Hospital, which is in the Department of Health and Human Services, to the House Oversight Committee. The presentation involved working through the audit report findings and reading highlights. The audit report investigated conditions at a state run facility that houses mentally ill persons, some of whom are awaiting trial after having pleaded not guilty to crimes by reason of insanity. Its patients are both vulnerable and potentially dangerous. The OAG found that the facility could not account for keys (470 missing key rings and lock cores that had not been changed for at least 20 years), the staff at the hospital was working exceptionally high numbers of overtime hours and back to back shifts, some staff had inappropriate access to confidential patient health care records, inventory records for "high-risk non-controlled medications" were inadequate, and that the double set of doors at the entrance to the facility did not close properly, providing patients with an opportunity to flee. The audit documented that the facility's incident reports "identified instances during April 2016 and June 2016 in which two patients fled from the facility by timing the opening of these doors. The patient who left in April 2016 was driven away in a waiting car and ultimately left the State."[1220] This is an especially worrisome situation given that the facility is located in a residential area and that the facility houses patients who are severely mentally ill and also patients charged with a crime but "who are not guilty by reason of insanity, court ordered, and incompetent to stand trial." Some of the problems at the facility, (allegations of substandard patient health and hygiene conditions) received attention in the media as far back as 2013.[1221]

The presentation by OAG staff on the Walter P. Reuther Psychiatric Hospital lasted about 20 minutes, followed by a few questions from the chair and committee members. Staff from the agency was then provided an opportunity to tell the committee how the facility and the state were responding to the audit findings and to provide any clarification. The director of the Department of Health and Human Service did not attend the hearing to give the agency response nor were there any Powerpoint slides or other materials or visual aids presented by the agency. In contrast during two other Oversight Committee hearing on an audit report, one involving Veterans Affairs[1222] and the other on cybersecurity with the Department of Technology, Management, and Budget,[1223] agency directors and support staff attended and provided

[1219] https://www.freep.com/story/news/local/michigan/2018/03/16/audit-state-michigan-computer-attack/431224002/, accessed 6/22/18.
[1220] https://audgen.michigan.gov/wp-content/uploads/2017/11/r391023016-4441.pdf, accessed 6/21/18.
[1221] https://www.clickondetroit.com/news/michigan/defenders-disturbing-conditions-found-at-hospital, accessed 6/21/18.
[1222] http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-030818.mp4, accessed 6/22/18.
[1223] http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-041218.mp4, accessed 6/22/18.

prepared slides and materials for committee members. For this hearing the agency response was provided by a bureau director who oversees all state hospitals, and the hospital director for the Walter P. Reuther Psychiatric Hospital talked to the committee. The committee chair noted that this was the worst audit report on any agency he had seen,[1224] and yet the agency did not launch an effective defense or explanation. On the other hand, a similar statement was made about the cybersecurity audit of the Department of Technology, Management, and Budget.[1225] But the director of that agency did attend the hearing to present slides and information defending and explaining the work of his agency.

Questions from committee members ranged for naïve to insightful. For example, one legislator asked what an FTE is. Other committee members asked whether anyone had been disciplined or fired over the missing keys or the unauthorized access to medical records. The facility representative's responses did not seem to satisfy them. One committee member inquired about the salaries paid to employees and whether they were too low to attract and retain staff. The facility representative did not know what the average wages were. Later in the hearing she reported that there are numerous unfilled positions, but no one circled back to the issue of whether pay was too low to attract and retain nursing staff, which appears to contribute to the excess number of hours of overtime (more than 1,000 hours for 52 staff over a two-year period, and more than 4,000 hours for one staff member).

At the conclusion of the hearing, the chair took a vote on whether to refer this audit report to the Appropriations Subcommittee on Health and Human Services. The vote was unanimously in favor. Although he mentioned also sending the audit report to the relevant standing committee, he did not take a vote to do that. At one point in the hearing, the self-described frustrated chair of the Oversight Committee, after accusing the absent Director of the Department of Health and Human Services with poor leadership, threatened to cut the agency's budget by 15% if there wasn't more action to correct the problems. But, he also told the hospital director to meet with the committee staff to draft a letter to Capital Outlay to request money for new doors for the facility, seemingly recognizing that lack of money was preventing the facility from replacing the doors. Subsequent legislative action on topics raised in the audit and hearings on the Walter P. Reuther Psychiatric Hospital involved introduction in the House of HR 4629 – HR 4631, which proposed statewide staffing to patient ratios for nurses. The bills never received a floor vote in the house and the chair of the Senate Health Policy Committee was reported to say that his committee would not consider the bills.[1226]

The Michigan Senate has a similar oversight standing committee comprised of five members designated in Senate Rule 2.103[1227] tasked with reviewing auditor general reports--the Senate Committee of Government Operations. Specifically, at the request of the chair of the Committee on Government Operations a senate standing committee will "hold hearings and make written recommendations to the Committee on Government Operations on an auditor general report" according to Rule 2.104.[1228] Moreover, this recommendation is voted on by members of the standing committee. Despite this, none of the nine available committee meetings

[1224] http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-011818.mp4, accessed 6/21/18.
[1225] http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-041218.mp4, accessed 6/22/18.
[1226] http://www.crainsdetroit.com/article/20171119/news/645366/safe-nursing-staffing-bills-face-uphill-battle-to-get-hearing, accessed 6/22/18.
[1227] http://www.legislature.mi.gov/Documents/Publications/rules/senate_rules.pdf, accessed 1/30/2018.

of the Senate Committee on Government Operations held during 2017-18 discussed any auditor general reports. Some of the audio recordings were blank, and some lasted less than 20 minutes. It is not clear that this committee is active in addressing concerns or problems with state agencies that might be raised by the OAG. The one lengthy meeting of the nine meetings recorded involved access to firearms in school districts. The hearing was held in the aftermath of the Las Vegas mass shooting. It did not appear to involve oversight of the executive branch.

The House Oversight Committee chair and his committee members are carrying out their oversight responsibility, but video recordings of most committee meetings demonstrate that the majority of the hearings consist of staff and agency officials explaining to legislators what a program is and what it does rather than legislators probing its performance or implementation problems. According to some informed observers, it takes at least 2 years and often 3 or 4 years before a legislator understands the work of a committee well enough to ask probing questions rather than just trying to figure out what the agency does, and even when legislators begin asking questions, the questions are often very general—just what did you do with the money (interview notes 2018)? Because many Michigan legislators do not remain on the same committee for their six-year tenure in the lower chamber, representatives may never gain enough experience to ask the probing questions necessary for oversight (Sarbaugh-Thompson and Thompson 2017). The few legislators we observed asking tough questions (why aren't you doing X?) often seem to rely on their prior career experience (e.g., the cattle producer on the House Agriculture Subcommittee inquiring about Bovine TB) to give them enough knowledge to conduct oversight.

Although legislators in the senate have more experience, and hence might be able to ask more pointed questions, the senate does not appear to be as active as the house in holding formal oversight hearings. We were told that the house recently has adopted more formal procedures for reviewing audit reports, while the senate process is more informal (interview notes 2018). These hearings appear to confirm this. It is possible that the senate held some informal discussions about these audit reports behind closed doors. But an observer with knowledge of the senate claims that there is no longer any oversight in the standing committees (interview notes 2018), which is consistent with lacunae in the Senate committee tapes.

Given the power accorded to Michigan's committee chairs and chamber leadership, it is more difficult for minority party legislators to get information from the OAG into the public records. Sometimes committee members can only invite witnesses to testify with the chair's permission (interview notes 2018). Some chairs are receptive to involvement by the minority party and other minority party members reported no opportunities to influence the chair's agenda (interview notes 2018). According to one legislator, minority party members are typically able to invite witnesses to testify about problems with state agencies. But another minority party legislator reported that he was only able to ask state agency officials questions informally outside the committee hearings because the chair did not permit such queries from the minority party members of the committee (interview notes 2018). The majority party can, through these techniques, limit oversight, but use of these tactics depends on choices made by the individual chair.

Oversight Through the Administrative Rules Process

In the early 1990s Governor John Engler (Republican) sued to prevent the state legislature from overturning administrative rules.[1229] As a result, the Michigan Supreme Court restricted the ability of Michigan's legislature to overturn administrative rules once the rule is promulgated. Both Republicans and Democrats in the legislature decried this during interviews we conducted with them for our term limits research project (interview notes 1998). More recently, Public Act 513 of 2016 grants the legislature more options when it objects to an agency rule.[1230] These new options include a way for the legislature to propose an alternative rule and pass that as a bill or to delay proposed rules. Additionally, PA 513 allows the Joint Committee on Administrative Rules (JCAR) to suggest changes to proposed rules. The result is an exceptionally complicated contingent system that involves the legislature in the formulation of rules before they are finalized. This Public Act became effective on January 9th, 2017. It establishes the following procedures:[1231]

Initiating a Rule: After a law is passed, the state agency, (or professional boards and commissions, etc.) affected sends a request for rulemaking (RFR) to the Office of Regulatory Reinvention (ORR) to initiate the process. If the ORR approves the RFR, it notifies the JCAR that a rule will be drafted.

Drafting a Rule: Then the state agency drafts a proposed rule to implement the law and sends that to the ORR, which again notifies JCAR and also sends the draft rule to the Legislative Services Bureau (LSB) Legal Division for editing.

Public Hearing and Comments: Next the agency prepares a Regulatory Impact Statement and Cost-Benefit Analysis and sends that to the ORR. This step must be completed 28 days prior to public hearings on the rule. ORR reviews the proposed rule and grants permission for the agency to hold a public hearing on the rule. The agency schedules the hearing and notifies ORR, which notifies JCAR of the hearing, which notifies the relevant standing committee of the hearing. JCAR can hold its own separate hearing on the rule if it chooses to do so. The agency must also notify the public of the hearing by publishing a notice in 3 newspapers at least 10 days, but not more than 60 days prior to the hearing. The agency may revise the rules based on public input and then sends the rule back to ORR to go through the various checking with LSB and JCAR again.

Post-Hearing Draft: After holding the public hearing, the state agency sends a rules package back to ORR. JCAR must receive the rule within one year.

JCAR Approval: Once it receives the rules package, JCAR has 15 session days to exercise one of three possible options. First, it can let the rule go forward by doing nothing, in which case the ORR will send the rule to the Office of the Great Seal—making it an official rule. Second, JCAR can reject the rule and work through the legislature to repeal the law or pass a bill to rescind the rule or impose a one-year stay on the law. Alternatively, JCAR can ask the agency to make changes to the rule. In this case, the agency can accept JCAR's requested changes and send the revised rule to ORR to file with the Office of the Great Seal. Or the agency can reject JCAR's changes, which sends the rule back to JCAR, which has another 15 session days to decide whether to object to the rule or to take no action. Once again, taking no action will trigger

[1229] http://www.crainsdetroit.com/article/20160301/NEWS/160309985/casperson-bill-to-create-environmental-rules-committee-has-united, accessed 2/16/2018.
[1230] http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0513.pdf, accessed 2/16/2018.
[1231] https://www.michigan.gov/documents/lara/Admin_Rules_Process_353271_7.pdf, accessed 2/16/20

submission of the rule by ORR to the Office of the Great Seal. Maintaining its objections means that JCAR will have to work through both chambers of the legislature to repeal the law or pass a bill to rescind the rule or impose a one-year stay on the law.

This extremely complicated and conditional set of actions means that unless the legislature is controlled by the same political party, it will be difficult for JCAR to block a rule by working back through both legislative chambers. On the other hand, if institutional prerogatives prevail over partisanship, the legislature does have options to restrain executive branch actions. It also appears that the executive branch, through the ORR, tries to work out any technical bugs in the agency rule prior to involving JCAR. Moreover, the relevant standing committee in the legislature is not an integral actor in this process. JCAR is, however.

Searching for information on whether JCAR is actively involved in oversight revealed an entry in the Michigan Senate Journal (99th Legislature Regular Session of 2017, Wednesday, January 11, 2017)[1232] in which 20 rules for which JCAR "by a concurrent majority vote, waived the remaining session days for the following rule set:" thereby allowing the ORR to immediately file the rule. In the same Senate Journal, the legislature is notified that 12 other rules have been officially filed by ORR. The webpage for the committee itself was uninformative. There was no record of prior meetings and no meetings currently scheduled.

Examining the ORR website for the history of pending rules reveals that JCAR is not mentioned in the list of steps involved in rules that were successfully modified in 2017. See for example changes to the "Responsibilities of Providers of Basic Local Exchange Service that Cease to Provide the Service."[1233] The steps in the process of changing this rule mentions all the steps in the Administrative Rule Process that involve the agency, ORR, and LSB, but nothing involving JCAR participation is listed. The tab that is labeled JCAR includes transcripts of the public hearing, copies to newspaper notification of the public hearing, and other reporting about the actions taken. It appears that JCAR is informed of agency and ORR actions, but does not become involved, typically.

On the other hand, several blog posts indicated concern about JCAR's potential involvement in the rules promulgated to regulate medical marijuana. This indicates that JCAR can use legislative oversight to regulate initiatives passed through the citizen ballot initiative process—another little discussed form of legislative oversight. This, however, is not oversight of the executive as much as it is oversight of the citizenry or state government more broadly.

Recently the chair of the Senate Committee on Natural Resources sponsored a set of bills creating a separate panel of private sector actors who would oversee rules for the Department of Environmental Quality (DEQ). According to media coverage of this issue, the chair of the Senate Natural Resources Committee, Senator Casperson, says that "environmental groups have too much sway over state regulators and conflates what he considers an onerous permitting process that drives away business with the influence of those groups, which, he says 'are flat out lying.'" This is the chair view, which seems to arise out of conflicts between environmentalists and his family's log trucking business.[1234] Given the institutional resources available for agency oversight in Michigan and the power of a committee chair to exercise his oversight prerogatives, this appears to be a way to influence environmental laws after he is termed from office. Sen. Casperson will be termed out of the Michigan legislature at the end of 2018. The bills passed both chambers of the legislature and were given immediate effect.

[1232] http://legislature.mi.gov/doc.aspx?2017-SJ-01-11-001, accessed 2/16/2018.
[1233] http://dmbinternet.state.mi.us/DMB/DTMBORR/Rules.aspx?type=Numeric&id=2017&, site accessed 2/16/18.
[1234] https://www.mlive.com/news/index.ssf/2018/01/michigan_deq_oversight_bills.html, site accessed 6/22/18.

The DEQ Rule Review Panel will consist of 6 industry representatives, with one individual representing each of the following industries: solid waste management, manufacturing, small business, public utilities, gas and oil, agriculture. The six non-industry members include one individual representing environmental groups, local government, land conservancy, a public health professional, and two representatives of the general public. No more than six members of the panel may be affiliated with one political party. There is no restriction on conflicts of interest on this panel. Therefore, a pipeline company could sit on the panel to oversee rules about pipeline safety.[1235]

This idea allegedly was based on a model in operation in Indiana (interview notes 2018). Media reports about the way these committees work in Maine[1236] and in Indiana[1237] indicate that the affected interests are able to write the rules affecting their operations. Recently, Oklahoma's governor created a similar private sector panel for that state that will monitor performance of all state agencies. Some legislators see this effort as an abdication of the legislative responsibility for oversight (interview notes 2018). Earlier versions of the bill did not provide an option for the governor or the director of DEQ to appeal the rules, but the final version does provide that option—a slight nod to some checks on the power of a non-elected panel.

Oversight Through Advice and Consent

The Michigan Senate can block appointments by rejecting them within 60 days. If no action is taken within the 60-day window, then the nomination is confirmed. Although Michigan's Senate could reject gubernatorial appointments, this power apparently is rarely used even under divided partisan control. In 1990 the Republican Senate rejected some appointments to boards and commissions made during Democratic Gov. Blanchard's final year in office[1238], and the Republican-controlled Senate rejected some of Democratic Gov. Granholm's appointments to university boards and to the state elections board. Some of these were in the final year of her second term, [1239] but at least one was early in her term. [1240]

Although the senate does not seem to regularly block cabinet-level gubernatorial appointments, questioning nominees during senate hearings can be a form of oversight (interview notes 2018). After a hiatus in which no senator confirmation hearings were held, the senate has held several hearings in the past couple years both for agency directors and for appointees to commissions and boards. Notably this occurred under one-party government. Asking nominees about their plans for an agency is seen as a useful way set the agenda and to establish a relationship with an executive branch actor, such as the state treasurer (interview notes 2018).

Michigan's governors appear to issue more executive orders when their political party does not control the legislature. Under Gov. Granholm, a Democrat facing a Republican

[1235] http://michiganradio.org/post/bills-create-mdeq-oversight-panels-their-way-snyders-desk, site accessed 6/22/18.
[1236] http://michiganradio.org/post/nestle-manager-joins-board-can-rewrite-environmental-laws-maine-could-happen-mich, site accessed 6/22/18.
[1237] http://michiganradio.org/post/mi-bills-aim-follow-indiana-s-lead-where-businesses-have-power-shape-environmental-rulemaking, site accessed 6/22/18.
[1238] https://www.newspapers.com/newspage/207134410/, *site accessed 2/16/18*
[1239] http://www.crainsdetroit.com/article/20100709/BLOG096/307099988/governor-appoints-and-appoints-again-will-the-senate-bounce-again, site accessed 2/16/18.
[1240] http://www.michigan.gov/formergovernors/0,4584,7-212-57648_21974-112420--,00.html, site accessed 2/16/18.

legislature, there were more than 50 executive orders issued in a single year, while under Gov. Snyder, who worked with a legislature controlled by his own Republican Party, the number of executive orders varied from about 10 to 25 annually.[1241]

Except when government reorganization is involved, Michigan's legislature has no power to review gubernatorial executive orders. Michigan's governor can issue executive orders to reorganize state government, and many of these orders in recent years were reorganization orders. These executive reorganization orders are subject to legislative approval. If both chambers of the legislature do not reject the reorganization order within 60 days, then the reorganization takes effect. Even with divided government, Michigan's legislature has never blocked gubernatorial efforts to reorganize state government, although it nearly did so in 2003 when newly elected Gov. Granholm tried to create a combined Department of Labor and Economic development. Reportedly several business interest groups objected to changes in the way workman's compensation would be handled and so the Republican-controlled legislature was poised to reject the order. An eleventh hour compromise between house Republicans and the governor led her to withdraw the executive order and reframe it in a way that satisfied house Republicans.[1242] So, it appears that Michigan's legislature can, although it rarely does, oversee government reorganization.

Oversight Through Monitoring of State Contracts

As noted above, the Michigan OAG spends somewhere between 40 and 50 percent of its time conducting mandated financial audits, but monitoring specific contracts does not appear to be part of its mission. Contract monitoring is performed within the executive branch. Specifically, the Michigan Department of Technology, Management and Budget (DTMB), established through the Management and Budget Act, PA 431 of 1984, includes the State Administrative Board, which monitors state contracts and leases. This is a board comprised of the governor, lieutenant governor, secretary of state, attorney general, the state treasurer, the superintendent of public instruction, and the director of the Department of Transportation. In turn, the DTMB is responsible for several (roughly 30) of the boilerplate reports, described in the section on oversight through the appropriations process. Most of the boilerplate reports produced by the DTMB are assigned to the Subcommittee on General Government, but only a few of these reports monitor contracts, vendors, or services for individual departments, such as transportation or environmental quality. The legislative committees on Government Oversight discuss bills that would alter or establish general procedures for monitoring contract and lease arrangements, but we did not see evidence on the committee calendar that anyone is monitoring the work of DTMB, the executive branch contract monitor.

[1241] http://www.legislature.mi.gov/(S(lt3t3jakxgcbrvsqpcyvmno4))/mileg.aspx?page=executiveorders, accessed 10/7/18.

[1242] https://mitechnews.com/archive/gov-granholm-michigan-house-appear-to-reach-compromise-on-new-department-of-labor-and-economic-development/, accessed 10/7/18.

Oversight Through Automatic Mechanisms

Michigan allows its legislature to add sunset provisions to pieces of legislation, but it is not required nor is it a common addition to Michigan's laws (Baugus and Bose 2015). As part of its mission of "simplify Michigan's regulatory environment", the Office of Regulatory Reinvention (ORR), an executive branch unit that is active in administrative rules review. It says that it rescinds obsolete and burdensome rules. Between April 25, 2011 and January 11, 2019, ORR rescinded 3,188 rules. This is an executive branch unit, and rescinding these rules does not appear to involve input from the legislature. So it is not legislative oversight of the executive branch.

Other Oversight Mechanisms

In Michigan, state agencies also conduct internal audits through the Michigan Department of Technology, Management, and Budget (DTMB). There is a collaborative relationship between the OAG and DTMB. This relationship includes information sharing and sometimes DTMB follows up on findings from OAG reports (interview notes 2018). DTMB reports are not public, but the OAG can and does post them on its website as a service to DTMB.

Methods and Limitations

Michigan archives recordings of committee hearings. It has easily accessible material on the legislature's webpage to examine oversight practices. We interviewed 9 people out of 11 that we contacted.

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Legislative Oversight in Minnesota

Capacity and Usage Assessment

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

Summary Assessment

Minnesota's legislature has an especially large variety of tools at its disposal to oversee the state's executive branch. There are abundant staff resources to support legislators' oversight efforts. It has both a legislative auditor and an elected state auditor. There is some competition between the two, and interestingly, the legislative auditor audited the performance of the state auditor. It has an extremely elaborate and well-documented administrative rule review process. The legislature jealously guards is institutional prerogatives to check and balance the executive branch. The executive branch takes a similar approach. This may demonstrate the partisanship of divided government, but it also could reflect a commitment to institutional prerogatives.

Major Strengths

Some "best practices" of the State of Minnesota include active communication between the Office of the Legislative Auditor (OLA) and the legislature and use of joint committees and commissions such as the Legislative Audit Committee (LAC) that allow for the efficient communication of audit reports to both the Senate and the House. Standing committees are actively involved in rule review, confirmation of gubernatorial appointments, and hearings on audit reports and on budget testimony. Oversight also benefits from having equally divided party membership in on the LAC. This committee supervises the Office of the Legislative Auditor (OLA), so this balanced party membership facilitates bipartisan oversight. The OLA produces audit reports that impact appropriations, legislation, appointments, and even state contracts. Performance-based budgeting provides an opportunity to consider how well state agencies carry out legislative intent and how well they serve the public or their clients. In Minnesota this form of budgeting has evolved to avoid "formulaic" budget decisions, serving rather as a mechanism to identify impediments to agency performance, some of which require increased funding to provide needed resources to poorly performing programs.

Challenges

The use of audits in budget hearings does not appear to be systematic. Information overload connected to performance-based budgeting may deter legislators from adding more reporting to the budget process. So, an assessment of what information might be most valuable could lead to greater use of audit reports. Likewise, sunset review of boards and commissions is inconsistent, with various attempts being abandoned before they become established. The legislature rarely rejects gubernatorial appointees and has turned to the courts for assistance in nullifying gubernatorial executive orders that created policy changes. The legislature has opportunities to participate in administrative rule review, but these prerogatives are apparently underutilized. Minnesota's legislature lacks authority to monitor state contracts, so it occasionally uses agency audits to surface performance problems that involve state contracts.

Relevant Institutional Characteristics

Minnesota's legislature is at the median in terms of professionalism, ranking 25th in the nation (Squire, 2017). This is supported by Baugus and Bose's (2016) findings, that Minnesota is part of a majority of states that provide their legislators with less than full-time pay while assigning them with more than half-time work. In 2018, legislators received $45,000 per year plus $66 per day in the House and $86 in the Senate to cover their expenses. The average per diem received is nearly $9,000 per representative and nearly $7,000 per senator.[1243] As of 2015, the legislature's staff included 636 staff members, with 568 of them being permanent.[1244] Although this is among the 10 largest state legislative staffs, it is a smaller number of supporting staff members than in states with highly professional legislatures.[1245] These supporting staff members include personal staff, committee staff, partisan staff, and non-partisan professionals, from entities such as the Office of the Revisor of Statutes and the Office of the Legislative Auditor.

The duration of Minnesota's legislative session is roughly 120 days annually (NCSL, 2010). While other state legislatures may be able to call a special session (McCormack & Shepard, 2010)[1246], in Minnesota only the governor has the power to call for a special (sometimes known as extraordinary) session. These occur fairly often, with seven special sessions between 2010 and 2017.[1247] Minnesota is not among the 15 states that have term limits for their legislators.[1248] The absence of term limits allows legislators to spend more time learning the more complex parts of their jobs, including exercising oversight over state agencies.

Minnesota's governor is also not term limited, and the office is tied for the 17th most institutionally powerful in the country (Ferguson, 2015). The governor has responsibility to develop and propose the state's budget. The legislature can either adopt or revise the budget, and the governor can then sign or veto appropriations bills. The governor can use the item-veto only

[1243] https://minnesota.cbslocal.com/2018/01/10/per-diem-payments-mn-legislature/, accessed 9/11/18.
[1244] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 7/8/18.
[1245] California, Florida, New York and Pennsylvania, for example, have more than 1,000 staff members.
[1246] http://www.house.leg.state.mn.us/hrd/pubs/ss/ssspecses.pdf, accessed 7/8/18.
[1247] https://www.leg.state.mn.us/lrl/history/spsess, accessed 9/11/18.
[1248] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 7/8/18.

for appropriation bills, and overriding this veto requires two-thirds of both chambers (Council of State Governments, 2008). We were told there have not been any successful overrides in the past two years (Interview Notes IV, 2018).

Minnesota has one of the smallest bureaucratic workforces among the states. Its state-wide share of employees who work for local and state government is 9.8%, while the national average is at 11.3% (Edwards, 2004). This is consistent with a smaller than average share of the workforce employed in the field of education (5.7% compared to a national average of 6.1%).

Political Context

Since the election of President Franklin Roosevelt in 1932, the state has largely voted for Democrats for president, with the exception of President Eisenhower in 1952 and 1956 and President Nixon in 1972.[1249] Despite this preference for Democratic presidents, partisan control of Minnesota's state government is typically divided between the two political parties. While the legislature tended in the past two decades to lean toward Democratic control, the state regularly elected governors from both political parties. Since 1978, the Republican Party held the governorship from 1979-1983, 1991-1999, and from 2003-2011. Although the governor does not have term limits, based on Minnesota's previous ten governors, it is typical to have a change in governors after four to eight years[1250] and also typical for the state to elect a new governor from the opposite political party. Notably, in 2013, Democrats controlled both legislative chambers and the governorship—the one rare instance of single party control since 1992. Currently, partisan control of the Senate is tied with one vacant seat and the Republicans control the house. Governor Mark Dayton is a Democrat. This persistent partisan competition may contribute to party polarization in the legislature. Recent evidence shows that Minnesota's house is highly polarized (8th nationally) based on differences between median roll call votes for each party in the chamber (Shor and McCarty, 2015).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Minnesota has four analytic bureaucracies that provide information about state government. The Office of the Legislative Auditor (OLA) is primarily involved in overseeing state government (including any program or topic relating to state government). The Office of the State Auditor (OSA), an elected position, is primarily involved in overseeing local government.[1251] Finally, a pair of analytic bureaucracies provides economic and fiscal analytic support to the legislature. These are the House Fiscal Analysis Department (HFAD) and the Senate Council, Research and Fiscal Analysis Office (SRFAO). Both these offices provide budget analysis and fiscal information.

[1249] https://www.270towin.com/states/Minnesota, accessed 6/20/18.
[1250] https://ballotpedia.org/Governor_of_Minnesota, accessed 6/20/18.
[1251] https://www.auditor.leg.state.mn.us/juris.htm, accessed 6/4/18.

The OLA works most closely with the legislature in conjunction with the Legislative Audit Commission (LAC). OLA's statutory authority includes the ability to "audit state agencies, evaluate public programs, and investigate alleged misuse of public money." All public officials or employees are required to cooperate with requests from the OLA related to the use of public funds. Furthermore, the OLA has statutory authority to audit other government entities, [1252] such as commissions, courts, charter schools, the Minnesota Zoo, Vocational Education Student Organizations, Minnesota State Colleges and Universities, and the Metropolitan Airports Commission, among others.[1253] The state appropriates approximately $6.3 million to support the work of the OLA and its 55 full-time employees[1254] (NASACT, 2015).

The OLA is headed by the Legislative Auditor appointed by the LAC. According to s. 3.997, Min. Stats., membership of the LAC consists of six senators (three appointed by the Subcommittee on Committees and three appointed by the senate minority leader) and six representatives (three appointed by the speaker and three appointed by the house minority leader).[1255] The LAC is thus equally divided between the majority and minority party members. The Legislative Auditor oversees two divisions of the office, which includes the Financial Audit Division and the Program Evaluation Division.

The OLA's Program Evaluation Division (PED) (created in 1975) conducts policy analyses, program evaluation, and "performance audits" (NCSL, 2015). The PED produced seven evaluations during 2016 and six evaluations during 2017, and for 2018 they completed six evaluations.[1256] The PED is comprised of seventeen staff members, who include "thirteen full-time professionals with advanced degrees in fields such as economics, law, public affairs, and sociology."[1257]

The OLA's Financial Audit Division (FAD) has a Deputy Legislative Auditor who supervises a staff of roughly forty auditors, some of whom are CPAs or CISAs (certified information systems auditors).[1258] The FAD produced 28 audit reports in 2016 and 19 audit reports in 2017. For 2018 they completed nine audits with eight more in progress.[1259] Currently all "works in progress" are internal controls and compliance audits. The FAD also conducts financial statement audits, information technology audits, and special reviews. Additionally, "…each year the division also conducts several unscheduled 'special reviews' in response to allegations that state resources were misused."[1260] If funds have been misused, the FAD notifies the attorney general, the county attorney, and the LAC. Finally, the FAD conducts some discretionary audits: "[I]nput from policymakers is the driving factor in the selection of discretionary audits." [1261]

The LAC is responsible for the OLA's Program Evaluation Division and its Financial Audit Division, and the reports they produce. In that capacity LAC approves all evaluation topics for the PED,[1262] but the LAC accepts suggestions for evaluations from anyone: legislators,

[1252] https://www.auditor.leg.state.mn.us/statu.htm, accessed 6/4/18.
[1253] https://www.auditor.leg.state.mn.us/addsr.htm, accessed 6/4/18.
[1254] This includes support staff.
[1255] https://www.revisor.mn.gov/statutes/cite/3.97, accessed 6/4/18.
[1256] https://www.auditor.leg.state.mn.us/ped/ped4.htm, accessed 6/20/18.
[1257] https://www.auditor.leg.state.mn.us/org.htm, accessed 6/4/18.
[1258] https://www.auditor.leg.state.mn.us/fad/fadbgd.htm, accessed 6/18/18.
[1259] https://www.auditor.leg.state.mn.us/fad/aipfad.htm, accessed 6/4/18.
[1260] https://www.auditor.leg.state.mn.us/fad/fadbgd.htm, accessed 6/4/18.
[1261] https://www.auditor.leg.state.mn.us/fad/fadbgd.htm, accessed 6/4/18.
[1262] https://www.auditor.leg.state.mn.us/ped/guide.htm, accessed 6/20/18.

legislative staff, an agency, citizens, or even anonymous individuals (Interview III, 2018). Additionally, the legislative auditor can "conduct a special review in response to allegations … brought to [his/her] attention . . . [and will conduct] a preliminary assessment in response to each request for a special review to determine what additional action, if any, [the] OLA should take."[1263] LAC members are not involved in any evaluation, audit, or investigation, and do not see reports until they are made public.[1264] When the report is completed, the LAC may hold hearings to review audit and evaluation reports.[1265] Under the supervision of the legislative auditor, the PED reports their evaluations to the LAC and any other committee that may be involved.[1266] According to an interviewee, the OLA will staff the LAC during its meetings, but it does not provide staff for other standing committee hearings (Interview III, 2018).

Transcripts of LAC meeting minutes and some audio recordings from past meetings are available on its website.[1267] LAC held seven meetings during 2017, with each meeting lasting up to two hours in length. Although LAC does not meet often (Interview III, 2018), meeting minutes indicate that its members take their oversight responsibility seriously. For instance, at the October 17, 2017 meeting, members selected audit report topics, were told about three recently completed reviews, and received an update on current works in progress by the OLA. Transcripts reveal that the Transit Financial Activity Review, by the PED, found that the Metropolitan Council provided different financial projections to federal officials than those they gave to the Legislature. The LAC chair quizzed representatives from the Metropolitan Council about this. The council explained that their projections were different because the report to the legislature was "limited to current law funding, but the federal report [was] not."[1268] The transcripts state that, "several members expressed concerns about the difference in the projection reports," and the meeting then moved onto the next review. Although this let the Metropolitan Council know that the LAC is watching their actions, it is not clear that any action was taken. But attention from the committee does signal that the legislature is monitoring this sort of reporting discrepancy.

The OLA spends a substantial amount of time presenting audit findings on executive branch agencies to the legislature (Interview Notes, 2018). When the OLA releases an evaluation report, it is usually released to either the LAC or a standing committee in either chamber,[1269] but committees of jurisdiction (standing committee) are especially interested in these audit findings and typically want to hear these presentations (Interview III, 2018). The OLA presents, on average, at three committee meetings per program evaluation. Furthermore, the OLA will attend committee hearings if they have bills that relate to an evaluation because the committee might want them to be available for questions or comments. OLA audits are used regularly during committee hearings as well as on chamber floors, although they don't necessarily track when audits are mentioned (Interview III, 2018). One example of the work of the OLA is presented below, but additional examples of the OLA's collaboration with standing committees are provided in the section on *Oversight Through Committees,* below.

One example of the work of the OLA is provided by a 2017 evaluation of the Perpcich Center conducted by the OLA, which found widespread mismanagement and governance

[1263] https://www.auditor.leg.state.mn.us/ped/guide.htm, accessed 6/20/18.
[1264] https://www.auditor.leg.state.mn.us/ped/guide.htm, accessed 6/20/18.
[1265] https://www.auditor.leg.state.mn.us/lac.htm, accessed 6/4/18.
[1266] https://www.auditor.leg.state.mn.us/ped/resmeth.htm, accessed 6/4/18.
[1267] https://www.auditor.leg.state.mn.us/minutes.htm, accessed 6/4/18.
[1268] https://www.auditor.leg.state.mn.us/m101717.htm, accessed 6/4/18.
[1269] https://www.auditor.leg.state.mn.us/ped/resmeth.htm, accessed 6/20/18.

problems.[1270] The Perpich Center for Arts Education was established as a state agency in 1985. The Perpich Center is responsible for various educational institutions including a residential high school, as well as arts education opportunities across the state. The evaluation report recommended numerous changes including enhanced oversight of the agency by the board, an annual assessment of the executive director and an annual evaluation by the board of enrollment and standardized test score trends. The report also recommended that "the Legislature should consider changes in the Perpich Center Board's role, size, and composition…amend state law to include minimum requirements for Perpich Center school administrators…[and] consider whether to change the scope of the agency's duties." The evaluation, which was strongly supported by the legislators, resulted in legislation, a school closure, and leadership changes, including a new board of governors and a new executive director (Interview III, 2018).

Another analytic bureaucracy in Minnesota is the Office of the State Auditor (OSA). Although it is part of the executive branch, the OSA works with the OLA and the legislature. The state auditor is an elected official and can only be removed from office by impeachment (NCSL 2015). The level of funding for the OSA is comparable to the amount for the OLA ($6.4 million), but instead of a state appropriation, the OSA charges local governments for its services (NASACT 2015). Multiple divisions of the OSA contribute to its oversight responsibilities. The Audit Division performs approximately 150 compliance and financial audits (which includes accounts payable and receivable)[1271], and reviews approximately 500 single audits per year. The Pension Division reviews investment, financial, and actuarial reporting for approximately 700 public pension plans. The Tax Increment Financing Division oversees approximately 1,700 Tax Increment Financing (TIP) districts and collects and reviews approximately 1,700 annual TIF reports. Additional divisions include the Legal/Special Investigations Division, which investigates allegations of theft or misuse of public funds, and the Government Information Division, which conducts a Best Practices Review of local government, and collects and analyzes local government financial data. This financial data is reported to the legislature (and the public) to "assist the Legislature with planning and policy-making decisions related to local governments."[1272] According to Chapter 6 of the Minnesota Statutes, the State Auditor is also required to serve on the "State Executive Council, State Board of Investment, Land Exchange Board, Public Employees Retirement Association Board, Minnesota Housing Finance Agency, and the Rural Finance Authority Board" (NCSL, 2015).

Although the OSA does not conduct performance audits, it is responsible for the state's Performance Measurement Program.[1273] This system was created by the Council on Local Results and Innovation, which was created by the legislature in 2010. Essentially, this program is designed "to aid … state and local officials in determining the efficacy of counties and cities in providing services and measure the residents' opinions of the services."[1274]

The division of authority between the OSA and OLA is complicated. Although their websites clearly state that the OSA handles local auditing (exclusively financial, compliance, and special audits), and that the OLA is responsible for state auditing, the OLA also audits[1275] three

[1270] http://www.senate.mn/committees/2017-2018/3091_Committee_on_E-12_Policy/Perpich%20Center%20for%20Arts%20Education%20Full%20OLA%20Program%20Evaluation.pdf, accessed 6/20/18.
[1271] http://www.osa.state.mn.us/other/AccountingDocs/min_pub_req_gaap.pdf, accessed 6/20/18.
[1272] http://www.osa.state.mn.us/default.aspx?page=whatwedo, accessed 6/5/18.
[1273] https://www.lmc.org/page/1/performancemeasurement.jsp, accessed 6/15/18.
[1274] http://www.osa.state.mn.us/default.aspx?page=20130214.000, accessed 6/4/18.
[1275] http://www.osa.state.mn.us/default.aspx?page=faq#AuditFAQs, accessed 6/4/18.

specific metropolitan agencies.[1276] Additionally, the OLA can audit charter schools and state universities, while the OSA audits school districts.[1277] Furthermore, in regard to state-wide single audits (federal grants to state agencies), according to the memorandum on the single audits, the OLA "performs the statewide single audit and prepares the audit report at the state level." Yet, the OSA's Audit Practice Division is responsible for reviewing the single audits. In this process, the Minnesota Management & Budget agency (MMB), an agency discussed in the next section, represents all involved state agencies and assists in coordinating the single audit requirements.[1278]

Recently the complicated relationship between OSA and OLA became even more fraught after an OLA review of OSA's audits of local governments. Although OSA audits of local governments are mandated by state law, counties must pay for these audits. Counties complained to their legislators that OSA annual audits cost too much. Consequently, in 2015, the legislature amended the Appropriations Law so that counties could choose to have their annual audits conducted by either the OSA or a private CPA firm. Moreover, the OLA conducted a review of OSA to "assess the 'efficiency' of county audits conducted by the OSA."[1279] The 2016 OLA review of OSA concluded that the audits were expensive and that counties should be able to hire CPA firms to conduct the audits, but recommended that OSA should retain the authority to determine whether the audits conducted by CPA firms met the OSA standards.[1280] The state auditor challenged the legislature's action in an appeals court case in 2017, but the court upheld the law permitting counties to hire a CPA to conducts these audits.[1281] This is an interesting case of legislative oversight of executive branch's analytic bureaucracy.

Finally, as mentioned earlier, there are two other chamber specific analytic bureaucracies: the House Fiscal Analysis Department (HFAD) and the Senate Council, Research and Fiscal Analysis Office (SCRFAO). These assist the legislature with budgets and fiscal analysis. HFAD is comprised of one chief fiscal analyst and 10 fiscal analysts. The chief fiscal analyst oversees the department and serves as one of the two nonpartisan staff on the House Ways and Means committee. The rest of the 10 fiscal analysts serve as staff on the remaining house finance and tax committees (Interview VI, 2018). HFAD is responsible for reviewing legislative and executive spending requests; assisting finance committees in locating budgetary alternatives; "monitoring the fiscal impact of legislative proposals through fiscal notes and revenue estimates as prepared by the executive branch; preparation and review of legislation to implement legislative budget decisions, including supplemental appropriations; tracking legislative budget decisions, and providing analysis of enacted budgets for legislative oversight."[1282]

Collectively, HFAD provides nonpartisan, confidential assistance to any house member. The department provides 40 budget-related reports on their website to assist the House finance and tax committees on state budgetary and fiscal issues. These reports include twenty-three budget tracking spreadsheets (consisting of appropriations for past and current legislative sessions as well as proposed executive and legislative budgets), twelve issue briefs (analyzing the fiscal implications of policy and budget proposals), four Money Matters articles entitled: *Summary of Legislative Fiscal Action, General Fund Revenue and Expenditure Forecasts,*

[1276] https://www.auditor.leg.state.mn.us/juris.htm, accessed 6/4/18.
[1277] http://www.osa.state.mn.us/list.aspx?get=67, accessed 6/4/18.
[1278] http://www.osa.state.mn.us/default.aspx?page=description, accessed 7/8/18.
[1279] https://www.auditor.leg.state.mn.us/sreview/countyaudits.pdf accessed 7/8/18.
[1280] https://www.auditor.leg.state.mn.us/sreview/countyaudits.pdf accessed 7/8/18.
[1281] https://www.auditor.leg.state.mn.us/sreview/countyaudits.pdf accessed 7/8/18.
[1282] https://www.house.leg.state.mn.us/Fiscal/, accessed 6/20/18.

Capital Budget and Operating Budget Summaries, and an *Analysis of Special Legislation*, and one annual summary of fiscal effects on the state general funds.[1283] The latter is produced by the House Ways and Means committee after a budget resolution is adopted by the committee. This report is required by House Rule 4.03 to report on the fiscal impact of the bills that move through the Ways and Means Committee. While updates to these reports occur frequently during the legislative session, updates are not always done after the legislative session ends (Interview Notes, 2018). [Note: Ways and Means is a standing committee that does not meet during the interim.] Reports are typically published independently on relevant issues, and committees may be given memos or spreadsheets. HFAD does not typically give full reports to individual legislators (Interview VI, 2018).

In addition to producing these reports, HFAD staff is responsible of keeping track of fiscal issues and reviewing bills prior to committee meetings to inform members of their fiscal impact (Interview Notes, 2018). In response to inquiries from legislators, fiscal staff will identify policy and funding alternatives. Furthermore, fiscal staff will summarize the history of programs and identify past program issues. Fiscal staff does not typically give presentations on budget issues; instead the sponsors or cosponsors of a bill make any presentations. Fiscal analysts will, however, answer any questions after the presentation. Furthermore, the analysts read OLA financial audit information, notify committee members when that information is available, and then summarize it for the committee members. If legislators want more detailed information, someone from the OLA is called upon. OLA staff might attend a committee meeting for this purpose (Interview VI, 2018).

The comparable fiscal staff agency for the senate is called the Senate Research and Fiscal Analysis Office (SRFAO). It, too, is a nonpartisan office that provides senators with budget tracking spreadsheets and issue briefs, as well as other research and fiscal services. The SRFAO does provide presentations on budget issues for committees.[1284] Together, both the House and Senate fiscal support agencies create joint reports used by the legislature during committee hearings. For instance, during a May 14, 2018, House Ways and Means Committee hearing on amending a budget resolution, a fiscal analyst from each chamber had created multiple spreadsheets analyzing the amounts to be spent in the upcoming fiscal years from the state's general fund per program. These spreadsheets were referenced briefly in the beginning along with the relevant bills. During discussion, when a member asked the committee chair a question regarding possible amendments, the committee chair referred the question to the chief analyst who was present at the meeting. The analyst was able to identify the conditions under which a change in the budget target could be met.[1285]

Apart from the governor's budget, when state departments and agencies need to spend funds from the federal government, contingent on appropriation accounts, or other sources, they may get approval for their requests from the Legislative Advisory Commission (LAC).[1286] This commission was also created by the Legislative Coordinating Commission (LCC) and gets its authority from s. 3.30, Min. Stats. and s. 3.3005, Min. Stats. The commission consists of four permanent members: a designee or the Senate Majority Leader, the Senate Finance Committee chair, a designee or the Speaker of the House, and the House Ways and Means Committee chair. Based on the funding requests, one member from the Senate and one from the House are also

[1283] https://www.house.leg.state.mn.us/Fiscal/, accessed 6/20/18.
[1284] http://www.senate.mn/departments/office_bio.php?office_id=1007#keyresources_data, accessed 6/20/18.
[1285] https://www.youtube.com/watch?v=9rojB7t95ko, accessed 6/20/18.
[1286]https://mn.gov/mmb/budget/legadcomm/, accessed 6/20/18.

members of the commission.[1287] The commissioner of the Minnesota Management & Budget agency (MMB), as the LAC secretary, keeps a permanent record of their meetings. But the minutes of these meetings have not been updated since 2015.[1288]

Oversight Through the Appropriations Process

Minnesota's budget operates within a biennium, and the governor is required to propose the budget in odd-numbered years. According to s.16A.11, Min. Stats., the governor submits the proposal in three parts to the Legislature: a budget message, a detailed operating budget, and a capital expenditure budget. The first two parts are presented together in odd-numbered years, and part three is presented in even-numbered years.[1289]

After the governor proposes his/her budget, the legislature initiates a set of appropriations bills through which the revenues and expenditures are agreed upon and become law. There is no single unified budget bill.[1290] The appropriations process is largely conducted by the House Ways and Means Committee and the Senate Finance Committee with the assistance of the fiscal analysts of both chambers. The Ways and Means Committee's authority is described in Rule 4.03 of the Minnesota House Rules, which states that the committee "must hold hearings as necessary to determine state expenditure and revenues for the fiscal biennium."[1291] Currently, the House Ways and Means Committee consists of approximately 20 members from both majority and minority parties, based on the proportion of legislative seats held by each political party.

Minnesota uses performance-based budgeting (discussed further below), so the performance report of each agency is used as a basis for the budget as well as a mechanism for oversight within the executive branch. Minnesota's version of performance-based budgeting analyzes the societal benefits and not just the program's inputs and outputs. Consistent with this use of performance-based budgeting, Chapter 16A.10 of Minnesota statutes requires that governors include agency and program performance data in their budget proposal.[1292] The Minnesota Management & Budget agency (MMB) helps guide agencies by providing them with guidelines for reporting their performance measures. Agencies are required to provide "performance-based budget plans." The MMB can also "require agencies to submit other periodic performance reports." According to the report, the goal is to "encourage agencies to develop clear goals … for their programs and strengthen accountability by illuminating whether state government is providing effective and efficient services."

[1287] https://www.lcc.leg.mn/lac/, accessed 6/15/18.
[1288] https://www.lcc.leg.mn/lac/meetings.htm, accessed 6/15/18.
[1289] https://mn.gov/mmb/budget/state-budget-overview/budprocess/, accessed 6/4/18.
[1290] "The release of the governor's budget sets the legislative component in motion. Budget proposals are introduced in the legislature and make their way through the legislative process in a number of individual appropriations bills. Once they are approved and passed by the legislature, each law is sent to the governor who can accept the law by signing it, veto the entire law, or veto portions of the law. The final budget passed by the legislature does not appear in a single law but is made up of a number of separate appropriations laws. The state budget can also be modified, under certain circumstances, by the governor through the power of unallotment" https://www.leg.state.mn.us/lrl/guides/guides?issue=budget, accessed 8/18/18
[1291] https://www.house.leg.state.mn.us/cco/rules/permrule/403.htm, accessed 6/4/18.
[1292] https://www.revisor.mn.gov/statutes/cite/16A.10, accessed 7/8/18.

Rather than relying on an appropriations committee with a series of subcommittees responsible for appropriations for individual state agencies, the Minnesota House has standing committees that are responsible for financing various state activities. Some of these address both policy and finance. For example, there are committees for Public Safety and Security Policy and Finance, Job Growth and Energy Affordability Policy and Finance, and Higher Education and Career Readiness Policy and Finance. Finance and policy are separated into two committees for some of the larger departments, such as Health and Human Services, which has both a Finance Committee and a Health and Humans Services Reform Committee, with subcommittee on Aging and Long-term Care and on Childcare Access and Affordability. The House Ways and Means Committee coordinates the work of these committees with respect the budget and appropriations process. In addition to the House Ways and Means Committee, there are two committees on state taxes: the Taxes Committee, and the Property Tax and Local Government Finance Division.

During the appropriations process, there appears to be regular communication between the House Ways and Means Committee (a standing committee), the House Taxes Committee (a standing committee), and the other standing committees with jurisdiction of financial issues. The House Taxes Committee and the multiple finance committees conduct hearings to examine annual agency revenue and spending, and to relay that information to the House Ways and Means Committee. Brief meeting minutes and audio/video files from past meetings held by other finance standing committees are available on the Minnesota Legislature's website and on YouTube. We use the House Education Finance Committee as an example. The website reveals that it held 23 meetings during 2017, with each meeting lasting anywhere from one to four hours in length.[1293]

During one of these meetings the House Education Finance Committee listened to a presentation from the state's commissioner of education about the governor's budget recommendations for the Minnesota Department of Education (MDE) and presentations on various programs administered by the MDE. The meeting held on January 19, 2017, involved an overview of several education programs, including concurrent enrollment, postsecondary enrollment options (PSEO), and the Advanced Placement and International Baccalaureate programs.[1294] A House legislative analyst was there to present an overview of the programs. Experts from educational institutions and organizations testified about various programs. Video archives for a meeting held on January 25, 2017, reveal that members of the committee asked very specific questions of the agency's commissioner about the governor's budget.[1295]

The following illustrates the depth of the questions asked by legislators. The committee chair asked for more information about the department's progress on paperwork reduction with respect to special education student assessment and planning documents. Additionally, she asked about whether local school districts would need to pick up costs for a proposed state data collection system. The commissioner of education said she would check with the agency staff to provide precise numbers for both those issues. The chair also inquired about the amount of money Minnesota spends, which is one of the largest per pupil amounts in the country, and the persistence of an achievement gap. The education commissioner and the chair engaged in a lengthy discussion of whether more spending on current programs was better than additional reforms to fix the problem. The commissioner explained that most of the recent reforms concentrate on preschool education, so there would be a lag before results would become

[1293] http://www.house.leg.state.mn.us/cmte/Home/?comm=90006, accessed 6/15/18.
[1294] https://www.youtube.com/watch?v=d-Rll65gF3Y, accessed 6/4/18.
[1295] https://www.youtube.com/watch?v=8jMGLHf-ihc, accessed 6/4/18.

evident. In her questioning, the committee chair referred to specific state statutes and demonstrated command of education programs. She insisted that doing the same thing and expecting change was not a plan to close the persistent achievement gap. The commissioner was equally firm in her view that it takes time for reforms to have an impact. Another committee member asked about whether voluntary pre-K was producing results. The commissioner responded that the program was only six months old, so it was not possible to tell yet. Another committee member asked about the impact of a specific reading proficiency initiative and a teacher evaluation program. The same committee member asked why there was no money requested for training principals and then continued with questions about the governor's position on school choice. The commissioner responded that 90% of students in the state "chose" public schools even though the state has charter schools, open enrollment in any public school, support for private schools, and opportunities for home schooling. The committee member persisted in asking why the governor was not pursuing a voucher program for private schools through foundations and donors. The commissioner described the lower performance of Wisconsin with vouchers compared to Minnesota without them. Also, the commissioner pointed out problems with accountability and standards for private schools. The committee member then challenged the commissioner about the American Indian Contract Schools, saying that they had the same accountability problems that private schools have, but with support from the governor—a double standard according to the committee member. The commissioner said that the Indian American Contract Schools did participate in federal testing programs, but she would check further on their standards. American Indian Contract Schools are district, charter, and tribal contract schools that the MDE (Office of Indian Education) provides resources to and oversight over. These schools are either responsible for or assist in running educational programs, such as the Minnesota Indian Teacher Training Program (MITTP), that provide educational opportunities to Native Americans and support their cultural identity.[1296] The last question at this hearing was the only Democratic Farmer Labor (DFL) party member on the committee who had the opportunity to ask a question. She requested information on what the MDE was finding about the outside factors likely to affect school performance.

The quality of the questions committee members asked generally reflected a solid grasp of issues and previous activities involving education in Minnesota. Members appeared to be able to quiz the commission of education effectively about specific topics. On the other hand, there are indications that this was a partisan, albeit respectful, probe of MDE. This is indicated by the party affiliation of the committee members recognized by the chair, who is Republican. Republicans held the floor for the vast majority of the time allocated for questions, with only one DFL party member asking one question. Although it is possible that only one DFL member requested an opportunity to ask a question, it is also possible that this was a partisan allocation of committee time. The DFL committee member asked her question in the final hearing minutes.

When the legislature passes each of the series of appropriations bills that make up Minnesota's budget, the governor can veto the entire act or just veto specific portions of each act.[1297] Even after signing the series of appropriations acts, the governor can also use the power of "unallotment" to cut specific appropriations in the state budget in emergency cases.[1298] Also, the Legislature can modify the budget in the "off-year" legislative session.

[1296] https://education.mn.gov/MDE/fam/indian/, accessed 10/8/18.
[1297] https://mn.gov/mmb/budget/state-budget-overview/budprocess/, accessed 6/4/18.
[1298] https://www.leg.state.mn.us/lrl/guides/guides?issue=unallotment, accessed 6/20/18.

According to MMB's website, "[a]s a result of state forecasts and other changes, it has become common for the legislature to enact annual revisions to the state's biennial budget."[1299] Gov. Pawlenty's use of unallotment to cut General Assistance Medical Care triggered lawsuits by the legislature to test the constitutionality of unallotment.[1300] Through these legal actions the legislative branch successfully asserted its power to check the executive branch. In 2010, the Minnesota Supreme Court ruled that "use of the unallotment power to address the unresolved deficit exceeded the authority granted to the executive branch."

As this discussion demonstrates, the Minnesota legislature has abundant staff resources to support its budget work. Currently, it appears that the primary entities involved in the appropriations process are the House Ways and Means Committee, the MMB, the Legislative Advisory Commission, the OLA, the chamber fiscal analysts, and to a very minimal extent, the Legislative Commission on Planning and Fiscal Policy. However, the LCC has very recently established a Legislative Budget Office to be implemented on January 8, 2019. The LBO will receive its authority via Chapter Four of Minnesota Session Laws. Its website states that it will, "provide the House of Representatives and Senate with nonpartisan, accurate, and timely information on the fiscal impact of proposed legislation, without regard to political factors."[1301] Although audit reports are occasionally mentioned in conjunction with the budget process, there does not appear to be a systematic formal interface between audit compliance and action on agency budgets. The use of audits appears ad hoc. Yet, with performance-based budgeting, agency actions may already be thoroughly explored in the agency's budget request.

Oversight Through Committees

Minnesota has several joint committees that are called commissions that are important to the legislative oversight process. Several of these were introduced in the section on the analytic bureaucracy: the Legislative Advisory Commission, the Legislative Audit Commission, and the Legislative Budget Office Oversight Commission, newly created in 2018. These commissions post minutes of meetings that occur during the interim and appear to provide continuity when the legislature is not in session. Minutes of standing committees indicate that they meet frequently, but only during the legislative session. As noted in the section, *Oversight Through the Appropriations Process*, Minnesota's legislature has standing committees responsible for finance and also for policy for some of the large state agencies. For example, in addition to a committee on Agriculture Finance, there is a committee on Agriculture Policy. Likewise, there is a committee on Education Finance, in addition to a separate committee on Education Innovation Policy, as well as a similar pair of committees for Health and Human Service Finance and Health and Human Services Reform. Committee minutes also reveal that there are occasional joint meetings in which both the finance and the policy committees associated with a particular agency meet together. These joint meetings often involve a presentation by state agency leaders.

As we discussed in the section on analytic bureaucracies, the legislature often takes action in response to OLA audits and evaluations. The various standing policy committees and standing finance committees hold hearings and take action in response to OLA audits and other reports. The OLA's March 2018 evaluation of the Department of Health's investigative division,

[1299] https://mn.gov/mmb/budget/state-budget-overview/, accessed 6/15/18.
[1300] https://www.leg.state.mn.us/lrl/guides/guides?issue=unallotment, accessed 7/10/18.
[1301] https://www.leg.state.mn.us/lrl/agencies/detail?AgencyID=2301, accessed 6/4/18.

the Office of Health Facility Complaints (OHFC) triggered such a response. The evaluation found the OHFC had inadequate oversight over senior care homes, with one recommendation being to "implement an electronic case management system."[1302] The commissioner of the Department of Health responded to the evaluation in a letter, saying that the department had implemented a "new paperless system,"[1303] and that the department would work with legislators to implement the report's recommendations.[1304] This letter was explicitly mentioned in Section 60 of a recently passed omnibus bill (HF3138). Section 60 reads: ". . . the Commissioner of Health must submit a report . . . on the progress toward implementing each recommendation of the Office of the Legislative Auditor with which the commissioner agreed in the . . . letter . . . dated March 1, 2018."[1305] The chair of the House Health and Human Services Finance Committee (who sponsored the bill), said in response to criticism, that the bill was in part a response to an "audit" conducted by the OLA on the elder abuse reporting system.[1306] Furthermore, according to an article, the governor's proposed budget was also inspired by an eldercare-related report made by the OLA (OLA, 2016). This audit of the OFHC did in fact change an item in the governor's proposed budget to improve the OFHC (Interview III, 2018). The same audit influenced many other bills (Interview III, 2018). It is clear from news articles and these experts that OLA audit information is utilized by standing committees of the legislature.

Oversight Through the Administrative Rules Process

Minnesota has elaborate procedures for rule making with many opportunities for legislators to influence administrative rules, but legislators must compete with Administrative Law Judges (ALJ) and the executive branch for influence in this arena. Despite multiple opportunities to review rules, the LCC cannot suspend a rule without passing legislation. Short of passing legislation, its tools are objection and delay. The governor can veto rules after they are adopted, but rarely does so (Schwartz, 2010). Likewise, it appears that legislative review of rules is less common than the available procedures would imply.[1307] There are, however, instances in which the legislature uses these tools to insert itself into the rulemaking process. Moreover, sunset review of administrative rules creates a systematic mechanism for eliminating obsolete rules—a procedure we describe in the section on *Automatic Mechanisms for Oversight*.

Administrative rules review over the years has been conducted by various legislative entities. These include the LCC, which established the Legislative Commission on Administrative Rules Review, and the Subcommittee on Administrative Rules. In addition, there are the House and Senate standing committees that review the rules within their jurisdiction. Chapter 3 of the Minnesota Statutes and Article IV of the Minnesota Constitution provides some authority over administrative rules for standing committee chairs, and committee chairs sometimes prepare rulemaking notes (Konar-Steenberg and Beck, 2014).

[1302] https://www.auditor.leg.state.mn.us/ped/pedrep/ohfc.pdf, accessed 6/4/18.
[1303] http://www.health.state.mn.us/news/pressrel/2018/statement030618.html, accessed 6/4/18.
[1304] http://www.health.state.mn.us/news/pressrel/2018/statement030618.html, accessed 6/4/18.
[1305] https://www.revisor.mn.gov/bills/text.php?number=HF3138&version=3&session=ls90&session_year=2018&%20session_number=0, accessed 6/15/18.
[1306] http://www.house.leg.state.mn.us/SessionDaily/Story/13309, accessed 6/15/18.
[1307] Paul Marinac, Deputy Revisor of Statutes, reported in Schwartz (2010), p. 275.

The House Government Operations and Elections Policy Committee and the Senate Government Finance Committee have jurisdiction over any bill that "delegates rulemaking authority to, or exempts from rulemaking, a department or agency of state government."[1308] Merely because the two chambers are controlled by different political parties, both political parties in 2018 had input into the rule review process. In 2018, the House Government Operations and Elections Policy committee was comprised of eighteen members; eleven Republicans and seven Democrats. As of 2018, the Senate Government Finance and Policy and Elections committee consists of ten members; six Republicans and four Democrats.

The revisor of statutes provides an overview on their website called *Rulemaking in Minnesota: A Guide*. [1309] Published in 2014, this guide reflects the Minnesota Administrative Procedure Act (APA) and other relevant statutes. The guide is split up into four sections that focus on these four different processes: "adopting permanent rules, with or without a public hearing; exempt rules; and expedited rules." A rule or a rule change may be required by statute or petitioned by any person. Agencies must respond and can also choose to hold a hearing according to s. 14.05 to 14.28, Min. Stats.

The processes for promulgating new rules and altering existing rules in Minnesota are similar (Interview II, 2018). Therefore, we describe the procedure for adopting new rules after a public hearing in detail and only briefly touch on the variations to this process. *Rulemaking in Minnesota: A Guide* [1310] cites eleven steps that agencies must take to propose a new rule:

> (1) Agencies must publish, with 60 days' notice, a request for public comments on the rule in the State Register (s. 14.101, Min. Stats.). Before the first notice, agencies can appoint committees to comment on a rule. It appears that agencies do utilize this opportunity, and that committee input often impacts the agency's proposed rules before the public hearing (Interview II, 2018). Alternatively, an agency can request feedback from the Office of Administrative Hearings (OAH). Next, an ALJ will approve or reject the plan for reviewing the rule. If the plan is rejected, the judge provides reasons so that the agency can modify the review plan.
> (2) When the notice of hearing is mailed, the agency must provide the Legislative Reference Library with a statement of need for the rule and reasonableness of the rule. This statement is available to the public.
> (3) Next, the agency must submit the rule(s) to the revisor of statutes for approval; review and approval takes about a week.
> (4) The agency must submit a request for a hearing with the OAH, where an Administrative Law Judge (ALJ) will be appointed to approve the hearing notice.
> (5) Once approved, the agency can publish the notice of hearing. Then, the agency must forward the notice of the proposed rule to any affected persons, and "the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule." Furthermore, agencies must keep a rulemaking docket of each adopted rule during the previous year and submit this annually, by January 15th, to these individuals within the legislative policy and budget committees with the relevant jurisdiction.
> (6) The agency will, at the public hearing, explain why the rule is needed.

[1308] https://www.house.leg.state.mn.us/cco/rules/permrule/413.htm, accessed 6/15/18.
[1309] https://www.revisor.mn.gov/static/office/2014_all_rulemaking_guide.pdf, accessed 7/8/18.
[1310] https://www.revisor.mn.gov/static/office/2014_all_rulemaking_guide.pdf, accessed 7/8/18.

(7) The ALJ determines whether the rule should be adopted. If the ALJ does not believe the rule satisfies a need and the chief ALJ affirms this finding (s. 14.26, sub. 3, Min. Stats.), the agency can take corrective changes. Or if an agency rule is disapproved by the ALJ, agencies can try to get the legislature to enact the rule enacted as law. According to an interviewee, it is more common for agencies to adjust their rule to satisfy the ALJ (Interview II, 2018).
(8) The agency will submit approved rule(s) to the OAH to file with the Secretary of State (SOS).
(9) The SOS will forward a copy to the governor who has fourteen days to veto all or select portions of a rule. If the governor chooses to veto all or part of a rule, he or she must notify the chairs of the legislative committees with the relevant jurisdiction.
(10) If there is no gubernatorial veto, the revisor of statutes will prepare a notice of adoption.
(11) The agency then submits the notice to the State Register.

The process for rules that are adopted without a public hearing has nine primary steps. The first step is the same as the above, except instead of publishing a notice of hearing or dual notice, the agency will publish a notice of, "intent to adopt a rule without a public hearing." Step 4 is to publish the notice of intent to adopt a rule without a hearing and to communicate the notice to the public and the legislature. If, at this time, twenty-five or more requests are received for a public hearing, the agency must proceed as they would with steps 4-11 in the previous process. If not, the agency will submit any modifications of the rule to the revisor of statutes for approval. Then, the agency will "submit [the] rule as adopted to the OAH for review, and notify . . . all persons who have requested to be informed of this fact." Steps 7-9 in this process are roughly the same as steps 9-11 in the previous section, except, when the OAH files the approved rules, the filing must be "prompt," as opposed to having no time constraints at all.

Although rule reviews that require a public hearing and ones that do not are both common, more attention is paid to rules with public hearings (Interview II, 2018). Public hearings are primarily for rules that are more complicated and require more time. Additionally, Minnesota Statutes 3.843[1311] empower a legislative commission (including the LCC themselves) by majority vote to request that an agency hold a public hearing. This is a way for the commission to make recommendations to the agency on a rule.

Experts involved in this process say that an agency will propose a rule without a hearing if the topic at hand is technical and not controversial; sometimes these rules can go through the expedited or exempt process. The exempt process may also be utilized if the rule does not require a lot of subjective decision making for the agency. However, even under the expedited process, after a certain number of public hearing requests are received, a public hearing will occur. Sometimes, agencies will go into an expedited process, or a process without a public hearing, expecting it to be shorter but will then be required to have a public hearing. The rest of this process resembles steps 7-11 for rules adopted after a public hearing.

The expedited rulemaking process is similar to the exempt rulemaking process, except "a hearing [will occur] if required by law and if a sufficient number of hearing requests are received" (Konar-Steenberg & Beck, 2014). All emergency rules of the Department of Natural Resources are reviewed by the Attorney General. Otherwise, exempt rules must be submitted to

[1311] https://www.revisor.mn.gov/statutes/cite/3.843, accessed 7/8/18.

the OAH where the ALJ will either approve or disapprove the rule. Once approved, they are, "in effect indefinitely or for only two years."

In any rules process, the agency must "submit its notice of adoption, amendment, or repeal of rules to the State Register." If an agency fails to do this within 180 days of the ALJ's report, or at the end of the comment period, the rule is withdrawn, and according to s. 14.19, Min. Stats., the agency must report its failure and the reason for it to the LCC (Konar-Steenberg & Beck, 2014). Agencies then must file an annual report of improper rules (Tharp, 2001). According to 14.05, the LCC, governor, revisor of statutes and the policy and funding committees with the relevant jurisdiction receives the annual report of obsolete rules of the agency.

Clearly, these elaborate review processes provide several opportunities for Minnesota's legislators to review administrative rules. The LCC may review a rule, and when they do they hold one or more commission meetings on the rule. Based on Minnesota Statutes 3.841 and 3.305, sub. 6, the LCC may establish legislative commissions and subcommittees to assist it with its duties, which include administrative rules review. These commissions and subcommittees must be renewed every two years (Konar-Steenberg & Beck, 2014). Although some of these subcommittees continue to be renewed, they do not actively meet even though their chairs could call a meeting any time they wanted to. The LCC does not often oversee administrative rules (Konar-Steenberg & Beck, 2014). This is consistent with meeting minutes, audio, and video evidence from two meetings held in 2017 by the LCC. [1312] When the LCC does not review the rule, the Administrative Rules Subcommittee will conduct the review under the authority granted to them by statutes 3.842 and 3.843.

It is primarily the House and Senate standing committees that conduct administrative rules review for agencies within their jurisdiction (Interview I, 2018). Senate and House committees with jurisdiction over governmental operations may hold hearings publicly, if appropriate, and may request the OAH to hold the public hearing if a rulemaking hearing did not occur before the adoption of the rule, (Interview II, 2018). If the committees believe the rule is beyond the authority (procedural or substantive) of the agency, it can, by a majority vote, object to a rule under s. 14.15, sub. 4, Min. Stats. Or s. 14.26, sub. 3, Min. Stats. This objection is filed with the SOS, who will forward a copy of the certified objection to the agency and the revisor of statutes. Then, "the commission or committee publishes the objection in the State Register, and when the rule is published in the State Register, the rule will indicate the existence of the objection" (Konar-Steenberg & Beck, 2014).

If the objection is to a proposed rule, it cannot be officially filed until the rule is adopted.[1313] The agency has fourteen days after the filing of an objection to respond, and it is then up to the committee to change or eliminate its objection. The committee has two years after the objection is filed to "petition for a declaratory judgement to determine the validity of a rule objected to by the commission or committee." This forces the agency to defend the rule.

Alternatively, committees can vote to delay a rule "any time after the publication of the rulemaking notice," as provided by s. 14.126, Min. Stats. (created in 2001).[1314] The committee must publish their resolution to delay a rule in the State Register and notify the agency, Revisor of Statutes, and the chief ALJ. This prevents the agency from adopting the rule until the end of the annual legislative session.

[1312] https://www.lcc.leg.mn/, accessed 6/15/18.
[1313] https://www.revisor.mn.gov/laws/2000/0/469/, accessed 6/20/18.
[1314] https://www.revisor.mn.gov/statutes/cite/14.126, accessed 6/15/18.

The first use of this power to delay a rule occurred in 2018 (Interview II, 2018). The Minnesota Department of Agriculture proposed a rule (the Groundwater Protection Rule) in the spring of 2018 to decrease nitrates in drinking water.[1315] The agriculture committees of both chambers notified the governor that they would move to delay this rule if a specific agriculture bill did not pass. Nonetheless, the governor vetoed the bill, and both chambers' Agriculture Committees moved to delay the rule (Dunbar, 2018).[1316] The resolution was officially submitted and published in the State Register, officially delaying the rule until May 2019 (Interview II, 2018).[1317] The current governor is serving the last year of his current term and so the delay thwarts his input on the rule. The governor called the legislature's actions "unconstitutional," suggesting that this may end up in court,[1318] providing perhaps another instance of the courts settling disputes over checks and balances in Minnesota's government.

Oversight Through Advice and Consent

According to the Council of State Governments, Minnesota's governor has the authority to appoint, with senatorial confirmation, the adjutant general, the heads of the departments of Agriculture, Civil Rights, Commerce, Corrections, Economic Development, Education, Emergency Management, Environmental Protection, Finance Health, Highways, Information Services, Labor, Natural Resources, Revenue, Solid Waste Management, Transportation, the Commissioner of Human/Social Services (who oversees Mental Health and Retardation and Welfare), as well as other administrative personnel. Without senatorial confirmation, the governor can appoint the five commissioners of the Public Utilities Commission (the Council of State Governments, 2014). For the PUC, by law, a maximum of three commissioners can be of the same political party.[1319]

The advice and consent power of the Minnesota Senate is defined in the Rules of the Minnesota Senate and s. 15.066, Min. Stats.[1320] In brief, appointments that require senatorial confirmation are submitted by the governor and referred to the appropriate committee by the president of the Senate. Once the appointment has been referred to a committee, the committee has sixty legislative days to report to the Senate. If no report has been made within sixty legislative days, it is withdrawn from the committee and placed on the confirmation calendar for consideration by the Senate before adjournment of the regular session. As opposed to a rejection, confirmations can be reported out of committee with no recommendation.

Confirmation of the appointment requires the affirmative vote of a majority of the whole Senate. An interviewee noted that some appointments do not require any legislative action and that others require the vote of both chambers (e.g., Campaign Finance and Disclosure Board). Statutes determine when and if senatorial approval is required (Interview V, 2018). For some

[1315] https://www.mprnews.org/story/2018/03/07/mn-moves-to-eliminate-nitrates-in-groundwater-environmentalists-wait-wonder, accessed 7/8/18.
[1316] https://www.mprnews.org/story/2018/05/23/dayton-veto-brings-counterpunch-to-governors-groundwater-legacy, accessed 7/8/18.
[1317] https://www.rrfn.com/2018/06/11/minnesotas-groundwater-protection-rule-delayed/, accessed 6/21/18.
[1318] https://blogs.mprnews.org/capitol-view/2018/06/legislature-formally-delays-daytons-nitrogen-rule/, accessed 7/8/18.
[1319] https://mn.gov/puc/about-us/our-team/commissioner/, accessed 6/15/18.
[1320] https://www.senate.mn/rules/2017/tempsenaterules2017.pdf, accessed 5/31/18.

positions, both chambers must confirm the appointment within a specific time period or the appointment will be terminated.[1321] In one case, an appointment passed in the Senate, but died in House (Interview VII, 2018).

The Minnesota Senate's website details information about Minnesota senatorial confirmations.[1322] On this webpage, there are lists of appointees by the Minnesota governor rejected by the full Senate, rejected by Senate committee, and appointees who resigned or were fired before confirmation.[1323] The most recent appointee rejected by the full Senate occurred in 2018. The second most recent appointee rejected by the full Senate occurred in 2013. That person was also rejected in the same year by the relevant senate committee. Also, the most recent appointee who resigned or was fired before confirmation was in 2004. This evidence suggests that the Minnesota Legislature does occasionally exercise their advice and consent power as a form of legislative oversight over the executive branch. However, it also demonstrates that occurrence is rare.

The governor can use executive orders for reorganization of the executive branch and to create agencies. These orders are, however, subject to legislative review (Council of State Governments, 2014). Formal provisions also allow executive orders to be used to create advisory, coordinating, study, or investigative committee/commissions and to respond to federal programs and requirements (Council of State Governments, 2014). According to statute, any task force, council, or committee created by an executive order will expire two years after the order or ninety days after the governor leaves office, unless the order or a statute specifies an earlier date.[1324] The commissioner of the Department of Administration also has the power to "transfer personnel, powers, or duties from a state agency to another state agency" with approval from the governor. These transfers must be submitted to the chairs of the governmental operations committees of both chambers (s. 16B.37, Min. Stats.). According to the same statutes, any reorganization of the Housing Finance Agency or the Pollution Control Agency must be ratified by concurrent resolution or enacted into law before it can be effective.

The reorganization power of the governor and the oversight the legislature has over this reorganization is laid out in s. 16B.37, Min. Stats. Knowledgeable sources say that "the Legislature has the power of the purse; if an appropriation has been given to one entity, it is problematic for the executive branch to reorganize" (Interview V, 2018). Not many executive orders (at least recently) have incited a great deal of interest; the best example would be the litigation that occurred regarding childcare unionization. "None of [the reorganization] requires legislative approval, but "[there are] oversight hearings and [the] legislative power of the purse. Maybe [the Legislature is] not able to reshape things in legislation, but if they are unable to provide the funding, that is how that [oversight] works" (Interview VII, 2018). Furthermore, it appears that an agency cannot be eliminated, although the governor can rearrange it through the executive order process. As with executive orders, the legislation cannot reject it. They can only use legislation to change it, although this is difficult" (Interview VII, 2018).

The governor has the statutory authority to issue executive orders for civil defense disasters, public emergencies, energy emergencies and conservation, and to transfer funds during an emergency, and other emergencies. According to formal provisions, the governor's executive orders are subject to filing and publication procedures, the Administrative Procedures Act, and to

[1321] https://www.leg.state.mn.us/lrl/history/confirmations, accessed 6/27/18.
[1322] https://www.senate.mn/confirmations/confirmations.php?ls=, accessed 6/20/18.
[1323] https://www.leg.state.mn.us/lrl/history/confirmations, accessed 6/20/18.
[1324] https://www.revisor.mn.gov/statutes/cite/15.0593, accessed 6/15/18.

legislative review. The governor can also "assign duties to lieutenant governor and issue writs of special election." Via executive order, the governor cannot appoint state administrative personnel (Council of State Governments, 2014).

The most recent governor issued 30 executive orders during his first year in office (2011). This raised red flags in both legislative chambers about whether the governor was minimizing legislation and undermining the separations of powers. One senator stated that executive orders are "intended for [the] tweaking of things. Legislation is what's needed to change law." The executive orders ranged from childcare unionization to environmental permits. A Republican representative said that the governor does have a large amount of authority, but it is concerning when it is used to assert a political point of view (Pugmire, 2011).

Although the governor argued that his lawyers confirmed that all of the orders were constitutional, a year later the executive order on childcare unionization was nullified because, as the judge said, it exceeds the governor's authority, violated the legislature's right to create or change law, "and as such is a violation of the Separation of Powers doctrine" (Jimrags, 2012). The order was challenged by anti-union childcare providers not by the legislature (Steward, 2012), but the legislature submitted a brief that was influential. The court enjoined the executive order, "though in the legislative process there is no statute that allows the legislative branch to reject an executive branch [order]" (Interview VII, 2018). The legislature can pass a law that is in conflict with an executive order, and that should supersede the executive order. "This happens more from one governor to the next [as the governor must sign such a law] (Interview V, 2018)."

Oversight Through Monitoring of State Contracts

Minnesota's legislature lacks formal authority to monitor state contracts. The primary actors responsible for monitoring state contracts are the attorney general and the commissioner of administration, as provided in Chapter 16 of Minnesota Statutes.[1325] In brief, the commissioner is responsible for approving contracts, and the attorney general is responsible for reviewing a sample of these contracts to ensure statutory compliance. However, auditors, including both the OSA and OLA, do have the power to audit the activities of a state contract. The legislature receives these audit reports but there is not a standard procedure to review and follow up on them (Interview VI, 2018).

In 2014, the Minnesota Legislative Reference Library released a guide that describes how state agencies use Professional/Technical Contracts (P/T contracts) and provides resources about contracts for the legislature. Sources cited by the guide include the MMB, the Materials Management Division of the Department of Administration, and the OLA.[1326] The guide explains that reports available in the Legislative Reference Library and the Department of Administration archives include annual accumulations, which entail "approved contract amounts by department; approved contracts by department; approved contracts by vendor; and approved single source contracts by department." When an agency completes a contract over $25,000, they are required to submit a Vender Performance Evaluation to the Department of Administration. Vendor Performance Evaluations include amount spent, purpose, and the work done under the contract. The same rules apply to the legislature. So, when the LCC, the House, and the Senate

[1325] https://www.revisor.mn.gov/statutes/part/ADMINISTRATION%2520AND%2520FINANCE, accessed 7/8/18.
[1326] https://www.leg.state.mn.us/lrl/guides/guides?issue=contracts, accessed 6/20/18.

enter into contracts themselves, they submit a list of all P/T contracts they have engaged, including their cost, duration, tasks, and parties involved to the Legislative Reference Library (s. 3.225, Min. Stats.)[1327].

The guide also lists additional reports that address P/T contracts. Executive agencies must prove that they cannot use their own staff before hiring outside consultants or services in a report to the commissioner of administration (s. 43A.047, Min. Stats.)[1328] Subsequently, the Senate Finance and House Ways and Means Committees receive these reports documenting the agencies' justification for hiring outside consultants or services.[1329] These reports are rarely discussed during a House Ways and Means committee hearing, although sometimes individual finance committees might discuss one (Interview VI, 2018).

Recently, in January 2018, the Financial Audit Division released an internal control and compliance report on the P/T contracting activity of the state from July 2014 to February 2017. The goal of the audit was to confirm statutory compliance and "whether state agencies had adequate internal controls over . . . expenditures." This audit examined various departments, including the Department of Administration's Office of State Procurement. The audit found that this office had "adequate oversight over their use of P/T contracts." The Financial Audit Division found that the departments of Corrections, Education, Human Services, Transportation, and the Pollution Control Agency generally complied with the law in selecting and executing contracts; "accurately paid for services received," and "properly recorded the expenditures in the state's accounting system." However, these departments had occasional instances of weak internal control and noncompliance.[1330]

This demonstrates that the legislature, especially the OLA, has the means to oversee state contracts through audits by its analytic support agencies and utilizes this tool when necessary. But the OLA does not conduct audits on contracts specifically. Rather, the contact is examined if it is a part of another audit (interview notes 2018). Committees rarely hold hearing on agency contracts due to the low number of relevant audits. The typical issue with a state contract is why the job cannot be done by state employees or whether it cost too much. Contracts are not typically discussed unless there is such an issue, which has not occurred in about ten years (Interview VI, 2018).

Oversight Through Automatic Mechanisms

The Minnesota Sunset Act of 2011 was repealed in 2013. Currently, the Sunset Advisory Commission's website states that the law sets the schedule for executive branch agencies to be reviewed from 2012-2022,[1331] however, the commission ceased to exist in 2013. According to one interviewee, the commission "never really got started" (Interview VI, 2018). Responsibility for any remaining sunset reviews is shared between the LCC and the House and Senate governmental operations committees. But, in practice, such reviews are mainly conducted by the latter (Interview I, 2018). The Legislative Commission on Policy and Fiscal Services (LCPFP), which primarily aids the legislature on fiscal policy, was tasked with conducting sunset reviews

[1327] https://www.revisor.mn.gov/statutes/cite/3.225, accessed 7/8/18.
[1328] https://www.revisor.mn.gov/statutes/cite/43A.047, accessed 7/8/18.
[1329] https://www.leg.state.mn.us/docs/2009/mandated/090545.pdf, accessed 6/20/18.
[1330]https://www.auditor.leg.state.mn.us/fad/pdf/fad1802.pdf, accessed 7/8/18.
[1331] https://www.commissions.leg.state.mn.us/sunset/, accessed 6/15/18.

in 2013 when the sunset act was repealed. The LCPFP's most recent and available meeting was held on December 18, 2013. They have not met since 2013-2014 for either their fiscal nor sunset purposes (Interview VI, 2018). Moreover, the LCPFP does not have a legally required reporting schedule for sunset reviews (Interview, 2018).

An interviewee explained that the LCPFP had a broad set of responsibilities (specifically, the interviewee referenced the analysis the LCPFP provides to the legislature on projected state revenues and [tax] expenditures). The LCPFP's website states that when the legislature is considering the commission's fiscal projections, the commission is also responsible for "[gauging] the Legislature's role in state expenditures and consider[ing] the long-term needs of the state, while not duplicating work done by standing committees of the House and the Senate." Therefore, sunset reviews are currently, for the most part, conducted by House and Senate committees that have jurisdiction over the sunset topic.

According to another interviewee, current practice dictates that for any sunset review of commissions, those commissions can be extended if a committee chair determines the commission has been useful. Furthermore, the interviewee said that there is not a formal process that is called a "sunset review" in Minnesota, so there is no way to track the reviews. However, committee chairs informally conduct "sunset reviews" in the sense that they will formally determine whether an entity is needed or not. The interviewee continued that "it is not so much about expiring and extending. In its own way, it is sort of a sunset review" (Interview II, 2018). A separate interviewee said there is currently not any use of sunset or renewal requirements for continuing appropriations. The same interviewee continued, saying, "there are no standards like, 'Each program gets reviewed every six years' or something like that. There are programs that are set to expire at a certain point of time, but that's only because it only takes that amount of time for them to do what they need to do" (Interview VI, 2018).

Finally, Minnesota has a sunset procedure for existing administrative rules. Agencies are required to report rules that are obsolete, non-obsolete, and the status of any rules identified as obsolete in the previous year to the governor, the LCC, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, annually by December 1. Agencies must explain why rules are or are not obsolete.

Methods and Limitations

Minnesota's legislature provides extensive video archives of committee hearings. These can be searched by committee and by year. Agendas for committee hearings are posted on this link to the recording. Other resources about the legislature are similarly well organized and accessible. We contacted 17 people in Minnesota and were able to talk to 12 of them about legislative oversight in the state.

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Legislative Oversight in Mississippi

Capacity and Usage Assessment

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

Summary Assessment

Mississippi's Program Evaluation and Expenditure Review (PEER) Joint Committee and its staff provide outstanding empirical evidence for legislators to use for overseeing the work of the executive branch. PEER staff produces award winning reports. Despite the quality of these reports, the PEER committee did not meet at all during 2016. Appropriations committees themselves claim that the budget process lacks transparency, thwarting their ability to evaluate departmental needs. Their fixes so far seemed to have created just as much if not more confusion. In addition, the fixes did not call in key agency staff for testimony on how the process will affect important services like the Mississippi State Department of Health. All of this has occurred against the backdrop of deep cuts. No records of committee hearings are kept so it is difficult to say what exactly is going on, but it appears that politics play a substantial role in actions that are framed as legislative oversight. The legislature lacks any authority to review administrative rules or executive orders.

Major Strengths

PEER is an outstanding analytic support agency. PEER and the Office of the State Auditor (OSA) work products are used by the legislature to improve government. Statutes are passed that attempt to resolve issues addressed in PEER and OSA reports. The PEER is required by statute to review the state procurement process on a biennial basis. Budget battles demonstrate legislature has some capacity to check the power of the governor, but less capacity to check the power wielded by the lieutenant governor as president of the senate.

Challenges

Independence of the legislature from the executive branch is undermined by the extraordinary powers wielded by the lieutenant governor, who chooses chairs of senate

committees and acts as the chair of the Joint Legislative Budget Committee. The Joint Legislative Committee on PEER, the primary oversight committee in the legislature, did not meet for a whole year because the lieutenant governor refused to name the senators to the committee. The lieutenant governor exercises similar control over the work of the Joint Legislative Budget Committee. Legislative attempts to reform the appropriations process appear to be politically motivated based on the lack of basic hearings and testimony from key actors on their effects. There is no oversight of agency rulemaking from either the legislature or other executive branch agencies. Agencies need only respond to public petitions, which appear likely to occur only when wealthy individuals or special interests object to rules.

Relevant Institutional Characteristics

The Mississippi legislature consists of 122 Representatives and 52 Senators.[1332] The National Conference of State Legislatures (2017) classifies Mississippi's legislature as a "citizen legislature"—the job takes less than half the hours in a normal work week, the pay requires a second job, and the staff size to support the legislature is relatively small. Both representatives and senators run for reelection every four years during the year preceding a presidential election, and there are no limits on the number of terms a legislator may serve. Mississippi's legislative session is enshrined in the state's constitution, which specifies that a session is 90 calendar days unless the session follows a gubernatorial election. Then it is 125 calendar days (NCSL 2010). The yearly salary is $23,500 plus a per diem of $144 plus mileage reimbursement tied to the federal rate (NCLS 2011). Therefore, legislators earn almost $36,000 per year for three years of their term and $41,000 during the year following a gubernatorial election. The legislature has 173 staff members, 140 of which are permanent (NCLS 2015). Based on these characteristics, Squire (2017) ranks Mississippi's legislature as 37th in professionalism.

Mississippi grants relatively limited institutional powers to its governors, and historically the legislature, even though it is not rated as a highly professional institution by Squire or NCSL, was considered stronger than the governor. Several changes have reduced this imbalance, however. These changes include: the reorganization act, which gave the governor the sole authority to propose an executive budget (1984), a constitutional amendment that permitted governors to succeed themselves (1986), and a Mississippi Supreme Court decision preventing state legislators from serving on executive boards and commissions (1983) (Haider-Markel 2008). The governor, however, has fewer opportunities to appoint top executive officers than many other governors do.

Except for this limited appointment power, Mississippi's governor has many powers that most other governors have, such as the line-item veto. To override a gubernatorial veto the legislature must muster a 2/3^{rds} vote by those present when the vote is taken, but vetoes that occur after the legislature adjourns can be overridden during the next regular legislative session. The governor also has the ability to call and set the agenda of special legislative sessions. During a special session the legislature can only consider or take action on items listed in the

[1332] https://ballotpedia.org/Mississippi_State_Legislature accessed 7/25/18

gubernatorial proclamation calling for the session, impeachments, and investigations of state office accounts.[1333] So even though the executive branch has gained power vis-à-vis the legislature, Mississippi's governor does not dominate state politics. In fact, the lieutenant governor appears to be more powerful than the governor due to his or her ability to choose chairs of senate committees and his or her power to chair the Joint Legislative Budget Committee.[1334]

Mississippi's state and local government employees make up 15% of total employment in the state, the 4th most among the 50 states plus the District of Columbia. The following percentages of Mississippi's workers are engaged in specific local and state government employment: 8.1% are engaged in the education sector, 1.7% are employed in public safety, 3% in welfare, 1.4% in general services, and .8% in other sectors (Edwards, 2006). Surprisingly Mississippi has a higher percentage of its citizens employed in welfare than any other state and its proportion employed in education is higher than 47 other states.

Political Context

The current government in Mississippi is considered a Republican "trifecta," in that both chambers and the governor are controlled by Republicans. The 2018 legislature consists of a Republican-controlled Senate, 33 to 19, and a Republican-controlled House, 73 to 47 with 2 vacancies.[1335] From 1992 to 2012, Mississippi's legislature was controlled by Democrats, although during most of this time the governor was a Republican (NGA 2017). Democrats achieved a trifecta briefly from 2000 to 2003, the only time since 1992 that the state elected a Democratic governor. Republicans have maintained one-party control since 2012 (NCSL 2017).

The Mississippi Republican Party is characterized by Haider-Markel (2008) as white and strongly conservative in contrast to his description of the Mississippi Democratic Party as a diverse mixture of people with black, brown, and white skin. He goes on to say that within this party, the black Democrats generally favor liberal positions on education, crime, and race-related issues while the white Democrats are generally liberal on education and race-related issues but not on crime (Haider-Markel 2008). There are well-organized interests in the state on economic issues, ranging from the AFL-CIO and educators to the Economic Council and Farm Bureau (Haider-Markel 2008). Despite these factions, the state legislature has surprisingly low levels of partisan polarization. Each chamber is rated as the 35th most polarized in the nation based on the difference between Republican's and Democrat's ideological positions (Shor and McCarty 2015). This could be a legacy of the era before partisan realignment in the south in which southern Democrats were ideologically conservative. Indeed, the Mississippi Democrats in both chambers are among the least liberal in the country ranking 11th least liberal in the house and 10th least liberal in the senate.

[1333] https://ballotpedia.org/Governor_of_Mississippi, accessed 11/1/18
[1334] https://ballotpedia.org/Mississippi_State_Legislature, accessed 11/3/18
[1335] https://ballotpedia.org/2018_Mississippi_legislative_session accessed 7/25/18

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Mississippi has three analytic support bureaucracies that provide information and analysis to support the legislature. One of these is a performance evaluation agency embedded within a legislative committee. Another of these bureaucracies is led by an elected state auditor. The final support bureaucracy is a legislative fiscal staff unit.

The primary analytic bureaucracy for the Mississippi legislature is the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER). PEER is a joint standing committee consisting of seven senators appointed by the lieutenant governor, seven representatives appointed by the speaker of the house, 21 staff including an executive director, and a chair and vice chair, both of whom are elected annually and rotate between the chambers.[1336] Currently PEER consists of 10 Republicans and 2 Democrats[1337] or 83% control of seats by Republicans compared to 63% in the Senate and 60% in the House.[1338] It appears there are two vacancies that tilt the partisan balance toward the majority party in both chambers. The PEER Committee is enabled by Section 5-3-65 of the Mississippi Code[1339] to employ staff, and this staff is organized into five offices: Performance Evaluation, Performance Accountability, Quality Assurance and Reporting, Legal, and Administrative.[1340] PEER's authority is enshrined in Section 60 of the Mississippi Constitution, which grants the legislature unilateral authority to create "legislative committees to administer oaths, to send for persons and papers, and generally make legislative investigations effective."[1341]

Historically, PEER superseded the 1946 General Legislative Investigative Committee (GLIC), which was used for both the purpose of promoting good government and something like the House Un-American Committee[1342] in that it accused Americans of communist sympathies.[1343] In 1969, the Eagleton Institute was commissioned by the legislature to study the Mississippi legislature's structural and procedural deficiencies. Eagleton's report suggested a Legislative Auditor model, but the legislature instead chose a committee model like GLIC for

[1336] http://www.peer.ms.gov/Pages/About_PEER_Committee.aspx accessed 8/6/18
[1337] http://www.peer.ms.gov/Pages/Committee_Members.aspx accessed 8/6/18
[1338] https://ballotpedia.org/Mississippi_State_Legislature accessed 8/6/18
[1339] https://law.justia.com/codes/mississippi/2016/title-5/chapter-3/joint-legislative-committee-on-performance-evaluation-and-expenditure-review/ accessed 8/6/18
[1340] http://www.peer.ms.gov/Pages/About_PEER_Committee.aspx accessed 8/6/18
[1341] http://www.sos.ms.gov/Education-Publications/Documents/Downloads/Mississippi_Constitution.pdf accessed 8/6/18
[1342]https://books.google.com/books?id=ZPUaBwAAQBAJ&pg=PA124&lpg=PA124&dq=Mississippi+General+Legislative+Investigation+Committee+GLIC&source=bl&ots=fXiox-juzI&sig=HGcTW05d8grNupp7xcuWHJ5j6XQ&hl=en&sa=X&ved=2ahUKEwj1pKaR69jcAhWSu1MKHULsCy0Q6AEwA3oECAgQAQ#v=onepage&q=Mississippi%20General%20Legislative%20Investigation%20Committee%20GLIC&f=false page 124
[1343]https://books.google.com/books?id=DdCApZN4xjwC&pg=PA54&lpg=PA54&dq=Mississippi+General+Legislative+Investigation+Committee+GLIC&source=bl&ots=7G1SgH3QRo&sig=1PcxohUK12O_QMkcr9LPl_wyVVg&hl=en&sa=X&ved=2ahUKEwj1pKaR69jcAhWSu1MKHULsCy0Q6AEwAHoECAAQAQ#v=onepage&q=Mississippi%20General%20Legislative%20Investigation%20Committee%20GLIC&f=false page 54-57

PEER. They did, however, add "performance evaluation"[1344] to PEER's portfolio. The PEER enabling legislation is Section 5-3-51 through 5-3-71 in the Mississippi Code, which passed in 1972.[1345]

PEER's work products had been varied, ample, and well respected within the professional evaluators association, National Legislative Program Evaluation Society (NLPES). Their charge is to provide the Mississippi Legislature with input relevant to oversight by analyzing state agency programs and operations.[1346] PEER produced performance evaluations, expenditure reviews, background investigations of appointments, fiscal forecasting of proposed laws estimating changes in revenues and expenditures, bill writing assistance, audits, assistance with performance budgeting, and internal oversight.[1347] PEER staff's role in investigating appointments that require senatorial advice and consent is somewhat unique in the states and is discussed in the section "Oversight through Advice and Consent." In 2017, PEER produced 11 evaluations.[1348] PEER was recognized by the NLPES with its top award in 2016 and its director was recognized with its highest honor for an individual person, the retired Executive Director of PEER, in 2015.[1349]

Legislators serving on the Joint Legislative Committee on PEER are the decision makers regarding PEER staff efforts. Committee members determine both the workflow of PEER staff and whether to publish a report (interview notes 2018). There have been instances over a decade ago in which committee members voted against the release of a report because the agency had self-corrected, and the report was no longer needed (interview notes 2018), but no such activity has occurred recently. In 2016, the PEER committee members did not meet due to the lieutenant governor failing to name the senate appointees, an issue which will be described in the section "oversight through standing committees." Typically, the PEER committee members meet monthly (interview notes 2018) including between sessions but PEER staff is available to assist legislators year-round.[1350] We are told that PEER committee members consider input on which issues to pursue from PEER staff, the governor's office, agency heads, tax payers, and legislators, but the primary initiators are the PEER committee members themselves and other legislators (interview notes 2018). PEER workflow is determined to a lesser extent by statute. We are also told that requests for PEER reports focus on efficiency, effectiveness, and economy, rather than partisan interests, which are filtered out through public debate and discussion during PEER committee meetings (interview notes 2018).

It appears that PEER evaluations regularly trigger legislative action. In its application for its 2016 NLPES Excellence Award,[1351] PEER reports several instances in which its reports resulted in the enactment of legislation. Moreover, PEER reports that its evaluations led to

[1344] http://www.peer.ms.gov/Pages/FAQs.aspx accessed 8/6/18
[1345] http://www.peer.ms.gov/Reports/reports/rpt343.pdf accessed 8/6/18
[1346] http://www.peer.ms.gov/Pages/default.aspxas accessed 8/6/18
[1347] http://www.peer.ms.gov/Pages/About_Peer_Committee.aspx accessed 8/6/18
[1348] http://www.peer.ms.gov/Pages/Publications.aspx accessed 8/6/18
[1349] http://www.ncsl.org/legislators-staff/legislative-staff/program-evaluation/past-nlpes-award-winners.aspx, accessed 8/6/18
[1350] https://www.clarionledger.com/story/news/politics/2016/12/01/peer-committee-running/94670848/ accessed 7/25/18
[1351] http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESExcelAwardNar2016MS.pdf, accessed 11/1/18.

improvements in monitoring service delivery from state entities, such as the Mississippi prison industries corporation. PEER's reports have also, according to its NLPES application, identified unspent funds and convinced the legislature that the state would lose money if it took proposed actions, such as changing the distribution of oil severance tax collections.

In addition to PEER, Mississippi has an Office of the State Auditor (OSA). The State Auditor is a separately-elected constitutional official in the executive branch serving for a four-year term.[1352] In 2015, Republican Stacey Pickering was elected to the post but in 2018 resigned to take a position in Veterans Affairs[1353] with the governor appointing his replacement.[1354] The OSA is comprised of five divisions: financial and compliance audit, investigative, performance audit, technical assistance, and property.[1355] Although the OSA is large and well-funded (total budget of $12 million of which $5.6 million is a state appropriation), practitioners told us that the OSA serves a smaller role in legislative oversight of the executive than does PEER. There are several reasons for this. First, the legislature directs the work of PEER staff, while OSA priorities are determined by the elected state auditor. Second, PEER has a much broader notion of performance evaluation than the OSA does. Third, PEER has a publicly open process for requesting an audit, voting on its release, holds a public hearing on the results to provide for a public discussion of the findings, and responds to a legislative interest. While the OSA lacks these features, there are also questions about the independence of the OSA given that it is headed by a single politician. We were also told the two entities have never collaborated on a joint report but there were times PEER contacted the OSA for further details regarding an OSA report. The OSA Performance Audit Division is a relatively small unit within the OSA, comprised of 10 professional staff out of the 130 staff of the OSA (NASACT 2015). Despite its small size, it produced 11 reports in 2017.[1356]

PEER staff and OSA work products appear to be well utilized by both the PEER committee and the legislature. For example, a state audit revealed that the MS Department of Education awarded information technology contracts to former colleagues of the sitting state superintendent of education, in some cases splitting contracts into amounts that fall below thresholds for automatic oversight or mislabeling invoices in a fashion to avoid scrutiny (Pender and Harris 2017). Legislative interest raised the issue in PEER hearings where Department of Education officials stated that the staff responsible for these contracts no longer works for the agency. The current state superintendent stated that new employees were hired, changes were made, and an internal audit is underway.[1357] As a result of this situation, PEER staff produced a report in 2017 that looked at the entirety of the procurement laws and used the Mississippi

[1352] https://ballotpedia.org/Mississippi_State_Auditor#cite_note-1 accessed 8/6/18
[1353] https://www.clarionledger.com/get-access/?return=https%3A%2F%2Fwww.clarionledger.com%2Fstory%2Fnews%2Fpolitics%2F2018%2F06%2F25%2Fpickering-resigning-auditor-veterans-post%2F730646002%2F accessed 8/6/18
[1354] https://www.clarionledger.com/get-access/?return=https%3A%2F%2Fwww.clarionledger.com%2Fstory%2Fnews%2Fpolitics%2F2018%2F07%2F06%2Fgov-phil-bryant-surprise-pick-state-auditor-replace-pickering%2F762629002%2F accessed 8/6/18
[1355] http://www.osa.ms.gov/about/ accessed 8/6/18
[1356] http://www.osa.ms.gov/reports/performance/Default.aspx accessed 8/6/18
[1357] https://www.clarionledger.com/story/news/politics/2017/10/23/wright-contracts-investigation-mde-cronyism/790498001/ accessed 8/6/18

Department of Education as a case study to understand actual practices.[1358] PEER also has a statutorily mandated procurement report scheduled for 2019, with plans to repeat that report every two years after that.

The final analytic support agency, the Legislative Budget Office (LBO), provides staff support to the Joint Legislative Budget Committee and the legislature in order to assist in the adoption of a budget and to ensure a balanced budget. The LBO assists the Joint Legislative Budget Committee both to develop the Legislative Budget Recommendation and throughout the budget cycle to ensure a balanced budget. Moreover, it provides data processing support to the legislature. [1359] The LBO has 23 professional staff listed on their website.[1360] There are 16 reports listed on their website with a 2017 publication date, but these are fiscal reports (budget summaries, revenue estimates, etc.) not performance audits.[1361]

Oversight Through the Appropriations Process

The Legislative Budget Office (LBO) outlines the following steps in the annual budget cycle: 1) agencies make budget requests using the LBO's online budget request system in June; 2) agency five-year strategic plan is due July 15th; 3) the Joint Legislative Budget Committee (JLBC) hears agency budget requests and revenue estimates in September; and 4) in December the JLBC adopts a Legislative Budget Recommendation.[1362] The Joint Legislative Budget Committee is an important substantive standing committee in the appropriations process due to its role in adopting the Legislative Budget Recommendation and monitoring state expenditures. The JLBC consists of 13 legislators and the lieutenant governor, who chairs the committee. The speaker of the house is the vice-chair, while the senate president pro-tempore and house speaker pro-tempore are committee members. The remaining members are the chairs of key committees: Senate Appropriations, Senate Finance, Senate Public Health and Welfare, Senate Energy, House Appropriations, House Ways and Means, House Energy, and House Wildlife, Fisheries, and Parks.[1363]

The budget is based on revenue estimated by the governor's office and the JLBC. Although the governor shares responsibility with the legislature for building a budget, the governor is responsible for a balanced budget. In 2017, Mississippi's governor made a series of mid-year cuts when revenue fell short of projections. These were across the board cuts rather than savings identified through the state's newly adopted performance-based budgeting, which is currently shelved until the budget process can be simplified and made conducive to performance-based budgeting techniques. The July 2016 and May 2017 cuts totaled $171 million because tax collections were less than expected. Despite a lawsuit arguing that this action violated the

[1358] http://www.peer.ms.gov/Reports/reports/611.pdf accessed 8/6/18
[1359] http://www.lbo.ms.gov/Home/About, accessed 8/6/18
[1360] http://www.lbo.ms.gov/Home/Staff 8/6/18
[1361] http://www.lbo.ms.gov/Home/Publications 8/6/18
[1362] http://www.lbo.ms.gov/Home/BudgetProcessCycle accessed 8/6/18
[1363] http://www.lbo.ms.gov/Home/CommitteeMembers accessed 8/6/18

separation of powers between the legislative and executive branches, [1364] the Mississippi Supreme Court affirmed the constitutionality of the governor's budget cuts.[1365] The legislature then rolled these mid-year cuts into the budget for the next fiscal year. Republican senate leadership, the lieutenant governor and house speaker took credit for these cuts, saying, "We Republicans have campaigned for many, many years that we are for living within our means, we are for controlling spending, we are for reducing the size of government."[1366]

Another key figure in the budget process is the separately elected lieutenant governor. In addition to the duties usually performed by a lieutenant governor (president of the senate in which he votes to break a tie), whoever holds this office in Mississippi has sole authority to appoint members to Senate committees, including the JLBC. Additionally, the lieutenant governor is vice chair or chair of certain senate committees.[1367] This means that legislators often must negotiate with the lieutenant governor before sending the budget to the governor. For example, in 2016 then Lieutenant Governor Tate Reeves, a Republican, placed a priority on tax cuts. House Ways and Means Committee Chairman Jeff Smith, R-Columbus, characterized the role Reeves played in the 2016 saying, "It doesn't take a genius to figure out that if we don't do something on tax cuts, the lieutenant governor isn't going to sign a bond bill."[1368] So even though the legislature has a role in the budget process, the lieutenant governor's control over the legislative budget process undermines the independence of legislative oversight. Although currently the lieutenant governor shares party affiliation with the majority party in both chambers, one can easily imagine the tension that would arise if these players were from opposite political parties. Additionally, it is plausible that the governor and lieutenant governor could be from opposite political parties, which would further complicate negotiations.

Despite these constraints on the legislature's autonomy in the appropriations process, there is ample evidence that, at least when there is one-party control, the legislature has impact on state agencies through the budget process. For example, in December of 2016, the Joint Legislative Budget Committee (JLBC) proposed a 2017 budget that eliminated 1,999 unfilled state government positions, removed State Personnel Board protection from a large number of state employees so that agencies could more easily fire them, and changed agency transportation rules to reduce out-of-state travel and placed a moratorium on state government purchases of new cars (Pender 2016). These budget proposals were described as consistent with the JLBC's 2016 strategic vision of utilizing performance budgeting to make cuts, according to the JLBC.[1369]

Another example of the legislature making broad, systematic changes to the budgeting process is SB2362 of 2016, entitled Budget Transparency and Simplification.[1370] It is clear from

[1364] https://www.usnews.com/news/best-states/mississippi/articles/2018-06-06/mississippi-high-court-mulls-case-over-power-to-cut-budgets accessed 8/6/18
[1365] http://www.governing.com/topics/finance/Governor-Can-Make-Mid-Year-Budget-Cuts-Mississippi-Court-Rules.html, accessed 11/2/18.
[1366] https://www.sunherald.com/opinion/other-voices/article146012644.html accessed 9/6/18
[1367] https://ballotpedia.org/Lieutenant_Governor_of_Mississippi accessed 8/6/18
[1368] http://www.jacksonfreepress.com/news/2016/apr/17/mississippi-plans-budget-cuts-weak-revenues-lt-gov/, accessed 8/6/18
[1369] http://www.lbo.ms.gov/pdfs/fy18_jlbc_rec.pdf, accessed 11/3/18
[1370] http://www.law.mc.edu/legislature/bill_details.php?id=5033&session=2016, accessed 8/6/18

hearings on this bill that the legislation claimed to simplify the budget process and make it more transparent by eliminating special funds and the practice of billing between agencies, thereby decreasing the complexity in the budgeting process. It is exceptionally difficult to ascertain the details of this legislative action, however, because some of the video archives of committee hearings do not work and the minutes of committee meetings only record whether the committee approved legislation or not. For this specific bill, there are three videos of five supposedly available that work. [1371] There is a debate on the floor of the legislature on March 2nd 2016 (16 minutes and 18 seconds),[1372] and then two other recordings March 31st (12 seconds), and April 5th (18 seconds). Only the first video provides content about the bill, which is that the funding streams for various agencies—fees, fees charged to other state agencies, general fund, special funds, and so on—that are used by agencies to justify their budget needs confuse legislators. It makes it hard for legislators to determine the agency's actual needs and their true cost. It is clear that SB2362 was framed as a way to improve budget transparency and for the legislature to more easily distinguish meritorious from unmeritorious agency spending requests, especially spending on staff salaries.

There was some debate during the floor proceedings, during which one legislator stated:

> We have an underground economy going on in state government... we had PEER do a study… rent and fees charged to other agencies total 100 million dollars… this clouds the true cost of government… [SB2362] breaks that down so there will be no charges.[1373]

This same legislator stated that performance measures will be applied once greater transparency and simplification is brought to the budget process through SB2362. At the same brief floor debate, the Democratic attorney general (AG) expressed concerns through a proxy—Senator Bob M. Dearing— about the legality of removing special funds and the effect it would have on his agency. The answer he received is that there will be more money in the general fund once the special funds are eliminated, and the larger general fund will be able to fund the AG Office's needs. When asked to explain why some special funds were being consolidated and others weren't, the answer was that the special funds that are being eliminated by SB2362 are the ones the drafters want to handle presently and that they are the biggest. This floor debate would portend a fiscal debate that is currently shaping the 2019 gubernatorial election, wherein the presumptive Democratic candidate, current AG Jim Hood, is decrying the Republican backed SB2362, while Republican candidate and current Lieutenant Governor Tate Reeves is defending the legislation.

[1371] The Mississippi College website that chose to archive the legislature's audio/visual relies on the legislature's online journal to connect an issue with the correct audio/visual. SB2362 has nine total video links, but 4 are linked to procedural steps in the journal that have no corresponding audio/visual. 2 of the remaining 5 links are for days that the Audio/Visual system crashed (interview notes 2018). We were told that despite the NCSL website stating the existence of audio/visual for committee meetings, these in fact do not exist. Only floor proceedings are recorded. We were also told by sources close to the issue that committee meetings do not have minutes or audio/visual, rather they only have the votes for approve and not approve (interview notes 2018).

[1372] https://s3.amazonaws.com/legislative/SB2362_03022016.mp4 8/6/18

[1373] https://s3.amazonaws.com/legislative/SB2362_03022016.mp4 8/10/18

SB2362, while framed by Republicans as a way to simplify the budget, was challenged by Democrats as a way to hide budget cuts. Democrats argue that Republicans railroaded the bill through without proper hearings. The Mississippi Legislative Black Caucus hosted a June 8th, 2016 public hearing in the State Capitol to discuss some of the consequences of SB2362 on public health.[1374] The hearing was hosted by a political organization rather than an official committee of the Mississippi legislature. Media outlets reported on this hearing and indicated agency heads expressed their opinions about SB2362. These included concern over the loss of special off-budget funds, but also praise for not having to pay fees to other agencies for services.[1375]

Evidence that the bill was pushed through without allowing some parties to testify comes from the Mississippi Public Health Officer who was not asked to give testimony on SB2362 when it was discussed in the legislature, but provided testimony at the Mississippi Legislative Black Caucus hearing. The Officer expressed several concerns regarding SB2362, such as recent budget cuts and the current state of the Mississippi State Department of Health. The bill would reduce the department's budget by 11 percent from 2016 to 2017, cut 64 currently filled positions, and eliminate 89 vacant positions. She identified the infant mortality initiative and environmental services as the areas within the Health Department that would be the most affected.[1376] Moreover, she explained how the prohibition on one department charging another a fee for service would have a negative effect on the Health Department's budget. The lieutenant governor's office assured her that "the department will be able to provide emergency response services and other critical services that the law technically forbids."[1377]

Mississippi AG Jim Hood was more pointed in his criticism of the process by which SB2362 passed. The governor signed SB2362 in May of 2016. On June 20th, 2016, the attorney general advised agencies that the conversion of agency trust and special funds into the general fund was on legally shaky ground. Therefore, he recommended that agency heads keep collecting funds in these accounts as if SB2362 never passed.[1378] Furthermore, AG Hood asserts that the conversion of these funds into the general fund was an attempt by the legislature to cover-up the "budget-busting tax breaks they've handed out to corporations."[1379] Rolled into this criticism is the claim that due to the confusion created by transitioning to the new, simplified and transparent budget process, legislators voted on the 2017 budget blindly after delays in receiving the LBO figures. He asserts that SB 2362 caused the delay.[1380] One effect of the votes was known: more layoffs in the Department of Health. But with the budget confusion, no one knew exactly how many layoffs.

[1374] http://yallpolitics.com/index.php/yp/post/44103, accessed 8/10/18

[1375] https://www.watchdog.org/issues/budgettaxes/mississippi-legislators-bemoan-budget-cuts-to-health-care-agencies/ , accessed 11/2/18

[1376] http://www.jacksonfreepress.com/news/2016/jun/09/health-department-will-have-send-home-more-people-/, accessed 8/6/18

[1377] http://www.jacksonfreepress.com/news/2016/jun/09/health-department-will-have-send-home-more-people-/, accessed 8/6/18

[1378] https://www.clarionledger.com/story/news/politics/2016/06/15/hood-budget-opinions/85927636/, accessed 8/6/18

[1379] https://www.clarionledger.com/story/news/politics/2016/06/20/hood-state-budget/86136978/, accessed 8/6/18

[1380] https://mississippitoday.org/2016/06/10/questions-cloud-start-of-states-fiscal-year/ accessed 8/6/18

The Republican lieutenant governor and Democratic attorney general continue to spar in the media. They will likely be their respective parties' candidate for governor in the 2019 election.[1381] It is clear that the fights over appropriations feature prominently in Mississippi politics. Although the legislature has some power over the budget process, the lieutenant governor has a great deal of power to shape appropriations in the state. Given the power of the lieutenant governor, it would be difficult for the legislature to oppose him or her. A similar contest over control of the senate occurred in 2003-2008 when Republican Lt. Gov. Amy Tuck appointed Republicans to chair several key committees despite Democrats holding the majority of the seats in the senate.

Oversight Through Committees[1382]

Practitioners told us that the Joint Legislative Committee on Performance Evaluation and Expenditure Review (JLCPEER) is the primary committee performing legislative oversight in Mississippi.[1383] JLCPEER is a joint standing committee consisting of seven senators appointed by the lieutenant governor, seven representatives appointed by the speaker of the house, and two officer positions— a chair and vice chair— which are both annually elected and rotate between the chambers.[1384] This is the same as the process used for selecting JLBC committee members. A more detailed description of this committee was presented in the section on *Oversight through Analytic Bureaucracies*.

JLCPEER's functioning has been hobbled in recent years. Lt. Governor Reeves prevented the JLCPEER from meeting by holding up key appointments, [1385] effectively rendering it useless from December 15th, 2015—the date of its last report—until at best October 2016,[1386]

[1381] https://www.clarionledger.com/story/news/politics/2018/08/01/jim-hood-tate-reeves-preview-possible-2019-gubernatorial-battle/875496002/, accessed 8/6/18

[1382] Rule 36 of the Senate (http://billstatus.ls.state.ms.us/htms/s_rules.pdf) and Rule 60 (1) of the House (http://billstatus.ls.state.ms.us/htms/h_rules.pdf) enumerates the standing committees of the respective chambers. Rule 36 of the Senate enumerates the Joint Committees. There are listed 39 standing committees in the Senate (http://billstatus.ls.state.ms.us/htms/s_cmtememb.xml) and 47 standing committees in the House (http://billstatus.ls.state.ms.us/htms/h_cmtememb.xml). Senate rules list four joint committees in addition to the joint committees noted in this paper: the Performance Evaluation and Expenditure Review Committee, Legislative Budget Committee, and the Reapportionment Committee.

[1383] The House Accountability, Efficiency, Transparency Committee, the Senate Accountability, Efficiency, Transparency Committee, and the House Performance Budget Committee each presumably engage in some level of oversight, but hearing records are scant. The Performance Budget Committee is new as of 2016 and will be discussed in the section on Performance Budgeting. The Chair of the House Accountability, Efficiency, and Transparency Committee is quoted often in news stories on oversight, such as this one https://www.clarionledger.com/story/news/2018/03/24/mississippi-prison-industries-loses-3-2-m-fires-ceo/415867002/ but I can't find examples of committee hearings in news media documenting the work that they are doing and there exists no archive of committee hearing audio/visual.

[1384] http://www.peer.ms.gov/Pages/About_PEER_Committee.aspx accessed 8/6/18

[1385] https://www.clarionledger.com/story/news/politics/2016/09/13/peer-committee-hold/90302002/ accessed 7/25/18

[1386] https://www.sunherald.com/news/politics-government/state-politics/article128266949.html accessed 7/25/18

when the appointments were made.[1387] The spokesperson for Lt. Gov. Reeves offered the following explanation for his actions on September, 2016:

> The lieutenant governor believes the best use of PEER staff's time for the first six months of a new term was for them to be working on implementation of performance-based budgeting, individual legislative requests, and those reports required by state law. He very recently met with the director, and I expect he will make his appointments in the very near future.[1388]

The appointments were made the following year on October 21st, 2016, without any additional explanation for the delay.[1389] During the time without senate appointments, PEER could not initiate new reports, release completed reports, or hold hearings, but PEER staff did continue working on legally mandated reports and on projects that were already assigned by the previous Joint Committee on PEER. Practitioners stated the event was unusual but had no comment regarding why the appointments were held up or the effect on legislative oversight (interview notes 2018).

As noted in our section on Oversight through Analytic Bureaucracies, the JLCPEER holds hearings to follow up on both reports created by PEER staff and issues identified by other analytic bureaucracies, like the state auditor. For example, the state auditor uncovered issues surrounding the awarding of contracts by the Mississippi Department of Education and the legislature tasked JLCPEER to review the findings. From news reports and conversations with sources close to the issues, JLCPEER is relied on by the legislature to perform oversight of the executive both through its capacity to direct PEER staff to create reports, but also through other inputs including findings from other committee hearings, state auditor reports, and the accountability environment generally.

The Mississippi legislature in 2013 created an external oversight entity, the Corrections and Criminal Justice Oversight Task Force,[1390] which consisted of members of the legal and criminal justice community including: judges, police, public defenders, district attorneys, the parole board chair. This task force, with the technical support of Pew Charitable Trusts and the Crime and Justice Institute, submitted recommendations to the legislature to "improve public safety, ensure clarity in sentencing, and control corrections costs."[1391] This task force recommended a series of criminal justice reforms in its 2017 report. Bills based on these recommendations were introduced in both chambers, and one, HB 387, was signed by the governor March 26, 2018.

[1387] https://www.clarionledger.com/story/news/politics/2016/12/01/peer-committee-running/94670848/ accessed 7/25/18

[1388] https://www.clarionledger.com/story/news/politics/2016/09/13/peer-committee-hold/90302002/ accessed 7/25/18

[1389] https://www.clarionledger.com/story/news/politics/2016/12/01/peer-committee-running/94670848/ accessed 7/25/18

[1390] http://www.jacksonfreepress.com/news/2018/feb/14/re-entry-reforms-still-alive-legislature/, accessed 11/3/18

[1391] http://www.ospd.ms.gov/Task%20Force/CORRECTIONS%20AND%20CRIMINAL%20JUSTICE%20TASK%20FORCE%202017%20FINAL%20REPORT.pdf, accessed 11/3/18

Oversight Through the Administrative Rules Process

No formal rule review is performed by either the legislative and executive branches. The Secretary of State is responsible for creating the forms and determining the format for rules, but that office has no authority to review the rules. The final decision about implementing a new rule rests solely on the agency promulgating the rule. The agency is required to complete various impact analyses that include the need for the rule and the benefits of the rule as well as economic impacts. The public has the right to challenge a rule based on its economic impacts. After raising the concerns with the agency, the public can seek a court ruling to invalidate the rule if the agency has not followed the correct procedures to analyze the rule's impact or has not given adequate consideration to information presented by the public. If the legislature wanted to revoke a rule, it would have to enact legislation.

All rules are supposed to be reviewed by the agency that created them every 5 years, but this is not practiced (Schwartz 2010). In April 2012, Mississippi Governor Phil Bryant signed the Small Business Regulatory Flexibility Act that gave business a greater role in the regulatory process[1392] and added procedures to the economic impact analyses on small business.[1393] This gives the public more leverage in the rule review process. But still, there is virtually no oversight of the executive branch exercised by the legislature.

Oversight Through Advice and Consent

Authorization for executive orders is both constitutional and statutory covering a wide range of provisions, including but not limited to emergencies, executive branch reorganization/creation, responding to federal program requirements, and creating commissions/committees. There exists no legislative executive order review. Governor is exempt from the Administrative Procedures Act and filing and administrative procedures Miss. Code Ann. Section 25-43-102 (1972)

The governor made 20 executive orders in 2017.[1394] These include mandating sexual harassment training for agency staff, mandating active shooter training for all state employees, declaring a weather emergency and deploying the National Guard (2), granting the adjutant general authority to promulgate certain rules for the militia, ordering flags to be flown at half-staff (11), commissioning studies (3), and declaring an emergency due to the opioid epidemic.

While the legislature does not formally have review of executive orders, they have been involved in talks about government reorganization and have cleared the way for reorganization to occur. The legislature has considered bills to reorganize the Department of Mental Health in 2017.[1395] In that same year, the Mississippi State Department of Health[1396] conducted an agency

[1392] https://m.natchezdemocrat.com/2016/08/17/state-helps-ease-regulations-on-small-business/# accessed 8/13/18
[1393] https://legiscan.com/MS/bill/SB2398/2012 accessed 8/6/18
[1394] http://www.sos.ms.gov/Education-Publications/Pages/Executive-Orders.aspx 8/6/18
[1395] https://www.clarionledger.com/story/opinion/columnists/2017/01/29/reorganization-bill-detrimental-mental-health/97209840/ accessed 8/6/18
[1396] https://starkvilledailynews.com/content/msdh-close-district-office-starkville 8/6/18

reorganization in which it consolidated offices into a regional system. In 2014, The Mississippi Department of Education conducted an agency reorganization directed by State Superintendent that eliminated 7% or 30 employees from its payroll, which was made possible by a law passed earlier that year giving the Superintendent the power to fire employees without cause for two years.[1397]

As noted earlier in this discussion, Mississippi's governor has limited opportunities to appoint top executive branch members. Out of the 50 listed administrative officials, 21 are appointed by the governor or by an executive branch agency subject to senate approval, or in the case of Adjutant General, approval by either the senate or the house (Book of the States 2014). In the legislative advice and consent process, PEER staff, at the request of the relevant committee chair, performs investigations into the background of any appointee made by the governor that requires the advice and consent of the senate.[1398] Sources close to the issue claimed that there were appointees who were investigated by PEER (interview notes 2018). News coverage suggests legislative scrutiny does occasionally occur, but even when a nominee's ethics might legitimately be questioned, the senate, without taking time to conduct a thorough investigation, still confirmed the nominees—just not unanimously.[1399]

Oversight Through Monitoring of State Contracts

The executive branch Department of Finance and Administration through its Office of Purchasing, Travel and Fleet Management[1400] is responsible for monitoring state contracts.[1401] Recent efforts have been made to increase the transparency of both contracting and state expenditures by the creation of online systems[1402] as well as the creation of the website Transparency Mississippi.[1403]

PEER has uncovered contact issues while conducting performance audits of agencies. After following up on a state auditor's report, PEER held hearings uncovering issues in the MS Department of Education contract bidding, which, as noted in the section on the Analytic Bureaucracy, found cronyism and impropriety regarding MS Department of Education contracts, including illegal invoice splitting to avoid oversight. The state auditor decided to probe the Department of Education issues independently.[1404] These efforts at contract oversight came following federal convictions of the corrections commissioner for corruption in the awarding of no-bid contracts, bribes, and money laundering—tainting "hundreds of millions in state

[1397] https://www.clarionledger.com/story/news/local/2014/09/03/mde-lays-off-about-30/15031175/ 8/6/18
[1398] http://www.peer.ms.gov/Pages/About_Peer_Committee.aspx accessed 8/6/18
[1399] http://archive.boston.com/business/taxes/articles/2010/04/22/miss_senate_confirms_tax_appeals_board_nominee/, accessed 11/4/18.
[1400] http://www.dfa.ms.gov/media/3990/procurementmanual.pdf 8/6/18
[1401] http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/ 8/6/18
[1402] https://www.ms.gov/dfa/contract_bid_search 8/6/18
[1403] https://www.msegov.com/dfa/transparency/default.aspx 8/6/18
[1404] https://mississippitoday.org/2017/09/25/state-auditor-to-probe-ed-dept-contracts-spending/ accessed 8/6/18

contracts." [1405] The Mississippi Department of Corrections Commissioner was the target of contract monitoring by PEER, which raised questions about no-bid contracts in 2011. The chair of the House Accountability, Efficiency and Transparency Committee sounded the alarm on no-bid contracts.[1406]

PEER staff produced a report in 2017, "State Government Purchasing: A Review of Recent Statutory Changes and a Case Study,"[1407] which looked specifically at the procurement system in the Mississippi Department of Education. The document highlights significant statutory changes to procurement that strengthened oversight, but ultimately still relied on the executive branch Public Procurement Review Board.[1408] The report found that sole-sourced, no bid procurements decreased because of the 2015 legislation. The Mississippi's Accountability System for Government Information and Collaboration (MAGIC) IT system the state uses to monitor and detect contracts for review was also criticized. PEER made recommendations to improve the coding of contracts to increase the validity of the system. By statute, PEER is required to biennially review state government purchasing practices.[1409]

Oversight Through Automatic Mechanisms

Mississippi does not have sunrise or sunset processes. Mississippi's Sunset Act was terminated on December 31, 1984 and it has not been replaced (Baugus and Bose). Administrative regulations are not reviewed by the Mississippi Legislature (Baugus and Bose). Practitioners told us that there are no sunsets or renewal requirements for continuing appropriations (interview notes 2018). Rather, appropriations are made on a yearly basis, so every appropriation is considered for review by the legislature except for what are called "diversions," which are funds allocated for a specific purpose sometimes by fee or the dollars are a pass-through to a regional entity. Diversions do not have sunsets. But there are agencies and agency programs that do have sunsets, which are called "repealers":

> There are dozens of repealers that are extended every year and another dozen new repealers introduced every year. The two groups are repealers on professional licensure boards or commissions in Title 73 and repealers on agencies or sections of the enabling legislation for agencies—health department and human services. Those are the most common, but we have seen them in tax laws, insurance laws, environmental resource laws, etc. You can find them all over and they are used more as a device to get certain legislation back before the legislature in a set amount of time. It's no longer used systematically but now it's used on an individual basis and you'll find some legislators who want to use it a

[1405] https://www.clarionledger.com/story/news/politics/2017/09/28/auditor-hammers-mde-over-contracts/712093001/ accessed 8/6/18
[1406] https://www.clarionledger.com/story/news/2014/11/08/indicted-epps-way-lawmakers-governors/18746327/ accessed 9/14/18
[1407] http://www.peer.ms.gov/Reports/reports/611.pdf accessed 8/6/18
[1408] https://law.justia.com/codes/mississippi/2013/title-27/chapter-104/in-general/section-27-104-7/ 8/6/18
[1409] https://www.clarionledger.com/story/news/politics/2017/09/25/mde-education-contracts-watchdog-questions/699764001/ accessed 8/6/18

lot or you'll find situations where it is used as a compromise to get a bill passed (interview notes 2018).

Sources say that repealers are sometimes used to ensure agency compliance with legislative intent (interview notes 2018). For example, in 2015 the Governor called a special session and asked the legislature to send him a bill without the repealer on the entire Medicaid administration. The legislature complied thus averting a possible crisis like the repealer that eliminated the Department of Human Services in the 1990s for 5 weeks forcing the Governor to recreate it through executive order (interview notes 2018).

Oversight Through Performance Budgeting

The LBO has several publications regarding the deployment of a new performance budgeting approach, which started in 2014.[1410] According to sources, the legislature has tasked PEER with cost benefit analysis connected to performance accountability and performance budgeting, which resulted in PEER hiring additional staff. SB2362, discussed extensively in the section on oversight through the appropriations process, passed in 2016, is intended to clear the way for the implementation of performance-based budgeting by simplifying the budget process. So far, these efforts are still just getting off the ground. The House Performance Based Budgeting Committee, which was created in 2016, is charged with looking for opportunities to use evidence to cut costs and improve performance of government service. PEER worked with the Mississippi Department of Corrections to make performance improvements and met with the House Committee on Performance Based Budgeting to develop their capacity to develop and implement performance improvement programs.[1411]

Methods and Limitations

We contacted 16 total officials and were able to interview four. Mississippi provided an obstacle because neither audio/visual nor formal minutes are kept of hearings. We sought to overcome this obstacle by contacting legislators directly for their account of specific hearings but we could not reach anyone for comment. Of the four people we spoke to, three were legislative staff and one was a research librarian. Of the 11 people we contacted and could not reach for comment, seven were current or former representatives, three were legislative staff, and one was an agency of the legislature.

[1410] http://www.lbo.ms.gov/Home/Publications accessed 8/6/18

[1411] http://www.jacksonfreepress.com/news/2016/may/11/legislative-summer-school-all-about-performance/ accessed 9/14/18

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Legislative Oversight in Missouri

Capacity and Usage Assessment

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

Summary Assessment

Missouri does not have the political resources to produce the evidence needed for "evidence-based bipartisan oversight." Missouri provides limited analytic support for its legislature with respect to performance audits or other information about state agencies. Its state auditor is an independent and autonomous actor that does not work in tandem with the legislature or the governor. The heavy reliance on fiscal notes rather than other forms of program assessment suggests that the legislature concentrates on efficiency to the exclusion of effectiveness in government.

Major Strengths

The Missouri Legislature is vigorous in its use of its authority to confirm gubernatorial appointments. It has the prerogative to use sunset provisions and the rule review process to provide a check on executive authority. Lack of staff severely constrains the use of these prerogatives. The main check on a governor is the use of veto overrides, but this happens primarily when the governor is from the opposite political party. Moreover, relying on this tool assumes continuing large margins of control in the legislature to override a gubernatorial veto, and often the result of such a strategy is gridlock rather than good government.

Challenges

Missouri needs a legislative auditor and substantial audit staff if it seeks evidence to monitor the performance of state agencies. The current focus of much legislative activity is on how to contain the costs of programs. This could reflect a political ideology ascendant currently in Missouri's legislature. If the legislature is concerned about government performance, it is not clear it has the tools to facilitate improvement. Moreover, there is no effort to rein in partisanship with respect to audits—either in the legislature, or between the state auditor and the governor.

Additionally, even when oversight is used by actors from the same political party, it frequently is a tool to out maneuver political opponents.

Relevant Institutional Characteristics

Missouri is slightly more professional than the median state legislature, ranking 16th in the nation (Squire, 2015). This ranking is partly because of the short length—70 days—of the legislative sessions and modest pay. The National Conference of State Legislatures (NSCL) characterizes the Missouri Legislature as a "hybrid" legislature (2017). This means that legislators in Missouri work up to two-thirds time while not earning enough income to make a living (approximately $36,000/year plus $113 per session day). This means that legislators earn roughly $44,000 per year or slightly more if there is a special session. Furthermore, there is a smaller number of supporting staff members—approximately 426 staff during the legislative session—available to assist legislators in Missouri than there are available to assist legislators in states with professionalized legislatures (NCSL, 2018). These supporting staff members in Missouri include personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies such as the Joint Committee on Legislative Research's Oversight Division.

Missouri is among the approximately 15 states that currently have term limits for legislators (NCSL, 2015). Missouri's term limits are fairly short – eight years in each chamber. Thus, turnover is extremely high, and legislators in Missouri have little time to learn the more complex parts of their jobs, including exercising oversight by monitoring state agencies.

Special (sometimes known as extraordinary) sessions may be called by the governor or the legislature. However, for the legislature to call a special session, three-fourths of the members of the senate and the house must sign a petition after a joint proclamation has been made by the senate president pro tempore and the speaker of the house (NCSL, 2009). Typically, the Missouri Legislature convenes for up to one special session in a year, based on data available since 2010. As such, Hamm and Moncreif (2013) estimate that the legislature is more accurately in sessions as long as four and a half months. When not in session, the legislature does not make substantial use of interim committees to overcome the disadvantages of a short session. The senate only has two interim committees.

Missouri's governor has a slightly below average Governor's Institutional Powers Index (GIPI) score, calculated by Ferguson (2013). However, the governor scores particularly well in a few key areas. First, the governor has full authority over the initial budget proposal. The legislature may then revise the governor's proposal, however, the governor's line-item veto power is difficult to overcome, requiring either two-thirds of the elected representatives in both chambers or three-fifths of present legislators (Perkins, 2017). Second, the governor has above average "tenure potential," being allowed to serve two four-year terms. Third, an updated index would show strong "party control" by the governor's party. Lastly, Ferguson "penalizes" Missouri's GIPI scores for being a plural rather than singular executive. The importance of this is demonstrated by recent audits of the governor by an elected state auditor of the opposite political party, which will be discussed shortly.

Missouri has a slightly lower than average proportion of its population working in state and local government—10.9% compared to the national average of 11.3%. This reflects a smaller than average proportion working in education in Missouri—5.9% compared to the

national average of 6.1%. Other major areas of state and local government employment—safety and welfare—are close to national averages (Edwards, 2006).

Political Context

Throughout much of the 1980s, there was divided government in Missouri. Although the Democratic Party managed to control the legislature and the governorship from 1993-2000, the state returned to divided government soon thereafter. Since the beginning of the 21st century, the Republican Party has controlled the legislature and the governorship twice, from 2005-2009 and from 2017-present (NGA, 2017). In 2017, the Missouri House consisted of 117 Republicans and 46 Democrats, while the senate had 25 Republicans and nine Democrats. Both chambers have veto-proof majorities, making it more difficult for the governor to sustain any vetoes.

Additionally, recent evidence suggests that the Missouri Senate is highly polarized along party lines. Missouri's senate has been ranked as the 6th most polarized upper chamber, based on differences between median roll call votes for each party in each chamber (Shor & McCarty, 2015).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Missouri's analytic support agencies for oversight are responsible to legislative oversight committees, specifically the Committee on Legislative Research. Membership on this committee consists of the Senate Appropriations Committee Chair, the House Budget Committee Chair, and nine members from each of the two chambers. In a nod toward bipartisanship, no more than six of nine members from each chamber can be from the same political party. These members are chosen by the president pro tempore of the senate and the speaker of the house. The Missouri Joint Committee on Legislative Research (JCLR) employs a committee staff of 21.[1412] Legislators and staff on the JCLR are tasked primarily with coordinating bill drafting and reconciliation services for the broader legislature. Within this general legislature support unit there is a specific oversight subunit.

The Chair of the Joint Legislative Research Committee (JCLR) appoints an Oversight Subcommittee that supervises the Oversight Division. The Oversight Subcommittee consists of three representatives and three senators chosen from the Legislative Research Committee. The Director of the Oversight Division is hired and reports to this subcommittee rather than to the Director of Legislative Research. He or she supervises staff of the Oversight Division, which currently consists of 11 people. Thus, in practice, the Oversight Division is an autonomous analytic support subunit.[1413]

The JCLR's Oversight Division receives its authority from §23.150 of Missouri Revised Statutes, which grants the division the power to prepare fiscal notes (impact statements), to

[1412] http://www.moga.mo.gov/HtmlPages/LegResHomePage.html, accessed 12/1/18.
[1413] http://www.legislativeoversight.mo.gov/, accessed 12/1/18.

conduct program evaluations of state agencies, and to perform sunset reviews. The Oversight Division produces several thousand fiscal notes each legislative session. These notes are a normal part of legislating and not generally a tool for oversight of the executive branch's implementation of policy. They are completed for every bill introduced into the chamber and revised if the bill changes at any step in the legislative process.

In the past, the Oversight Division performed an average of three program evaluations annually, however, the Oversight Division has not updated its website with any new evaluations since 2016. The Oversight Division is also responsible for performing regular sunset reviews of the state's regulatory and licensing agencies. These reviews appear to occur irregularly; in 2013, the agency performed 13 sunset reviews, none in 2014, one in 2015, and before that, four each in 2012 and 2010, with none in 2011.[1414] Programs and commissions in Missouri have a sunset period of six years, but that period may be extended to a maximum of 12 years should the legislature choose (Perkins, 2017). Of the 13 sunset reviews performed in 2013, three reviews of programs targeting positively constructed populations (i.e. the children of 9/11 first responders, and veterans) were extended, nine programs were recommended be sunset, and the Oversight Division did not offer an opinion on the sunset of two programs in their respective sunset reviews.[1415]

Missouri's already limited institutional resources to support legislative oversight appear to have declined in the past several years. WayBack Machine's archives of prior JCLR[1416] and Oversight Division[1417] staff directories show a gradually shrinking staff for an analytic institution, which creates substantial limits on the committee's capacity for oversight, especially when considering the committee's broad mission of oversight (Missouri Legislature, 2017).

Missouri has an elected state auditor. The state auditor receives much of their authority from Article IV, Section 13 of the Missouri Constitution. While not a part of the legislature and thus not an institution for legislative oversight, the State Auditor of Missouri is responsible for ensuring, "the proper use of public funds and to improve the efficiency and effectiveness of Missouri government by performing audits of state agencies, boards and commissions, the circuit court system, the counties in Missouri that do not have a county auditor, and other political subdivisions upon petition by the voters."[1418] The state auditor conducts various types of audits including annual financial audits of the state's financial statements and annual state-wide compliance audits to ensure that state agencies meet the requirements for federal grants on which state agencies rely. For the year 2017, the state auditor has completed 155 audits. To support its work, the Office of the State Auditor (OSA) receives a state appropriation, which was nearly $6.3 million for 2015. Also, its staff consisted of 113 professionals, roughly 10 times as large as Legislative Research's Oversight Division (NASACT, 2015). Some audits conducted by OSA are legally required, but the OSA can also decide to audit an agency or program. Neither the governor nor the legislature has the authority to determine what audits of state agencies the OSA undertakes (NASACT, 2015). However, through petitions, the governor and the public can require that the OSA audit local government entities.[1419]

[1414] http://www.legislativeoversight.mo.gov/, accessed 12/1/18.
[1415] http://www.legislativeoversight.mo.gov/, accessed 12/1/18.
[1416] https://web.archive.org/web/20121130004929/http://www.moga.mo.gov:80/general/lrdir.htm, accessed 12/1/18.
[1417] https://web.archive.org/web/2/http://www.moga.mo.gov/general/ovdir.htm, accessed 12/1/18.
[1418] https://www.auditor.mo.gov/aboutus/overview, accessed 12/17/18.
[1419] https://app.auditor.mo.gov/AuditInfo/AuditsInProgress.aspx, accessed 7/31/18.

The state auditor is elected as a partisan official. Recently, the Democratic state auditor has audited the actions of Republican Gov. Greitens. She is probing the use of taxpayer funds to pay for private attorneys to represent the governor in disciplinary action taken by the state legislature. She is working with the attorney general, however, rather than the legislature with respect to her audit findings.[1420] This is a pattern that shows up repeatedly in media reports about the OSA audits—the findings are turned over to the attorney general or other state and federal law enforcement officials for prosecution (Wayne County Journal-Banner, 2018). Some of these audits are described as forensic investigations.

The OSA also publishes performance audits. Recently, an audit of food stamp spending revealed that there is a lag of about a month after someone dies before food stamp benefits are terminated (Schmitt, 2018). Similarly, the auditor found a lag for incarceration and food stamp benefits. The auditor recommended better coordination between the Department of Social Services, which runs the food stamp program, and the Department of Health and Senior Services, which maintains death records. It appears that the OSA works directly with the state agencies involved to resolve audit findings. There is no mention in media coverage of involvement by the legislature, and the cover letter for the full audit report does not include any member of the legislature in the distribution list. It does, however, include the governor in addition to the director of the audited state agency.[1421]

The legislature regularly engages a private auditor to perform an audit of the OSA. The current state auditor as of 2018, Democrat State Auditor Nicole Galloway, has had four such private-legislative audits conducted of her office since assuming office three years ago.[1422] The audits conducted by Brown, Smith, and Wallace reported no findings of malfeasance.[1423] Additionally, the interest group and professional association, National State Auditors Association, issues a peer review evaluation of state auditor offices and has found in its most recent reviews Missouri's state auditor to be "well designed" and otherwise compliant with professional standards.[1424] The frequency of these audits by a Republican-controlled legislature of a Democratic state auditor could reflect partisan motives, or it could simply reflect routine checks and balances between two separate branches of government. In either case, it supports a perception that there is not a close collaborative relationship between the OSA and the Missouri Legislature.

Oversight Through the Appropriations Process

The legislature's involvement in the Missouri budget process formally beings in January, when the governor submits their budget to the legislature. Committees will hold hearings with agencies to discuss their proposed budgets, and the legislature will adopt a final budget in April or May. The House Budget Committee Chair will introduce the budget as a series of bills,

[1420] https://www.auditor.mo.gov/content/statement-state-auditor-nicole-galloway-taxpayer-funded-private-attorneys-hired-governor, accessed 7/31/18.
[1421] https://app.auditor.mo.gov/Repository/Press/2018032266672.pdf, accessed 7/30/18.
[1422] https://auditor.mo.gov/content/legislatures-audit-state-auditors-office-finds-operational-improvements-effective-data, accessed 12/11/18.
[1423] https://auditor.mo.gov/sites/default/files/FINAL%20-%20SAO%20Financial%20Audit%20Report.pdf, accessed 12/11/18.
[1424] https://auditor.mo.gov/sites/default/files/PeerReviewReport10-27-17.pdf, accessed 12/11/18.

which the speaker will refer to the appropriate committees. In order, these bills are sent to the house committees (e.g., education, economic development, etc.), the House Budget Committee, the full house (for debate), the Senate Appropriations Committee, the senate body (for debate), and then the conference committee (interview notes, 2018; Sirtori, 2015).

Legislative oversight during the appropriations process also appears to be partly conducted by the Senate Committee on Fiscal Oversight. The committee's authority is described in subpoint 8 of Rule 28 of the rules of the Missouri Senate. In sum, "the committee must consider and report upon all bills, except regular appropriations bills that require new appropriations or expenditures of appropriated funds in excess of $100,000, or that reduce such funds by that amount during any of the first three years that public funds will be used to fully implement the provisions of the Act." The membership of the committee must be as equal to the partisan balance of the chamber as possible. Currently, the membership of the committee consists of seven senators, two of which are Democrats and five of which are Republicans.

The House Budget Committee consists of 24 Republicans and 10 Democrats and is established by House Rule 23.[1425] It's responsibilities are described in House Rule 24; "The Committee on Budget shall have the responsibility for any other bills, measures, or questions referred to it pertaining to the appropriation and disbursement of public moneys."[1426] During a hearing held on February 12, 2018,[1427] on HB 3 (the appropriation bill for the Department of Higher Education) and HB 12,[1428] most members ask questions, although most questions are not investigative of the testifying agencies' actions. However, some in-depth questioning is conducted by multiple members. For instance, a legislator asks what priorities the Commissioner of Higher Education took in deciding to cut all of the higher education initiatives. The commissioner responds that the priority was to fund the core, which, according to a legislator at the meeting, is necessary to maintaining the institution, without which there would be no program. Many potentially investigative questions took the form of statements rather than actual questions. For instance, in discussing need-based and merit-based funding, a legislator comments that children with a poor education, while just as bright as children with a good education, are less likely to obtain the merit-based funding because of their poor education. Furthermore, that children with good educational opportunities, who obtain the merit-based funding, are likely going to be more capable of affording higher education than those children in need with poor education. Meetings are typically an hour and a half long.

The Senate Appropriations Committee consists of eight Republicans and three Democrats[1429] and is established by Senate Rule 25. Its duties are described in Senate Rule 28; "The Committee on Appropriations shall consider and report upon all bills and matters referred to it pertaining to general appropriations and disbursement of public money." There are no online recordings of senate hearings and hearings are typically not recorded. Although members can request that a hearing be recorded, these requests are seldom made (interview notes, 2018). However, according to an interviewee, audit reports are a part of an agency's budget report when the agency is testifying in front of the committee. Although the interviewee was unsure as to the

[1425] https://www.house.mo.gov/Committees.aspx?category=all&committee=1727&year=2018, accessed 12/11/18.
[1426] https://www.house.mo.gov/billtracking/bills171/rules/rules.pdf, accessed 12/11/18.
[1427] https://www.house.mo.gov/MediaCenter.aspx?selected=BudgetArchive, accessed 12/11/18.
[1428] https://oa.mo.gov/budget-planning/budget-information/2017-budget-information/appropriation-bills-fy-2017, accessed 12/11/18.
[1429] https://www.senate.mo.gov/aprp/, accessed 12/17/18.

different ways audit reports perhaps impact the budget or how often they are mentioned, audit reports are discussed during Senate Appropriations Committee hearings (interview notes, 2018).

There also appears to be an exchange of information between the Joint Committee on Legislative Research's Oversight Division and standing committees in the Missouri Legislature. As a division of the Joint Committee on Legislative Research, the work performed by the Oversight Division comes from the direction of the joint committee and is reported to them respectively. The Joint Committee on Legislative Research is established in Article III Section 35 of the Missouri Constitution. Further authority of the joint committee is derived from s. 23.010-23.298, Mis. Stats.

The Joint Committee on Legislative Research, a statutory committee, provides fiscal notes for all bills introduced to either committee or the floor and whenever they are amended. The Oversight Division prepares approximately 3,000 fiscal notes during a regular legislative session that are likely viewed by various standing committees responsible for overseeing the appropriations made to the agencies under their supervision (Missouri Legislature, 2017). These fiscal impact statements are, however, little more than an estimate of a bill's cost if implemented, not a review of the actual implementation of a program by an agency. Based on a staff training Power Point Presentation on the Legislative Oversight Committee's website,[1430] the fiscal notes provide the following information: costs and revenue generated, fiscal impacts on any political subdivision, economic impact on small business, duplication of existing program or agency, physical facilities or capital improvements required, and whether the bill satisfies any federal mandates. State agencies are asked to complete forms that provide this information to Legislative Oversight Committee staff. Thus, the appropriations process in Missouri involves gathering information from agencies about the fiscal impacts of any bill being considered in any legislative committee.

Vignette: Budget Battles with the Governor and the Legislature's New Constitutional Power to Override the Governor's Withholdings

Even with the institutional advantages over budget matters that Missouri's governor possesses and even during periods of single party control, conflicts over the state budget do occur. In Missouri, budget battles are often exacerbated by two conditions: first, the state's greater than the average reliance on the state income tax for revenue (Scarboro, 2017), and second, generally low tax revenues—Missouri has the 8th lowest annual tax revenue in country.[1431] Because the income tax is responsive to economic downturns or sluggish economic growth state revenues are likely to fall short of expectations during hard times, as was the case during the 2016 appropriations debates. Recently, the state auditor warned that the state's present 2018 budget is unstable and similarly susceptible to fiscal crises.[1432]

In addition to an above average reliance on income tax, the state's generally low tax revenues have meant that legislators have become accustomed to making difficult decisions about which programs receive funding and which do not. Many such budget debates tend to revolve around typically partisan spending priorities. Specifically, recent budget battles can be characterized as conservative attempts to cut education and welfare programs which are generally considered liberal spending priorities. The 2012 and 2017 budget battles took this

[1430] http://www.legislativeoversight.mo.gov/LegOvrHomePage.html, accessed 7/29/18.
[1431] https://www.taxadmin.org/2016-state-tax-revenue, accessed 12/11/18.
[1432] https://app.auditor.mo.gov/Repository/Press/2018007491503.pdf, accessed 11/12/18.

form. In 2012, following a substantial decrease in the state's business tax, the budget battle centered around dramatic cuts to the state's Head Start program (Robertson, 2012). In 2017, the debate centered around Medicare access, tax cuts for retirees, as well as education spending (Erickson, 2017c). Interestingly, during the 2012 budget debate between Democratic Governor Jay Nixon and the Republican legislature, the governor proposed a compromised budget that avoided many of the most extreme cuts by creating an amnesty program for delinquent tax-payers. However, the Republican legislature ultimately opposed the amnesty program and thus implemented their proposed cuts, nearly ending the Head Start program in the state. They were ultimately successful in their effort to exert their policy priorities over those of the governor.

Additionally, the for the budget for FY 2015, although both versions of the budget are typically based upon a "consensus revenue estimate" (Sirtori, 2015), "established by state budget experts and outside consultants" (The Missouri Times, 2018), the governor and the legislature "were at odds about how much money the state would make" (Sirtori, 2015). The governor estimated $8.73 billion while both chambers estimated $8.59 billion, however, the legislature ended up appropriating roughly $8.9 billion in general revenue. The governor at the time (Nixon) vetoed $144.6 million of general revenue, but the legislature overrode the veto and restored roughly $50 million. Then, the governor restricted the appropriated funds, withholding $641.6 million (including $100 million for k-12 education). Gov. Nixon released $180 million, but still withheld $502 million, and the legislature was without power to do anything until the end of the fiscal year.

That was until November, when voters approved Amendment 10, "which gave the legislature the power to override the governor's withholdings" (Sirtori, 2015). As of 2015, Republicans of the House Budget and Senate Appropriations Committees were unsure if they were going to use the power, as the full $500 million would likely not be restored. However, in maintaining a balanced budget, as "[i]f something gets released, something else gets restricted" (Sirtori, 2015), some funds could be released for domestic violence shelters among other ideas. The legislature planned to hear testimony from departments to decide, for the supplemental budget, how to appropriate funds (Sirtori, 2015).

A more recent article describes this new power more in-depth: "[The override] does not require the governor to reduce the total amount of his withholds. If the legislature overrides a withhold of $1 million on a specific line item, the governor can respond by withholding $1 million somewhere else" (Barnes, 2016). Also, the decision of where to make withholdings can be overrode by the legislature. The override power was first used in March of 2016; "$575,000 for the Missouri Scholars and Fine Arts academies . . . and $350,000 for rehab services for [those] who have suffered traumatic brain injuries" (Barnes, 2016). The author of this article described the above overrides as "modest" as they are a "tiny fraction of [a] potential surplus." An override requires a two-thirds majority vote (Barnes, 2016).

Oversight Through Committees

The legislature does occasionally consider "good government" legislation which might enhance the legislature's capacity for oversight. Government reform or "good government" bills are generally heard in the Senate Committee on Government Reform and in the House Committee on Government Efficiency. Sen. Romine recently sponsored two such bills. One bill would place additional limits on the governor's appointment powers. It passed committee

with a favorable vote and is awaiting floor action. A second bill by Sen. Romine, which eliminated public whistleblower protections, has been codified into law. Both bills passed through the same senate committee in the same session and address policy relevant to the legislature's mission to carry out oversight of the executive.

Although OSA's work is not directed by the legislature, it is legally required to audit state agencies and various local government entities. These reports are publicly available. The information in these reports concentrates primarily on use or misuse of public funds, conflicts of interest, and other use of public resources. As noted earlier, the response to these audits appears to more often follow legal channels rather than legislative. For example, as the result of a recent audit, the Greenville City Clerk was charged with a felony (Wayne County Journal-Banner, 2018), and information from the audit of MoDOT and the Highway Patrol that revealed biased bidding practices involving truck weigh stations was turned over to state and federal law enforcement authorities (Shurr, 2018). It appears from media reports that the state auditor works more closely with the attorney general than with the legislature. These reports appear to concentrate primarily on what the state auditor described as "forensic auditing."[1433]

Oversight Through the Administrative Rules Process

The Missouri Legislature possesses a Joint Committee on Administrative Rules (JCAR), that receives its authority from §536.037 of Missouri Statutes. The joint committee consists of 10 members, five of which come from the senate and five from the house. No major party may be represented by more than three appointed members from either house. The statute states the JCAR's authority to prevent proposed rules from being established and their authority to suspend rules that have already been promulgated (Perkins, 2017). However, a 1997 Missouri Supreme Court ruling determined that this broad veto authority was an unconstitutional violation of the state's separation of powers.[1434] The court specified that to block a rule the legislature needed to rely on its ability to pass bills. Thus, the legislature revised the administrative rule processes to allow itself the option to hold hearings and pass concurrent resolutions to block bills.

The administrative rules process in Missouri begins with printing proposed rules in the Missouri Register, which is published bimonthly. Once a rule has been published, a 30-day comment period begins during which any member of the public may provide comments to the agency promulgating the rule. The agency may also conduct a public hearing on the proposed rule, the date of which will be shown in the Missouri Register. The agency must then compile the comments received on the rule as well as any changes to be made to the text of the rule as a result of the comments received in an Order of Rulemaking. The Order of Rulemaking is then filed with the Joint Committee on Administrative Rules and may not be filed with the secretary of state until 30 days have elapsed.[1435]

During this 30-day period, JCAR hears testimony from those opposing the rule as well as those who are supportive of the rule, including the state agency responsible for promulgating the rule. The state agency proposing the rule is responsible for preparing a fiscal note if the rule will have an impact of more the $500 on public funds or would affect the income of any individuals

[1433] https://www.auditor.mo.gov/content/statement-auditor-galloway-criminal-charges-filed-against-former-greenville-city-clerk, accessed 7/30/18.
[1434] Mo. Coal. for Env't v. Joint Comm. on Admin. Rules, 948 S.W.2d 125, 134 (Mo. banc 1997).
[1435] https://www.senate.mo.gov/jcar/?page_id=8, accessed 12/17/18.

or businesses by more than $500. Given these low thresholds, fiscal notes are often needed. Moreover, the agency must submit a statement of impacts on small businesses to JCAR and to the Small Business Regulatory Fairness Board before the public hearing. Then, the committee may take action on the rules and may disapprove the entire rule or any portion thereof. If JCAR disapproves of a rule, it may not be published by the secretary of state, and for the disapproval to become permanent, the general assembly must ratify the action with a concurrent resolution passed in both houses of the general assembly (Council of State Governments, 2015). The governor may veto the general assembly's decision and the general assembly may override the governor's veto to permanently disapprove the rule.[1436]

Beginning in 2015, JCAR also conducts a five-year rolling review of existing rules. This is established in s. 536.175, Mis. Stats. Each year, a specified group of state agencies will undergo a process to review existing rules based on a predefined schedule.[1437]

According to the Missouri JCAR, they receive approximately 1880 rule filings per year, 150 of which are emergency rulemakings. "Each rule filing is reviewed for compliance and if necessary, members of the regulated community are contacted regarding their position on the prospective rule."[1438] JCAR has limited staff assisting the review of the large number of rules, therefore they reportedly rely on the public to expose problems with administrative rules.[1439]

Schwartz (2010) reports that JCAR's emphasis on the costs of rules without considering their benefits helps lobbyists and economic interests prevail over the public welfare. He provides an example of a rule that JCAR rejected that would have required improvements to sprinklers, alarms, and smoke partitions in nursing homes to enhance safety. JCAR voted nine to zero to disapprove the rule because it would cost too much (an undue burden) for nursing homes to comply.

Oversight Through Advice and Consent

The senate's advice and consent power over gubernatorial appointments is defined in Article IV, Section 51 of the Missouri Constitution, which states that, "All members of administrative boards and commissions, all department and division heads and all other officials appointed by the governor shall be made only by and with the advice and consent of the senate." The Missouri Senate has 30 days to confirm the nominee; otherwise that person may not be reappointed by the governor to the same office or position (Perkins, 2017).

Vignette: The Legislature's Oversight over the Governor's Appointments

Advice and consent of gubernatorial appointments has proven to be an important venue for legislative oversight in Missouri, even when both the Office of the Governor and the senate have been controlled by the same (in this case, Republican) party. In 2017-2018, the Republican-dominated senate and Republican Governor Eric Greitens faced numerous heated battles over key appointments. The first example occurred in 2017, when Republican senators and the governor faced off over a set of key appointments and the unilateral removal of commissioners on the state's Board of Education. Greitens' intention was to stack the Board of

[1436] https://www.senate.mo.gov/jcar/?page_id=12, accessed 12/17/18.
[1437] https://www.senate.mo.gov/jcar/?page_id=38, accessed 12/17/18.
[1438] https://www.senate.mo.gov/jcar/, accessed 12/11/18.

[1439]Interview with Cindy Kadlec, General Counsel to JCAR, 2/24/10 (Schwartz, 2010).

Education in order to remove Education Commissioner Margie Vandeven. The governor struggled to get his nominees confirmed by legislators in his own party, however, and was forced to withdraw three nominations for the board (Erickson & Taketa, 2017; Lieb, 2018). However, after successfully appointing four new members to the board via recess appointment, the governor still failed repeatedly to remove Vandeven from her role after a series of nominees—Claudia Onate Greim (Erickson, 2017b), Tim Sumner, and Melissa Gelner (Erickson, 2017a)—voted to retain Vandeven. After each failed attempt, Greitens "restacked" the commission until he finally succeeded in firing Vandeven (Taketa & Erickson, 2017). It took the governor 10 attempts to appoint people to the board before he finally succeeded in removing the commissioner. However, once the legislature reconvened it refused to consider Greitens' five recess appointees but refused to allow the governor to withdraw the recess-appointments from consideration, effectively delivering a lifetime ban to the five from ever serving on the board again (Suntrup, 2018). Without his board in place and facing serious personal legal troubles of his own, the governor was unable to direct the board to hire his preferred replacement, charter school activist and friend, Ken Zeff (Associated Press, 2018; Ballentine, n.d.). Ultimately, the senate succeeded in blocking the governor from realizing his policy priorities. Presently (in July 2018), the former Deputy Commissioner of Financial and Administrative Services within the Department of Education now serves as Interim Commissioner for the department (Taketa & Erickson, 2017).

Another example of the legislature trying to effectively 'check' the policy priorities of the governor through the confirmation process occurred a month after the battle for the Board of Education when the governor began to make similar attempts at remaking the Housing Development Commission. However, the senate refused to hold any hearings on the three nominations proposed by the governor. The governor then attempted to withdraw the nominees from consideration. However, Republican senators filibustered the move, effectively resulting in lifetime bans for each of the appointees from ever serving in that position (Peters, 2018b). Some legislators, board members, and bureaucrats felt the governor's handling of the Board of Education and Housing Development Commissions were "amateurish," exploitative, and "an abuse of [his] power" as governor (Peters, 2018a). As such, Republican Senator Romine introduced a bill in February of 2018 which, if passed, would eliminate recess appointments and make it impossible to fire a board member before their term was complete without the approval of a majority of the other board members. The bill has received a favorable vote in the Senate Committee for Government Reform.[1440] Greitens was arrested on unrelated matters weeks later and so the Board of Education and Housing and Development Commission battles concluded unceremoniously. However, the new governor, Governor Mike Parsons, is facing a lawsuit from state Democrats over his attempt to appoint a new lt. governor to fill the vacant position (Watson, 2018).

The senate recently used its confirmation authority to indirectly check other ambitions of the governor over which the senate has no formal authority. For example, Missouri's governor can issue executive orders without legislative approval, but the governor cannot reorganize government without senate ratification of the plans. With respect to government reorganization, the senate has 60 days—rather than 30 days as with appointments—to block the reorganization attempt. The legislature has no authority, however, to formally review and block other executive

[1440] http://senate.mo.gov/18info/BTS_Web/Bill.aspx?SessionType=R&BillID=69680271, accessed 12/11/18.

orders, aside from their typical authority to legislate. However, when Governor Greitens passed an executive order that gave all executive agency employees paid family leave, the legislature responded by shelving all gubernatorial appointments (Peters, 2017). The senate, however, eventually gave in to pressure from Greitens (Zimpfer, 2017).

The Missouri Legislature seems willing and able to utilize the confirmation process to oversee a governor from their own political party. It also demonstrates its ability to do so effectively and creatively when it feels highly motivated to rein in the governor.

Oversight Through Monitoring of State Contracts

As is the case in many of the other states, the authority to monitor state contracts is largely associated with the executive branch. Missouri has a centralized procurement system, which can facilitate tracking state contracts. In Missouri, procurement is overseen by the Office of Administration's Internet and Telecommunication Services Department (ITSD). The ITSD website standardizes the procurement process by hosting all executive agency requests for competitive bids and allows contractors to register as potential vendors. Additionally, users can search and retrieve public vendor contracts and review them.[1441] By standardizing the procurement process and making a system of searchable contract documents, the cost of conducting oversight of state contracts is theoretically diminished. Nevertheless, the legislature has very little formal authority over this. Determining with whom agencies contract—and how—generally, remains a gubernatorial and executive agency prerogative (Department of Legislative Services, 2014; Commission to Modernize State Procurement, 2016).

Oversight Through Automatic Mechanisms

Missouri has a couple of "automatic" and "good government" mechanisms that help ensure legislative oversight of the executive branch, including a legislative "sunset" mechanism as well as a statewide "sunshine" law. But, the Missouri Legislature can only review licensing and regulatory boards (Baugus & Bose, 2015). Given that the Missouri Joint Committee on Legislative Research's Oversight Division has not posted a sunset review report since 2015, there is considerable reason to suspect that legislators are not exercising strong legislative oversight through the sunset review process.

In Missouri, licensing boards and commissions are given a six to 12-year term before they come up for review by the Oversight Division of the JCLR. In 2013, the Oversight Division allowed most of the reviewed programs to sunset. However, two of the programs were never implemented to begin with because the legislature failed to fund them. Additionally, the legislature failed to offer an opinion on the continuation of a program in question in two different circumstances. Ultimately, the oversight division reviews very few sunsetting agencies every year, and it does not always offer an opinion as to whether to renew the agency or program.

It is also worth noting that Missouri has a "sunshine" statute which allows any citizen, including legislators, to request and access official documents, including emails which are not personal or otherwise sensitive. The state's sunshine law is a potential tool for both legislative

[1441] https://oa.mo.gov/itsd/contracts-bidding, accessed 12/11/18.

and "interest group" oversight of the executive. The "sunshine" law played a part in determining the intentions of Gov. Greitens in the case of the Board of Education. Greitens additionally ran afoul of the state's "sunshine" law when he directed his staff to communicate via an app called *Confide*, which sends encrypted messages that are not stored on the user's device after viewing them. The current state auditor is also facing a lawsuit from a citizen interest group hoping to gain access to certain emails and documents that are not presently available to them (Hancock, 2017). The sunshine law also allows people to request minutes and transcripts of committee hearings (interview notes, 2018).

Despite the above oversight enhancing mechanisms, Missouri has recently eliminated a third "good government" mechanism that had decreased the information costs associated with conducting oversight of the executive branch. In 2017, after the departure of Governor Jay Nixon, Republicans in the legislature repealed "whistleblower" protections for state and public university employees. Republicans had previously attempted to repeal the state's public employee whistleblower protections, but the efforts had been blocked by former-Governor Nixon (Ballentine, 2017). The elimination of "whistleblower" protections could have a diminishing effect on legislative and other forms of oversight by increasing the cost associated with obtaining the information necessary for oversight. If public employees are too fearful of losing their job to report malfeasances, then oversight of any kind will be difficult. To overcome this deficiency, the state auditor is now promoting an anonymous tip line run by her office.[1442]

Methods and Limitations

The Missouri House provides online access to video and audio for the House Budget Committee, but very infrequently for other committees (saved within the house's Debate Archive). For the house, transcripts are typically only available for special committees and minutes (including agendas) are archived by the secretary of state (interview notes, 2018). Additionally, the chairs of the house committees will keep their minutes and send them to the Missouri Archives at the end of the session. The chairs of the house committees can request a hearing to be videotaped as well (interview notes, 2018).

The senate does not publish minutes, transcripts, audio, or video online. Minutes and transcripts may be requested of the senate (interview notes, 2018). Minutes are kept by senate chairs and sent to the archives at the end of session. Senate Communications will record hearings upon committee request and keep those audio files and transcripts (interview notes, 2018). There are reports that are published from committee hearings, which describe who attended and the views of proponents and opponents of legislation. These can be accessed via Missouri Archives (interview notes, 2018).

Interviews were crucial due to the lack of accessible information. Out of the 19 people that were contacted, we conducted interviews with five people.

[1442] https://auditor.mo.gov/state-auditors-whistleblower-hotline, accessed 12/11/18.

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Legislative Oversight in Montana

Capacity and Usage Assessment

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

Summary Assessment

The institutional resources that Montana has for legislative oversight are stronger than one might expect given the extremely short legislative session. Montana makes excellent use of the tools that it has, primarily its interim committees, which act as loci of information gathering and bill development. These committees not only hold intensive hearings and study trips, but they are responsible for administrative rule review. On the other hand, a biennial budget cycle limits opportunities for oversight through the appropriations process and forces the state to make long-term budget projections, which increases the risk that mid-course correction will be needed.

Major Strengths

Montana's Legislative Audit Committee (LAC) is a bipartisan committee with equal membership from the two major political parties without regard to their proportion of seats in the legislature. The LAC is an interim committee, which means that it can review audit reports throughout the year rather than being restricted by the biennial legislative session calendar. The LAC is required to hear reports on all audits that the Legislative Audit Division (LAD) completes. It also works closely with the audit division to develop the scope for future audits.

It appears that all of Montana's interim committees have balanced party membership. This demonstrates a strong commitment to bipartisan oversight. Given the size of the LAD, there are numerous reports that provide evidence for legislators to use in overseeing the executive branch. The interim committees in Montana appear to be highly effective and to perform a lot of the substantive work of the chambers. And they appear to conduct excellent bipartisan evidence-based oversight.

Challenges

In contrast to the interim committees, the standing committees and the Joint House Appropriations and Senate Finance and Claims committee appear much more partisan. Their

members appear to rely very heavily on legislative staff to understand information. Moreover, despite the fact that the LAC hears a presentation on every audit report, committee minutes indicate that it rarely takes action based on these reports—at least at the time that the report is presented. Despite the depth of knowledge displayed by several interim committee members, it is easy to find Montana legislators who do not appear well informed and who ask naïve questions. Moreover, the legislature rarely engages in advice and consent on gubernatorial appointments and lacks power to intervene in executive orders or government reorganization.

Relevant Institutional Characteristics

The Montana legislature is one of the least professional state legislatures in the United States. According to the National Conference of State Legislature's categorization, Montana is one of four "Citizen II" legislatures—the least professionalized rating available (NCSL, 2017). "Citizen II" legislatures are characterized by the NCSL as being part-time, having low pay, and have few available staff. In the case of Montana, legislators are paid a salary of $90.64 per session day plus $114 per diem to cover their expenses. If the legislature meets for its maximum session length—90 days in odd-numbered years—legislators would receive $18,417, or an average of about $9,000 per year. The legislature has a permanent staff of only 136 (NCSL, 2017). These factors contribute to the state's rank on legislative professionalism—44th nationally (Squire, 2017). Although the state has legislative term-limits, Montana's term-limits are not especially restrictive. Legislators can serve for only eight years consecutively in each chamber. This limits continuous service but is not a lifetime limit. During the mandated time out of office in one chamber (eight years out of office), a legislator can serve in the other chamber. This allows legislators to cycle back and forth between chambers. Therefore, it is more likely that the state legislature's limited resources are a greater impediment to legislative oversight than are the limits on legislative tenure.

The limited institutional resources of Montana's legislature appear even weaker compared to institutional powers of the governor. According to the composite ratings of the Governor's Institutional Powers Index (GIPI), the Montana governor has strong tenure potential (two four-year terms), good appointment powers (may make many appointments), and exceptional power over the state budget (Ferguson 2015). As a result, the Montana governor's GIPI score is approximately the national average. This is not an exceptional set of institutional powers compared to other states, but it stands in sharp contrast to the limited institutional powers of the state's legislature.

Montana has a slightly higher than average share of its citizens employed in state and local government—11.7% compared to the national average of 11.3% (Edwards, 2006). Most of this difference reflects a higher-than-average rate of employment in education—6.6% of the state's citizens compared to a national average of 6.1%. Montana also has a higher-than-average percentage of its citizens (1.6% compared to the national average of 1.3%) who are employed providing state and local services, such as highways and parks. This is likely to reflect a lot of road miles distributed over a small population. These above-average areas of state and local government employment are only partially offset by lower-than-average rates for state citizens employed in safety (1.3% for the state compared to 1.7% nationally) and welfare (1.2% for the state and 1.5% nationally).

Political Context

Montana currently has a divided state government, as both chambers of its legislature are Republican-controlled, whereas the current governor is a Democrat (NCSL, 2018). Although from 1995 through 2004 Republicans controlled both the legislative and executive branches, the state has operated under divided party control since 2007. In 2005 and 2006, Democrats effectively had one-party control, given that the state house was evenly split, and the governor was a Democrat. In Montana, if a chamber is evenly divided between political parties, the governor's party controls the chamber. From 2007 to the present, the state has had a Democratic governor while Republicans control at least one, and often both, legislative chambers.

According to Shor and McCarthy's (2015) criteria, Montana has the fifth-most politically polarized state House in the country, and the ninth-most polarized state Senate. Montana House and Senate Republicans are the sixth and seventh-most "conservative" in the country, respectively. House and Senate Democrats are the 11th and 23rd most "liberal," respectively.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Montana has three support bureaucracies that provide reports to assist the legislature: the Legislative Audit Division, the Legislative Fiscal Division, and the Legislative Services Division. The Legislative Audit Division (LAD) is the analytic bureaucracy most directly involved in legislative oversight of the executive branch in Montana. This division has a state appropriation of $4.3 million to support its work and a staff of 44, most of whom are audit professionals. In addition, Montana elects a state auditor. The official title of the office is Montana Commissioner of Securities and Insurance, State Auditor. The office has divisions of Insurance, Licensing, and Securities. This office is not involved in conducting performance audits of state agencies, and we do not discuss it further here.

The LAD is headed by the legislative auditor, who is appointed by the Legislative Audit Committee (LAC). In addition to regular financial-compliance audits, the LAD also conducts contract audits, performance audits, a federal single audit, IT audits, and special audits. While the LAD reports principally to the LAC, any member of the legislature may request the legislative auditor to audit any activity in state government. Additionally, "[s]tate law requires LAD conduct a [financial-compliance] audit of each state agency at least every two years." [1443] M.T. Const. art. V, § 10(4) enumerates a broad post-audit authority for the state legislature.[1444] In 2017, the LAD completed 44 total audit reports including 12 performance audits, seven contacts audits, a state-wide federal single audit, three IT audits, and no special audits. The LAD does not appear to have performed any "special audits" in recent years. In 2015 and 2016 the LAD similarly performed 45 and 54 total audits, respectively.[1445]

[1443] http://leg.mt.gov/content/Audit/About%20Us/LAD-Who-We-Are.pdf, accessed 10/25/18.
[1444] https://leg.mt.gov/bills/mca/CONSTITUTION/V/10.htm, accessed 10/25/18.
[1445] https://leg.mt.gov/css/Publications/Audit/audit_reports_yearalpha.html, accessed 10/25/18.

The LAC is a permanent joint committee authorized via statute in M.T. Code § 5.13.201-203. It is a bipartisan committee, comprised of 12 members equally representing the two major political parties: three majority and three minority party members from each of the state's two chambers. The LAC is tasked with "review[ing] the audit reports submitted by the legislative auditor. In this role it releases the audit reports to the public, and serves as the conduit between the legislative auditor and the legislature."[1446] The LAC's meeting agendas suggest that the LAC allots approximately 20 to 30 minutes to hearing each audit report. Additionally, the LAC's agenda indicates that "follow-up" performance audits are given special attention; heard separately from non-"follow-up" type audits. Moreover, the LAC discusses the scope and relevant topics for any audits proposed with the LAD during LAC committee meetings.[1447]

From recent video archives of LAC meetings, in a typical hearing an auditor would provide a brief three-to-five-minute summary of the audit, committee members would be given the opportunity to ask questions of the auditor, a representative of the agency would be given the opportunity to respond, and then the committee members would have the opportunity to ask questions of the agency representative. The public is also given a chance to make comments or ask questions. In the hearings that we have reviewed, very few questions were asked of either the audit staff or the agency official. Legislators tended to not ask technical questions or questions that suggested a sophisticated understanding of the audit report. In a June 25th hearing one committee member asked the agency representative, "What is it this hearing is about? What's the point? What do you do, even?"[1448] In another audit hearing in the same meeting another representative asked the auditor, "Who [in state government] could the [Department of Agriculture] go to for accounting advise?" in that same hearing a committee member asked the agency head, "How many [accounting] staff are we talking about [as in: employed with the agency]?"

In a June 2018 hearing on the reappointment of the state auditor, the auditor was not called to give testimony before his re-appointment, although some committee members voiced their support for the auditor before a vote to re-appoint him.[1449] In a hearing on the LAD's strategic plan, one committee member applauded how "not corporate" the presentation was and how "easy [the plan] was for him to understand."

During the LAC hearing on the LAD's strategic plan, State Auditor Angus Maciver had to explain on multiple occasions the separation of powers between the legislature and the state agencies to the committee's junior members.[1450] Maciver then reminded the committee that the legislature can compel changes by passing law. A junior committee member then asked whether that ever happens, to which the LAC chair responded, "Yes," and that come October they would discuss what bills they might like to sponsor in more detail. A third, more senior member then suggested that LAC bills nearly always passed into law.

This interaction during the strategic plan hearing suggests a stark contrast in the sophistication of committee members based on seniority. In one respect, the interaction is positive, because it indicates mentorship of junior legislators by their senior colleagues. However, it is important to note that all the non-technical questions (examples of unsophisticated

[1446] http://leg.mt.gov/content/Audit/About%20Us/LAD-Who-We-Are.pdf, accessed 10/25/18.
[1447] http://montanalegislature.granicus.com/MediaPlayer.php?view_id=37&clip_id=25020#, accessed 9/20/18.
[1448] http://montanalegislature.granicus.com/MediaPlayer.php?view_id=130&clip_id=25542, accessed 10/25/18.
[1449] Ibid.
[1450] Ibid.

committee behavior) asked of the testifying auditors and agency representatives cited above were asked by more senior committee members.

The Financial Division's (LFD) primary function is to provide financial information to legislators on the finance committee such as historical revenue reports, revenue projections, demographic changes, as well as the projected costs of programs.[1451] LFD's revenue estimates affect budgeting decisions made by both the governor and the legislative budget committees. In 2017 the LFD's budget projections were off by more than $250-million, resulting in a budget crisis in the second half of the year—a problem we examine in more detail in the section on *Oversight Through the Appropriations Process*.

The mission of the Legislative Services Division (LSD) is to provide staffing and technical support for the legislature. Typically, this includes human resources, communications, legal services, bill drafting, and IT support.[1452] However, the LSD's Office of Research and Policy Analysis also provides project management and research support for the interim committees. The role of interim committees is discussed in more detail in the section on *Oversight Through Committees* below. In 2015-2016, the most recent years on record, the LSD published 14 interim committee reports. Some interim committee reports addressed directly the implementation of public programs. However, not all reports did. Some reports only provided background information on an area of policy[1453] while others appear to focus on providing new technical information.[1454] Reports that addressed specific deficiencies in program performance recommended ways those state agencies could improve.[1455] These interim reports allow the legislature to oversee agency performance on a limited number of issues in a manner that is more thorough than the regular session calendar would allow.

Oversight Through the Appropriations Process

The House Appropriations and the Senate Finance & Claims Committees conduct budget related oversight. These two committees frequently meet jointly when they are engaged in information gathering. However, the two committees appear to discuss their respective amendments and bills in separate meetings. Each member of these two committees also sits on one of the six Appropriations Subcommittees. These appropriations subcommittees are all joint committees. The meetings for both the House and Senate committees are, however, filed as the "Joint Committee on House Appropriations and the Senate Finance & Claims Committee" in the legislature's online archives, regardless of whether House or Senate items are being discussed.

When the legislature is not in session, budget-related matters are monitored by the Legislative Finance Committee and a Joint Permanent Committee, established by statute M.T. Code § 5.12.2. This Committee appoints the legislative fiscal analyst, whose office conducts

[1451] https://leg.mt.gov/css/fiscal/reports/2017-Session.html, accessed 10/25/18.
[1452] https://leg.mt.gov/css/Services%20Division/default.html, accessed 10/25/18.
[1453]For example see Handbook on Tribal Nations, https://leg.mt.gov/content/Publications/Committees/interim/2015-2016/tribal-nations-handbook-october2016.pdf, accessed 10/25/18.
[1454] For example see Net Metering in Montana, https://leg.mt.gov/content/Publications/Committees/interim/2015-2016/SJ12DraftReport-net-metering.pdf, accessed 10/25/18.
[1455] For example see Issues of Water Availability and Supply, https://leg.mt.gov/content/Publications/Committees/interim/2015-2016/1-issues-water-supply.pdf, accessed 10/25/18; as well as Considerations for the Future of Water Rights, https://leg.mt.gov/content/Publications/Committees/interim/2015-2016/3-future-water-rights.pdf, accessed 10/25/18.

research on the committee's behalf. The committee advises House and Senate Appropriations and Finance Committees prior to the preparation of the biennial budget (M.T. Code § 5.12.205).[1456]

A biennial budgeting process limits opportunities for legislative oversight via the appropriations process. That said, based on our review of a small nonscientific sample of archived video records of committee meetings and meeting minutes of committee and subcommittee hearings on the legislature's website,[1457] it appears that oversight is occurring; legislators seem to be engaged, and well informed—relying on legislative fiscal notes for financial information. It also appears that extensive expert and public testimony occurs during hearings. However, an examination of appropriations committees meeting minutes does not indicate frequent testimony from the LAD. Additionally, none of the video records we examined made references to audit reports. Therefore, Montana does not regularly appear to use its power of the purse to encourage agency compliance with performance audit recommendations.

In 2017, Montana's fiscal estimates overestimated the amount of tax revenue the state would receive and the fire season was especially severe and costly.[1458] Consequently, there was a $227 million budget shortfall. The state had to act promptly during the middle of the biennium to adjust for the shortage. As part of this emergency action, the Joint House Appropriations and Senate Finance and Claims Committee meeting held a four-hour meeting on January 5, 2017,[1459] that consisted of presentations by agency directors about their budgets. Each state agency was given a chance to provide testimony. The agencies were asked to explain whether they had money in their budget for the remaining six months of the current budget cycle, January through July 1, which they could return to the state. If they were able to do so, they were told it would soften the cuts they would face in the 2018-19 budget cycle.

Most of the directors who had money to give back reported that this was the result of senior staff retirements and newly hired staff who earned less than the senior staff they replaced. Most of the department directors said that any cuts to the current budget would undermine the state's match to receive federal funds magnifying the impact on the state of any cuts to their budget. One legislator asked about money "left on the table" for seniors, people with disabilities and people with Alzheimer's. The legislator cited numbers of people on waiting lists for these programs, referring to another set of presentations to the committee at an earlier date. Her question was, "What effect will cutting the program and taking away the remaining funds have on the waiting list for the programs?" This illustrates the ability of this legislator to combine sets of knowledge from other sources to frame a question about the impact of cuts. The legislator followed up by asking one director about ways to assess need for services and incorporate need into the decisions to make cuts. Taking a cue from this question, several department directors tried in their testimony to explain why their remaining funds might be needed in the next six months, before the end of the budget cycle.

Questions from legislators indicated that they were looking through the budget with a fine-toothed comb for any sources of revenue. Some legislators' questions were very specific, and they referred to charts and tables in legislators' packet of handouts. Several legislators asked

[1456] https://leg.mt.gov/bills/mca/title_0050/chapter_0120/part_0020/sections_index.html, accessed 10/25/18.
[1457] Ibid.
[1458] http://www.familyoutreach.org/wp-content/uploads/2017/09/Balancing-Montanas-Budget-Facts-Figures.pdf, accessed 9/20/18
[1459] http://montanalegislature.granicus.com/MediaPlayer.php?view_id=130&clip_id=20265, accessed 9/20/18.

questions about the purpose and need for a variety of small programs that appeared to have escaped close scrutiny when the budget appropriation was made. Some of these programs were based on legislation that the chamber had passed in prior years. For example, one legislator asked about HB 510, which is supposed to generate revenue from forested land. The committee was told that the funding for a county advisor for that program would be eliminated with the 5% budget cut. Several of these legislators' questions demonstrated limited knowledge about the programs required to carry out legislation.

Most of the department directors were not asked questions, even while delivering statements that should have demanded further inquiry. For example, the director of Natural Resources and Conservation said that if his department gave back money from their budget it would reduce the number firefighters they could hire, which could mean a more severe fire season. Yet this hearing, in January, concerned money that would be spent in the winter and spring—not during prime fire season. This apparent issue was left uncontested.

This committee hearing demonstrates a concerted effort on the part of legislators to oversee the state budget and agency use of funds. It also indicates that many legislators lack familiarity with the details of the budgets, making it hard for them to assess whether the agency directors were giving back all they could. Moreover, no one seemed to raise the issue of generating more revenue through taxes, fees, or other means. The assumption appeared to be that cuts were the only option—even when the next budget cycle was mentioned.

In November 2017, as part of a special session, the Joint Committee on Appropriations and Senate Finance and Claims Committee met to consider HB 2, which would appropriate money for the 2016-17 budget cycle—in effect replacing the previously passed appropriation bill that had appropriated more money than the state by 2017 had available. The executive branch budget director testified in opposition to the bill.[1460] Using an executive order, the governor had made $76 million in cuts.[1461] The governor's proposal was that one third of the shortfall should be covered by budget cuts, one third by temporary tax increases, and one third by budget transfers. Legislators wanted to focus solely on cuts and transfers.[1462] According to the budget director, under the executive order the state could restore these funds if revenue rose again. He argued that if the legislature passed HB 2 then the cuts would become the base budget amounts for the agencies. Moreover, any increased revenue could not be passed along to agencies whose budgets had been cut. Therefore, the executive branch opposed the bill.

HB 2 was introduced by its sponsor, the chair of the House Appropriations Committee. In the hearing, legislative staff described several amendments to HB 2. These amendments cut various activities across the board to produce approximately $25 million in cuts. Some of the cuts involved a state health care contribution "holiday" that would mean that state employees would receive less money to subsidize their health insurance costs. As the legislators discussed the bill, its sponsors said that the governor had made the cuts, but the legislature wanted to put those cuts into the appropriations bill. That raised questions about what would happen if more revenue were forthcoming—in the legislators' parlance the potential for an "unwind." In a discussion with the chair, Sen. Llew Jones, it became clear that the committee would have to pass a separate bill to unwind the cuts. A senator asked why the sponsor wanted to make the cuts

[1460] http://montanalegislature.granicus.com/MediaPlayer.php?view_id=130&clip_id=24969, accessed 9/20/18.
[1461] https://www.usnews.com/news/best-states/montana/articles/2017-11-13/the-latest-hearings-begin-at-montana-special-session, accessed 9/20/18.
[1462] https://helenair.com/news/local/first-of-governor-s-tax-increases-heard-as-special-session/article_85e743e0-ac85-56bd-8bd2-f9b6c4d682ad.html, accessed 9/20/18.

permanent given that the problem is temporary. Several Democrats on the committee stress that leaving the cuts as an executive order meant that the governor could restore money without legislation if revenue increased.

Throughout this hearing, the committee members relied heavily on legislative staff for explanations of the fiscal notes and also needed her input on procedural questions. The legislative staff analyst was clearly much better informed than the legislators, including the sponsor.

During public testimony on the cuts to human services programs, various speakers pointed out the value of retaining the flexibility to restore money if revenue increased. The committee chair reiterated that an unwind bill was being discussed simultaneously. Clearly, the unwind bill provided the legislature with control over which cuts would be "unwound" rather than letting the governor make those choices. Therefore, the crux of the issue involved the balance of power and control over budget decisions.[1463] Speakers stressed that codifying the cuts into an appropriation bill would establish in future budget years a lower starting point for an array of social service programs. The chair of the House Appropriations Committee repeatedly reminded committee members and others that the governor made the cuts, not the committee.

This committee hearing is an example of a partisan battle for control of the budget during a period of divided government through the use of checks and balances. The budget shortfall forced the governor to make cuts to the existing appropriations. The crux of the issue involved shifting control over the future of those cuts out of the governor's hands and into the hands of the legislature. Democrats in the legislature wanted to provide the governor, who was from their own party, with the flexibility to decide which programs would have their funds restored. Republicans, who controlled both chambers, did not. They wanted to codify the cuts by passing a new appropriation bill, which would provide the basis for future budget negotiations, and to write an "unwind" bill that would control the restoration of funds if more revenue became available.

Oversight Through Committees

Montana's legislature relies on interim committees to perform in-depth studies of specific topics. Legislators are appointed to interim committees by House and Senate leaders. Given that Montana's legislature meets in regular session only in odd numbered years, the term of service on an interim committee is long, lasting 20 months. These committees operate as work groups or study committees, inviting outside experts to provide information and make presentations. Moreover, the public may provide statements and make comments to interim committees.

Sources told us that a legislator is paid only for the days when their interim committee meets, typically 5 or 6 meetings, each lasting a day or two, during the 18 month interim. 5-2-302 of the Montana Code Annotated provides for legislator compensation and reimbursement during the interim. Legislators are paid mileage at the federal reimbursement rate (2-18-503), expenses for meals (2-18-502), expenses for lodging (2-18-501), and a payment of $90.64 per day equal to the daily rate paid during the session (5-2-301(1)).

Although it is common for legislatures with limited session length to rely on interim committees to conduct in-depth investigations and to develop legislation, Montana's use of these committees is more extensive than in most states. The list of needed assignments

[1463] http://montanalegislature.granicus.com/MediaPlayer.php?view_id=130&clip_id=24969, accessed 9/21/18

to interim committees for 2017-18 is 16 pages long.[1464] As of 2018, the legislature has organized 15 joint interim committees.[1465] The Montana Legislative Services Division publishes an electronic newsletter, called *The Interim*, which keeps the chamber informed about the activities of interim committees.[1466] Sources told us that membership on interim committee must be balanced by party according to current statutes, but the 2019 session might see a bill to change the committee representation to mirror the party share in the respective chamber (interview notes 2019). Each interim committee submits a report of its activities and accomplishments. Reports of interim committees include recommended legislation that a committee member will sponsor in the next regular legislative session.

In examining video from two March 2018 meetings of the State-Tribal Relations Interim Committee, this committee stood out because it planned to introduce multiple pieces of legislation in the 2019 session. The committee began 30 years ago as a special investigation committee, and after a couple years became what the Montana legislature calls a standing interim committee. The committee meeting on March 29, 2018, lasted for nearly nine hours. The meeting the following day lasted even longer. Staff discussed future meetings, one of which would be held as a video conference and another of which would be the committee's "travel trip" to visit Fort Belknap for a two-day meeting, a Native American Reservation near the Canadian border. The committee appears to be quite active.

The first presentation at the March 29 meeting, given by the chief deputy attorney general, addressed substance abuse initiatives in the state. He provided a summary of an 87-page report that the attorney general's office prepared using a contractor, Loveland Consulting. The presentation pointed out that it was important to look state-wide to assess substance abuse initiatives because various programs exist in "silos" throughout state agencies—criminal justice, children and family service, healthcare, traffic fatalities, and so on. The chief deputy stressed that this was not just about opioids, but also alcohol and other drugs and that a state-wide approach was needed so that agencies could collaborate across jurisdictions to address these problems.

Five of the seven committee members present asked questions—some more than once. The first committee member to ask a question inquired about whether the reduction of drug addicted infants born to mothers in a prevention program had been quantified so that the effectiveness of the program dollars could be assessed. The chief deputy attorney general agreed to try to track down that information. The same committee member also asked about why some treatment centers were listed as state-approved while others were not. He wanted to know what state approval entailed and why some centers were not approved and what might happen going forward to increase the number of state-approved centers if state-approval appeared to be important. Again, the chief deputy agreed to find out and report back to the committee. Another legislator asked who specifically the attorney general's office met with at stakeholder meetings on reservations that were described in the report. That legislator asked to be notified of any stakeholder meetings in her area so that she could inform people that she would like to see included invited to the meeting. The chief deputy readily agreed.

Another committee member asked about law enforcement jurisdiction and the difficulty in rooting out drug dealers on reservations. This is problematic because state police and tribal

[1464] https://leg.mt.gov/content/Committees/Administration/Legislative%20Council/2017-18/interim-appts-chart-2017-4.pdf, accessed 9/20/18.
[1465] https://leg.mt.gov/css/committees/interim/default-3.html, accessed 10/25/18.
[1466] https://leg.mt.gov/the-interim/index.html, accessed 10/25/18.

police are limited by jurisdictional boundaries. Therefore, drug dealers who are not Native American can use the reservations as a sanctuary beyond the reach of both state and tribal police. The chief deputy replied that the attorney general was working on developing a task force because it would be necessary to coordinate law enforcement efforts given the complications introduced by jurisdictional limitations. The legislator followed up by asking whether there were any state laws that inhibited this. The chief deputy replied that he knew of none, but would explore that with other law enforcement. It became clear later that federal laws are the problem. A representative made a suggestion that the highway patrol and other law enforcement need to sit down with the tribal leaders to develop cross-jurisdictional agreements. The committee chair asked about whether the attorney general's office would be supportive of a Crow Reservation request for HITDA (High Intensity Drug Trafficking Area). The chief deputy offered to help with that request and others. She followed up by asking that the attorney general help the committee explore a federal fix to the jurisdictional issues, citing 1885 legislation, the Major Crimes Act, and how it affects tribal jurisdiction nationally. The chief deputy said he would like to talk with her about her ideas on this and expressed interest in involving the state's congressional delegation in the conversation.

The committee members demonstrated a high level of knowledge about the topic. The presentation was evidence-based. The questions were substantive and probing, but not adversarial. The emphasis was on gathering information about ways to resolve parts of the issue of substance abuse in the state. The committee membership is balanced by political party—four Democrats and four Republicans. It is a joint committee that includes four representatives and four senators. Rather than asking her questions first, the chair waited until all other committee members had asked any questions that they wanted to ask. Then she asked a series of questions that demonstrated extensive familiarity with the topic at hand and with the substantive jurisdiction of the committee—tribal affairs. This segment of this committee hearing is a stellar example of nonpartisan, evidence-based oversight in which members and the presenter focused on ways to resolve a serious state problem.[1467] It reinforces our impression from other states that interim committees are a powerful tool for exercising oversight. These committees operate without the pressures of the session schedule. Their meetings are lengthy (often two consecutive days or more, and often include study trips. As a result of this sort of schedule, many legislators are likely to stay overnight, sometimes in small communities during their study trips. As a result, they have some time to know each other—sharing meals, staying in the same hotels. These concentrated blocks of time could be conducive to better quality, evidence-based nonpartisan oversight.

Oversight Through the Administrative Rules Process

The Montana legislature only has authority to review new administrative rules that are being promulgated by the state agencies. It may not review the performance or function of administrative rules that have already been recorded in the Montana Administrative Register. In order to block a newly promulgated administrative rule, the legislature is required to pass a joint resolution blocking the rule. However, this is hard to do because most of the time the legislature is not in session and so it cannot pass a resolution to block or delay rules as they are being

[1467] http://montanalegislature.granicus.com/MediaPlayer.php?view_id=130&clip_id=25294#, accessed 9/21/18.

promulgated. In order to prevent new rules from being adopted while it is not in session, the germane joint interim committee conducts rule review. If it objects to a rule, this committee may delay the implementation of a newly promulgated rule until the next regular session, giving the legislature the opportunity to issue a joint resolution blocking the rule.[1468] Therefore, most of the rule review that occurs is conducted by the germane joint interim committees.

When an agency decides to promulgate a rule, it is required to contact the legislation's sponsor for comments. The relevant interim committee can conduct a poll, by mail, to assess whether the proposed rule is consistent with legislative intent. If 20 legislators object to the rule, then the entire legislature must be polled. This rarely occurs (Schwartz, 2010). The committee may also hold hearings on the rule, request an economic impact statement, and it receives a summary of the rule from committee staff and the committee attorney. Committees decide whether they want to engage in three different possible levels of rule review: a detailed examination of the rule by the full committee, examination of a summary of the rule prepared by the committee's legal staff, or to be notified by the committee's legal staff of any unusual or substantively significant rules. The committee staff then screens the rules to determine which information to send to the committee. This triage approach reflects the demands faced by interim committees, most of whose members hold other full-time jobs, and therefore cannot afford to spend extensive amounts of committee time reviewing routine rules. As noted in the section on committees, the members of interim committees are already spending several days per year on committee meetings.

Based on the documentation of rule reviews conducted by the various interim committees, it appears that oversight of agency rules promulgation process is taking place. The committees are aware of newly promulgated rules and prepare notes on these rules. The quality of such oversight may vary by committee, however.[1469]

Oversight Through Advice and Consent

Relatively few of Montana's executive branch officials are separately elected: attorney general, secretary of state, and notably the lieutenant governor. As a result, the governor may fill many key positions with appointees: the state's treasurer and various other agency heads. These appointments, however, require senate approval (Ferguson, 2013; Perkins, 2017). These nominations are referred to the relevant committee for confirmation hearings, and committees appear to reject them from time to time. For instance, earlier this year, the Senate Fish & Game Committee rejected three of the governor's four nominees to the state's Fish and Wildlife Commission, preventing their nominations from being considered by the full Senate.[1470]

According to the *Book of the States* (2017), Montana's governor has constitutional, statutory, and implied authority to enact executive orders. Such powers include the reorganization of executive branch agencies and are not subject to legislative review (Perkins 2017). Governors Schweitzer and Bullock both issued between 15 and 20 executive orders per year. Many of these involved emergency declarations about fires and fuel shortages. Many also

[1468] See M.T. Code § 2.4.305, § 2.4.402, and § 5.5.2

[1469] http://leg.mt.gov/css/Committees/interim/2017-2018/Rule-Review.html, accessed 10/25/18.

[1470] http://billingsgazette.com/lifestyles/recreation/only-of-montana-governor-s-nominees-for-fish-and-wildlife/article_47b94b60-b869-58f6-8837-4637c2fa820a.html, accessed 10/25/18.

created task forces and commissions.[1471] We rarely find in these lists of executive orders ones that appeared to create new public policy—a situation that we find in some states such as Ohio. Yet, Montana's governors have broad powers to issue executive orders without legislative review and without restrictions through the state's administrative procedures act. Several of the executive orders listed during recent gubernatorial terms involved government reorganization. For example, executive orders 3-2015 and 4-2015 designate "Authorized Crime Victim Advocate Agencies as Criminal Justice Agencies" and "the Montana Department of Revenue as a Criminal Justice Agency." The rationale for this administrative restructuring appears to be the need for these entities to share information with the attorney general.[1472]

Montana's legislature, rather than its governor, appears to take the lead in government reorganization.

Oversight Through Monitoring of State Contracts

Montana has a centralized procurement system, ranked 10th out of 39 participating states, right behind Michigan, in a survey of state procurement systems by the Governing Institute.[1473] They report Montana faired especially well with respect to its well-trained (executive branch) procurement staff. Top states all have centralized systems, with common rules, competitive bidding for contracts, and make use of new technology. However, despite a good, centralized procurement system, that system remains centralized in the executive branch. In Montana, procurement is conducted by the "Department of Administration, State Financial Service Division, State Procurement Bureau."[1474] The Joint Interim Committee on State Administration and Veterans' Affairs is tasked with monitoring Department of Administration activities.[1475] There is no oversight of state contracts listed on the committee's agenda for the current biennium.[1476] The state auditor may also perform audits of state contracts, but has not done so since 2015.[1477] The state auditor does, however, regularly perform contract audits of the state's public universities.

Oversight Through Automatic Mechanisms

According to The Council of State Governments (Perkins, 2017), Montana is one of a few states which has never implemented a comprehensive sunset mechanism. However, Montana is one of 10 states that allow legislators to attach sunset clauses to legislation as they see fit—like Michigan (Baugus and Bose, 2015).

[1471] http://governor.mt.gov/Home/Governor/eo, accessed 9/20/18.
[1472] http://governor.mt.gov/Portals/16/docs/2015EOs/EO_03-2015_Crime_Victim_Agencies.pdf, accessed 9/20/18.
[1473] http://www.governing.com/topics/finance/gov-procurement-special-report.html, accessed 10/25/18.
[1474] http://sfsd.mt.gov/Home/Division/AboutUs/aboutSPB, accessed 10/25/18.
[1475] http://leg.mt.gov/content/Committees/Interim/2017-2018/State-Administration-and-Veterans-Affairs/Meetings/July-2017/DofA%202017%20COMBINED%20(002).pdf, accessed 10/25/18.
[1476] https://leg.mt.gov/css/committees/Interim/2017-2018/State-Administration-and-Veterans-Affairs/Meetings/meetings-and-materials.html, accessed 10/25/18.
[1477] https://leg.mt.gov/css/publications/audit/audit_reports_functionagencyalpha.html, accessed 10/25/18.

Other Forms of Oversight Unique to State or Uncommon Across States

Montana has one uncommon mechanism of legislative oversight that we have been able to identify. The Legislative Consumer Committee (LCC) appoints an attorney, the Consumer Counsel, to represent the interests of customers of the Montana public utilities and transportation to the state's Public Service Commission, (Article XIII, section 2, Montana Constitution, Title 5, Chapter 15). The Legislative Consumer Committee consists of two representatives, two senators, as well as a Consumer Counsel. The intention of this council is to incorporate a pro-consumer legal voice into the Public Utilities and Transportation decision-making process.

Methods and Limitations

In Montana, we interviewed a total of seven people out of the 11 people we contacted to ask about oversight. Montana's legislature provides live webcasts of legislative sessions and committee meetings and also provides public and online access to video, minutes, and agendas for their past committee meetings. Montana's online resources were sufficient in conducting a thorough examination of its legislative oversight capabilities. The video recordings are keyed to times on the committee meetings and so it is possible to focus on portions of committee hearings during which legislators ask questions—a very valuable tool.

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Legislative Oversight in Nebraska

Capacity and Usage Assessment

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

Summary Assessment

Nebraska's distinctive legislative structure, unicameral and non-partisan, affords both unique opportunities and obstacles for effective legislative oversight. While nominally non-partisan, the partisan tendencies of every senator is well known. However, the combination of the small membership of the unicameral and the absence of partisan caucuses to provide partisan discipline, has produced a history of collegiality and cooperation across partisan lines. But, with the adoption of term limits, efforts to reduce the impact of moderates in the legislature, and the partisan sorting out between urban and rural areas, this legacy is under stress. Despite this political context, Nebraska's legislature is making good faith efforts to conduct oversight.

Major Strengths

The continued and perhaps increasing use of special oversight committees indicates that there is some frustration on the part of lawmakers with how oversight is conducted through regular standing committees. However, the creation of these special committees appears to be a sincere reaction to highly publicized failures of state agencies. This reactive approach may not provide an ideal model for other states and legislators who desire to be proactive when it comes to robust oversight. For the most part, the special committee trend has proved useful in reforming some agency problems and have helped institute more permanent oversight offices. The Special Oversight Committees on Corrections and Children's Behavioral Services led to the creation of distinct Inspector General Offices where none existed before. Although it appears that there is some element of partisanship driving the formation of these committees, their track record and results demonstrates outcomes that are highly cooperative and honest attempts at oversight. Furthermore, these special oversight committees are seen as useful by the senators themselves, in that they allow for greater communication across committee jurisdictions and help pool knowledge across various arenas of the policy domain (interview notes, 2018). While the ad hoc approach to oversight may not be an ideal way for other states to approach oversight, Nebraska is conducting better and more oversight than in the recent past (interview notes, 2018).

Challenges

While the special oversight committees have produced encouraging oversight outcomes, they are highly reactive to well publicized agency failures. It is difficult to envision this process being utilized by the legislature for "police patrol" type of oversight. Additionally, despite good faith oversight efforts, problems persist with certain agencies. The legislature has created two investigations to be conducted by the Legislative Audit Office (LAO) as well as by the Auditor of Public Accounts (APA), and precipitated a near constitutional crisis over the subpoena of the corrections administrator. The Department of Corrections, however, is yet to reflect these oversight efforts. Finally, the legislature's unique unicameral structure may make oversight more difficult. Since there is only one legislative body, there is no other institutional body that can force or push the senate to conduct more or better oversight.

Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL) classifies the Nebraska Legislature as a hybrid: neither fully professional nor part-time but possessing elements of both. Legislators receive a $12,000 annual salary, plus a $142 per diem in-session for those legislators who reside more than fifty miles from the Capitol building, with a $51 per diem for those who reside within fifty miles (NCSL, 2017). Legislative sessions alternate annually between 90 and 60 days in session. There are 236 legislative staff members, 229 of whom are permanent staff members. Nebraska's legislators are limited to eight years of consecutive service (NCSL, 2017). The Squire Index (2017) ranks Nebraska's legislature as 21st most professional.

The powers held by the Governor of Nebraska are somewhat limited in comparison to those of other states. The governor shares budgetary responsibilities with the legislature and may utilize a line- item veto only on budget-related bills. The legislature may override such vetoes with a three- fifths majority vote. (Beyle, 2008) According to the Council of State Government's (2015) Governors' Institutional Powers Index (GIPI), the Office of the Nebraska Governor ranks 35th in terms of power among state governors. The limited appointment power of the office contributes to this lower rating.

Nebraska has the only unicameral, non-partisan state legislature in the country. The unicameral legislature was established in 1937, following approval of a constitutional referendum in 1934 that also abolished partisan affiliation for legislature members (Nebraska Legislature: History). Staff resources are limited for legislators. As of 2015 there were only 236 staffers (NCSL, 2017), which may be due to Nebraska's unique legislative structure. Within the legislature is the Executive Board, which embodies many of the functions of speaker of the house or majority leader in more traditional institutional arrangements. The Executive Board determines committee assignments, assigns bills to committees, and schedules floor votes, among other "leadership" prerogatives.

The Executive Board consists of nine senators, all of whom are elected by their fellow senators at the beginning of each legislative session. The Executive Board members are: a chair and vice chair, the speaker, and two members from each of the three geographic regions (caucuses) of the state. The Appropriations Committee Chair is a nonvoting board member whenever it considers financial matters.

Political Context

Despite the non-partisan nature of "the unicameral" (as the legislature is commonly referred to), state politics are dominated by the Republican Party. All statewide offices have been held by Republicans since 2013. Aside from former Democratic Governor-turned-Senator Ben Nelson, no Democrat has been elected to statewide office since 1994. In terms of polarization, the Nebraska Legislature is the 35th most polarized legislature in the United States (Shor & McCarty, 2015). In other words, it is not especially polarized. Consistent with this, several interviewees said there is a great deal of cooperation across party lines (interview notes, 2018). The level of polarization may be changing in a way that has not been captured by the Shor and McCarty data. In conversations with knowledgeable interviewees, it was noted that the current governor has made deliberate efforts to elect more ideologically consistent senators (interview notes, 2018). The efforts of the governor and the impact of term limits have lessened the incentive to cooperate across party lines. Further complicating Nebraska's tradition of non-partisan cooperation is the increasing political partisan divide between rural Republican areas and urban and suburban Democratic areas (interview notes, 2018). One observer commented that in the legislature, "there is little compromise anymore and greater partisan discipline than in recent years" (interview notes, 2018).

However, it would be in error to assume that Republican control at the state and federal offices applies to the unicameral. In several instances, some standing committees have a decidedly progressive or liberal lean, for example, the Judiciary Committee. Interviewees noted that known Democrats have headed key committees and Democrats in general have been able to achieve some legislative success due to the more diversified or ideologically splintered Republican membership. Since the unicameral does not have party caucuses to enforce some party discipline, the result is a more independent minded unicameral membership. Additionally, a knowledgeable source noted that Nebraska's political culture has in the past emphasized cooperation and compromise (interview notes, 2018).

The unicameral is comprised of 49 members serving four-year terms. Senators are term-limited to two consecutive terms. However, unlike some term limit states, Nebraska's senators are re-eligible to serve again after four years. The terms of senators are staggered, which means every two years, half of the unicameral is up for re-election.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Legislative Audit Office (LAO) is the legislature's analytical bureaucracy that is most involved in oversight. The LAO is responsible for the state's single audit as well as financial audits of state agencies. It also conducts performance audits of state agencies and programs. Its activities are directed by the Performance Audit Committee (Nebraska Legislature: Legislative Audit Office). The Performance Audit Committee is a special committee, and thus created by statute, in contrast to other types of committee, which are created by rule (Rules of the Nebraska Unicameral Legislature; Rule 3 Sec. 3-5, 2017, pp. 14-17).

Audits performed by the LAO focus on three criteria: (1) the extent to which the audited entities adhere to their prescribed purposes, (2) the degree to which they are succeeding in achieving their stated goals, and (3) their fiscal/budgetary performance. Audits can be conducted either at the discretion of the legislature's Executive Board, at the request of other legislative committees, or legislators themselves.

With a budget of approximately $670,000 and a staff of 8 professionals, the LAO produced 54 reports on specific agencies over the last twenty year, a rate of two or three reports per year. Additionally, the LAO produced annual reports from 2004 through 2017. Many of the agency/program-specific reports pertain to audits, while the remaining reports are mostly memoranda that refer to pre-audits or agency action that rendered the conduct of a full audit superfluous (Nebraska Legislature: Performance Audits). The LAO can request information from state agencies, but cannot issue subpoenas (NASACT, 2015), although the legislature can (Duggan, 2018b).

Although the LAO audits include information on whether program or agency actions are consistent with legislative intent and on whether programs and agencies are meeting their goals, these criteria are considered in the context of agency financial audits (NASACT, 2015). Performance audit reports posted on the LAO website are consistent with this. For example, the audit report on the Research and Development Act (RDA) assesses whether it is attracting business to the state rather than the inner workings of the actions of RDA staff. This is different than audits in some states that schedule site visits to observe agency staff doing their work and to interview program clients with respect to the services they receive. On the RDA audit, a reply from the auditee includes comments from the legislative fiscal analyst about the potential costs and legislation that might be needed for the auditee to comply with the audit recommendations.[1478]

There are two legislative analytic bureaucracies in addition to the LAO; (1) The Legislative Fiscal Office (LFO), which analyzes and predicts the financial effect of proposed legislation, and; (2) The Legislative Research Office (LRO), which provides research assistance and reports to legislators (Nebraska Legislature: Legislative Divisions). During legislative sessions, the Appropriations Committee directs the work of the LFO. It is a small unit with only 15 staff that was created in 2002 to assist legislators in the budget process.

In addition to these legislative analytic bureaucracies, Nebraska has a statewide elected state auditor called the Auditor of Public Accounts (APA). It is important to note that the legislature has no authority or committee that directs the actions of the APA or reviews its work. The APA is constitutionally a member of the executive branch but retains a level of independence from both the governor and the legislature. The APA has the constitutional authority to audit all state fiscal activity and audits all state agencies, commissions, and bureaus, as well as local school districts, counties, and court systems.[1479] The APA also reviews compliance issues with government programs and services that utilize federal funds, conducts the state's Comprehensive Annual Financial Report (CAFR), and audits the state lottery and state retirement systems.[1480]

[1478] https://nebraskalegislature.gov/pdf/reports/audit/na_research_dap_2017.pdf, accessed 7/6/18.
[1479] http://www.auditors.state.ne.us/About_Us/History_Major_Duties_&_Mission_Statement.html, accessed 11/27/18.
[1480] http://www.auditors.state.ne.us/About_Us/History_Major_Duties_&_Mission_Statement.html, accessed 11/27/18.

It appears that the APA is an active audit agency engaged in a wider-range of financial auditing functions. In 2018 alone, the APA issued 152 reports related to audit investigations, however, the vast majority of these reports are statutorily required reports of subdivisions of government like counties, municipalities, and courts or lottery and pension funds for which the state is responsible. Of the 152 reports in 2018, 50 were related to counties and municipalities, 55 related to court systems, and 22 to other statutorily required reviews like CAFR, lottery, or retirement systems.[1481] The APA's office is comprised of 45 staffers who conduct special investigations of fraud, waste, or abuse by state and local government employees.[1482] A positive sign is that the staff regularly testifies at pertinent committee hearings and is available to senators on a formal and informal basis.

It is important to note that the APA does not conduct performance audits; only the LAO conducts these audits. The APA's work on special investigations can leverage the legislature's oversight efforts, however. In 2015, the APA issued a report detailing systematic issues within the Nebraska Department of Correctional Services over how funds were spent by department subunits.[1483] During this period of time, the Nebraska Legislature had commissioned a special oversight committee, the Department of Correctional Services Special Investigative Committee, to examine fiscal and policy issues that plagued the troubled corrections system.[1484] As will be discussed below in the "Oversight Through Committees" section, the Department of Correctional Services has had repeated instances of mismanagement, both from a fiscal and procedural aspect. The legislative response with the special investigative committee is a key tool in how the Nebraska Legislature exercises oversight.

Over the past four years, the most recent auditor, Charlie Janssen, made deliberate efforts to improve the relationship between the APA and the legislature. For instance, the auditor established a legislative liaison position to improve communication between the APA and state senators (interview notes, 2018). One interviewee stated that the previous auditor would meet with senators, but senators felt conversations were more in line with "being lectured" than consulted (interview notes, 2018). The recent efforts have made a previously contentious relationship more collaborative, especially with the LAO. Prior to the current auditor, the APA and the LAO often had an adversarial relationship regarding appropriate jurisdiction and which agency could investigate what (interview notes, 2018). Currently, the APA and the LAO notify each other when an audit or investigation may impact either's work (interview notes, 2018). This overall improved communication and collaboration has allowed the APA to send legislative recommendations that enhances the ability of the APA to conduct investigations, for example, granting the APA the power to issue subpoenas (interview notes, 2018).

Oversight Through the Appropriations Process

The legislature approves "a full biennial (two-year) budget, which is enacted during regular legislative sessions held in odd-numbered years (the long, 90-day session)." The

[1481] http://www.nebraska.gov/auditor/FileSearch/years.cgi, accessed 11/27/19.
[1482] http://www.auditors.state.ne.us/About_Us/staff.html, accessed 11/27/18.
[1483] http://www.auditors.nebraska.gov/APA_Reports/2015/SA46-11022015-July_1_2013_through_December_31_2014_Attestation_Report.pdf, accessed 11/27/18.
[1484] Hearing held on November 4, 2015. https://nebraskalegislature.gov/calendar/hearings_range.php, accessed 11/27/18.

appropriations process is delineated in Rule 8 of the legislature's rulebook. The process is as follows: The governor submits a proposed budget, which is examined by the legislature's Appropriations Committee, with the assistance of the Legislative Fiscal Office (LFO). After holding hearings and following analysis by the LFO, the Appropriations Committee releases its budget recommendation. Next it crafts its appropriations bills. Rather than one, comprehensive bill, the budget is voted on as discrete items. These bills are then submitted to the full legislature and, if approved, sent to the governor (Nebraska Legislature: Budget Process). In cases of gubernatorial veto (line-item or full), the legislature may override such veto with the vote of 30 of its 49 members (Nebraska Legislature: Budget Process). To provide some budgetary context, the biennial budget for FY 2017-19 was $8.9 billion.

One of the LFO's responsibilities is to conduct oversight of the appropriations process.[1485] The LFO compiles yearly budget reports, general fund status updates, and updates on the state's revolving fund. These are not audits and cannot be labeled "audit." Complicating efforts to determine the quality of oversight performed by the Appropriations Committee, there are no archival recordings of committee hearings, either audio or video. The clerk of the legislature does provide transcripts of all committee and floor sessions. After reviewing several extensive transcripts, we found some basic oversight performed by some legislators. Specifically, we found evidence of oversight with respect to Medicaid reimbursement to hospitals and nursing home Medicaid rates.[1486] However, only two or three senators questioned the different Department of Health and Human Services administrators; most committee members asked no questions.

For FY 2018, oversight efforts appear focused on high profile problems. For example, the troubled Department of Corrections received no increase in funding and the Health and Human Services requested more funds for child welfare services, which are explained in greater detail in the next section (Nitcher, 2018). While there may be rigorous oversight being conducted of state agencies and specific programs within those agencies, it is difficult to ascertain the depth of that oversight from the available public record. But it does appear that legislators pay attention to recurring problems.

Although evidence of audits used in the appropriations or budget process is scarce, in 2018, there was one widely publicized use of an audit report. This involves the state single audit in 2016 of programs that received federal funds. A Planned Parenthood office in Heartland used public money (6% of the funds examined) for abortion related services according to the audit. Planned Parenthood claimed that this was paid for with privately raised funds that were not correctly recorded in its accounts. This led to a budget impasse in 2018 after the governor included a measure in the budget that would have prevented funding for any group that counsels or refers clients to abortion providers. The legislature, controlled by Republicans, balked because this would have cut funds for health clinics that refer women to other providers that provide abortion services (Chicago Tribune, 2018). These lawmakers were concerned that this would reduce access to contraceptives and other reproductive care for low-income citizens in the state. Ultimately, the budget passed with the restriction on funds that the governor sought (Associated Press, 2018). Although this incident indicates that audits are used in the budget process, it hardly qualifies as legislative oversight of the executive branch. Rather it illustrates executive branch

[1485] https://www.nebraskalegislature.gov/reports/fiscal.php, accessed 11/22/18.

[1486] https://nebraskalegislature.gov/FloorDocs/105/PDF/Transcripts/Appropriations/Agency%2025%20HHS%203-13-17.pdf, accessed 11/22/18.

use of audit information to extract concessions from the legislature.

Oversight Through Committees

Nebraska has 14 standing committees, special committees, which are established by law, and select committees, tasked with procedural responsibilities. All three have formal power that could be used to conduct legislative oversight. Additionally, the legislature passes resolutions annually to authorize Interim Study Resolutions, which empower committees to investigate specific policy problems during the interim.

Standing committees may review, hold hearings, and propose amendments to an appropriations bill following the bill's submission by the Appropriations Committee, provided that the bill pertains to said standing committee's "subject-matter jurisdiction" (Rules of the Nebraska Unicameral Legislature, Rule 8 Sec. 4, 2017, pp. 55-56). Despite the authority of standing committees to engage in these activities, the work of standing committees is controlled by a centralized leadership system in which the nine-member Reference Committee refers bills to standing committees. For example, per Rule 3, Section 21.A of the legislature's rules, any committee (standing or otherwise) has the power to issue subpoenas, but only if the "committee has received prior approval by a majority vote of the Executive Board to issue subpoenas in connection with the specific inquiry or investigation in question" (Rules of the Nebraska Unicameral Legislature, 2017, p.23).

The Executive Board of the Legislative Council is a special committee that "supervises all legislative services and employees," including the referral of bills to the pertinent committee (Nebraska Legislature: News). The members of the Executive Board of the Legislative Council are also the members of the Reference Committee—a very centralized committee structure. There are other special committees that play an important role in legislative oversight. As discussed above, the LAO currently operates under the direction of the Performance Audit Committee, a special committee. The committee's reports discussed above provide documentation of its oversight activities.

In recent years there has been a move by the unicameral to create specific oversight committees with jurisdiction separate from regular standing committees. Movement to create these committees is often associated with a highly publicized failure on the part of a state agency. For example, in 2017, lawmakers created a prison oversight committee to look at issues involving corrections, parole and probation (Schulte, 2017). In 2017, legislators considered creating an oversight committee to examine issues in the child welfare system. The call for a special oversight committee was the result of an internal inspector general report that focused on 50 children who suffered sexual abuse while in the care of the state (Nelson, 2017). Then, in 2018, the unicameral created a special oversight committee to examine issues with assisted-living facilities after a highly publicized death of a World War II veteran in September 2017. Previous violations had been identified at the facility in question by the Department of Health and Human Services in June and July of 2017, but the Department took no action (Young, 2018).

In addition to these committees, in the past five years there has been a Children's Behavioral Health Oversight Committee and the Developmental Disabilities Special Investigative Committee. However, there appears to be reluctance about standing committees conducting oversight or establishing more oversight mechanisms. In 2018, LB 1093 would have established the Office of Inspector General for Public Health after several highly publicized

deaths in assisted-living facilities. However, the bill failed to advance out of the Health and Human Services Committee.

Observers and participants in the unicameral have cited three reasons that have necessitated the creation of these special oversight committees. First is the nature of the unicameral itself; senators need more opportunities to dig into specific issues and policies. The normal standing committee process, combined with the short legislative session, cannot or does not allow for detailed oversight. Second, the special committees provide an opportunity for a mixture of committee perspectives. These special committees are often comprised of members from appropriations, the pertinent standing committee, and outside members. This element driving the formation of these committees cannot be overstated. Often issues of oversight pertain to budgeting and resource allocations, but also issues of licensing or agency communication. In the instance of the Special Oversight Committee on Correctional Services, elements of the corrections system failed to or were unable to communicate on who was to be released or who was up for parole. This resulted in the release of Niko Jenkins who did not want to be released and told parole board members if he was released he would go on a killing spree. He was subsequently released and murdered four people (WOWT 6 News, 2015).

Third, the committees provide a partisan outlet for those senators in the political minority. While Nebraska is nominally non-partisan, it is clear to everyone in and out of government where senators' political allegiances lie. This is reinforced by the fact that the first Prison Oversight Committee was chaired by a senator everyone knew to be a Democrat. Finally, oversight committees are becoming increasingly popular and important as term limits fully take effect. Senators are limited to two consecutive terms and then can become re-eligible to run in four years. The result has been a lack of institutional memory or knowledge, which can inhibit oversight efforts of individuals and by extension the committees on which they serve. The special oversight committees can pool knowledge from several different committees and narrow the policy focus in a way that does not burden the normal legislative duties of standing committees.

There was a clash in 2018 between the executive and the unicameral over the legislature's prerogatives to exercise oversight. The state attorney general sued to stop the unicameral from exercising its legislative oversight authority regarding an inquiry into Nebraska's death penalty processes (Duggan, 2018a). Several years ago, the unicameral banned the death penalty only to have it reinstated by a popular initiative driven by the governor. The initiative passed with 61% of the vote, and the death penalty was reinstated. The Unicameral Judiciary Committee attempted to hold a hearing and subpoenaed the Director of Correctional Services, Scott Frakes, to answer questions regarding the state's lethal injection protocol. The Chairwoman of the Judiciary Committee, Sen. Laura Ebke, wanted to understand how the Corrections Department acquired and devised the "four-drug combination" in the state's first execution in over 20 years. She stated that this was central to the legislature's oversight powers. In this instance a legislature's attempt to exercise oversight resulted in the attorney general suing 16 state senators and precipitating a possible constitutional crisis. This effort has strong partisan undertones that relate to past battles to reinstate the death penalty. It appears that oversight in this instance is less about monitoring agency performance than in focusing public attention on a sensitive politically polarized issue.

Oversight Through the Administrative Rules Process

According to The Book of the States, the Nebraska Legislature's role in the administrative rules process is solely advisory (Council of State Governments, 2016). In fact, this characterization appears to be overly generous: according to the Nebraska Secretary of State's summary of the administrative rules process, the legislature does not even have an advisory role. The process is as follows: an agency proposes a rule, public hearings are conducted, and then the proposed rule is submitted to the attorney general and the governor for final approval (Nebraska Secretary of State: Rules and Regulations). Proposed rules are sent to the legislature, and if any legislator objects to the rules he or she may send a letter of complaint to the relevant committee or to the bill's sponsor arguing that the rules do a disservice to the legislation. If the complaint is deemed to have merit, it is sent to the agency requesting a written reply within 60 days. None of this is binding on the agency, so, effectively, the legislature has no way to block a rule to which it objects.

Oversight Through Advice and Consent

The legislature's rules stipulate that gubernatorial appointments are referred to the relevant standing committee by the Reference Committee (consisting of the members of the Executive Board of the Legislative Council). The committee then holds confirmation hearings at which the appointee must testify, unless excused from doing so by the committee chair. The committee then provides its recommendation, followed by a vote by the full legislature to either confirm or reject the appointment (Rules of the Nebraska Unicameral Legislature, Rule 3 sec. 3(e), 2017, p. 16).

In practice, legislative rejection of gubernatorial appointments is exceedingly rare. In 2015, a controversial appointment of the Chief Medical Officer was confirmed, but only after a second vote and a request from the governor. Ironically, the appointee resigned a week later. Nonetheless, this sort of dispute over a gubernatorial nominee is rare; "Capitol staffers could not remember a rejection of a governor's appointee by the legislature in recent history" (Young, 2015).

The unicameral lacks power to oversee gubernatorial executive orders. The governor can use these orders to manage all forms of disasters and emergencies, and to create entities to study or investigate issues. The governor cannot use executive orders to respond to federal requirements, to reorganize state agencies or to conduct state personnel administration. It appears that Nebraska's governors make sparing use of executive orders. There was only one listed for 2018, nine for 2017, and none for 2016. Most of the orders in 2017 involved fires, droughts, and Hurricane Harvey.

Oversight Through Monitoring of State Contracts

Monitoring of state contracts is conducted within the executive branch by the Department of Administrative Services (DAS). This appears to constitute data collection more than oversight. The DAS maintains a database of state contracts.[1487]

Oversight Through Automatic Mechanisms

According to the Council of State Governments (2016), Nebraska's use of sunset legislation is discretionary, without a specific sunset commission. Rather, legislators may attach sunset provisions to legislation, boards, or commissions if they so choose (Table 3.27, p. 132).

In practice, the use of sunset provisions is somewhat rare. Within the legislature's last five sessions, only two instances of the attachment of sunset provisions to bills were found, both of which pertain to tax incentives. Within this same period, sunset provisions were removed from four already existing programs. Sunset periods were extended on two programs, while one program (a property tax levy) was discontinued at the expiration of its sunset clause (Nebraska Legislature Session Reviews, 2013-17).

Methods and Limitations

For Nebraska, three people were interviewed out of the six people that were contacted. We found no minutes for committee hearings, although there are publicly available transcripts. While there are no agendas available for past committee hearings, Nebraska's legislature has a website that shows what days committees met and what bills were considered in each meeting.[1488]The legislature does not make audio or video recordings of committee meetings available on its webpage. There are only live broadcastings. Limited archival resources make it difficult to be confident in our assessment of the quality of legislative oversight.

[1487] https://statecontracts.nebraska.gov/Search, accessed 7/7/18.
[1488] https://nebraskalegislature.gov/calendar/hearings_range.php, accessed 11/24/18.

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Legislative Oversight in Nevada

Capacity and Usage Assessment

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

Summary Assessment

Although Nevada's legislature meets only biennially, it uses several mechanisms to ensure continuity in legislative oversight. First, it uses interim committees to pursue oversight when the legislature is not in session. The stipends provided to members on these committees mean that a handful of legislators are literally paid to perform clearly defined oversight activities (e.g., audit hearings and sunset reviews). Second, the Legislative Counsel Bureau (LCB), which produces legislative audits, is an exceptionally powerful bureaucratic support agency. It can cut funds to state agencies based on audit findings, although it appears to use this power very rarely. This provides a mechanism for prompt response to serious problems that might arise between the infrequent legislative sessions. The legislature itself uses its oversight prerogatives (such as sunset reviews) more vigorously than many other state legislatures.

Major Strengths

The state balances partisan representation on oversight committees, which increases the potential for bipartisan oversight. The LCB works closely with the interim oversight committees to ensure that agencies comply with audit recommendations. Interim committee members are paid a daily salary plus expenses, thus, when the legislature is not in session, members of the interim oversight committees are paid to perform oversight activities, which could contribute to legislators' commitment to oversight. The LCB produces compliance reports and the legislature uses these reports in appropriations hearings to impose budget consequences on agencies that resist audit recommendations. The LCB also recommends legislative action based on audit findings and produces reports on whether the legislature acted. These reports (agency compliance and legislative action) are available publicly, which increases transparency and information about government performance. Nevada has sunset review requirements, and its legislature uses this power to terminate, consolidate, or revise boards and commissions. In its most recent review it made changes to two-thirds of the entities it reviewed.

Challenges

Nevada's legislature has almost no power to oversee gubernatorial appointments; only one gubernatorial appointment requires legislative confirmation. As is typical for most states, the legislature lacks the power to oversee state contracts directly. It can only interject itself into contracting problems through an audit report of the agencies involved in the contract. These lacunas are important because the gaming industry is a major actor in the business and political environment in Nevada. Giving the executive branch a free hand in appointments and contracts may leave the state vulnerable to conflicts of interest and improper conduct in industries that involve huge sums of money.

Relevant Institutional Characteristics

Nevada has a citizen legislature, ranked 30th in professionalism according to Squire (2017). Nevada is one of only four states that meet biennially. The legislative session is constitutionally restricted to a maximum of 120 consecutive days, and legislators are paid for only the first 60 days at a rate of $146.29/day for midterm members and $150.71 /day for those elected in 2016, plus both receive expenses (NCSL, 2017a). This equates to about $9,000 for the legislative session for the base pay, with an estimated maximum compensation of $17,000 (Gray et al., 2017). Thus, many legislators are likely to hold professions outside of their legislative responsibility (NCSL, 2017b). During the session, there is one full-time secretary for the legislature. In 2015, there were 284 permanent staff and 301 session-only staff, for a total of 585 permanent and session-only staff serving the legislature.[1489] Between legislative sessions, the members have no district or personal staff. In 1999, Nevada created a non-partisan support unit, the Legislative Constituent Services Unit, to assist legislators. The unit has 14 staff members during the legislative session.

Nevada has a relatively small legislative body with a total of 63 members, 42 in the assembly and 21 in the senate. The term limits for the state legislature in Nevada are among the weakest, along with Wyoming and Louisiana. The state constitution allows for a maximum combined total of 24 years of service, 12 years in each chamber. The leniency of the term limits allows legislators to gain substantial experience in their roles.

Nevada's governor possesses only slightly more than the average U.S. governor's power. Ferguson (2015) ranks the state's governor as the 21st most powerful in the country. Several factors limit this power. First, Nevada has a biennial budget process, and the governor lacks line-item veto power. The governor holds only package veto power, which means that the entire bill must be rejected. The executive branch budget department's forecast limits everyone's budgetary discretion, although in theory the governor might be better positioned to influence the agency's estimates. Second, in 2012, the governor lost sole power to call a special session of the legislature. The legislature now shares the power to call a special session, if necessary. Third, the governor lacks the power to reorganize government. Historically, reorganizations have occurred

[1489] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 6/29/18.

through legislative action.[1490] Fourth, several other executive branch officials are elected separately, including most notably the lieutenant governor, the treasurer, and the controller, in addition to the more commonly elected attorney general and secretary of state (Haider-Markel, 2008). On the plus side, the governor appoints other department heads, so Ferguson rates this as moderate appointment power (Ferguson, 2015). Also, there is no legislative review of executive orders.

Nevada has the lowest average share of local and state government employees as a percentage of its workforce of all of the states. The national average is 11.3%, while Nevada has only 8.6%, according to the Cato Institute (Edwards, 2006). Of these employees, a lower than average share work in K-12 education (4.1% for Nevada compared to 6.1% nationally). In the areas of safety, welfare, and services, there is no significant difference in comparison with the other states (Edwards, 2006).

Political Context

Nevada was historically a solidly Democratic state until the 1980s, when an influx of conservative voters led to Republican takeover (Haider-Markel, 2008). More recently, (1993 onward), Nevada became a battleground state, split between both parties.[1491] Currently, a young urban population in southern Nevada and an older, more rural population in northern Nevada shape the political context. In 2016, this dynamic produced a shift from a Republican trifecta to divided government with Democrats controlling the legislature and Republicans retaining the executive branch. Reflecting the history of Republican influence, state government emphasizes limited government, low state services, and low tax burden. In 2018 Nevada became a Democratic trifecta. A change in voter demographics, in particular, the growing proportion of minorities who disproportionately vote for the Democratic Party, could also be a factor in this shift (Posner & Ocampo, 2015).

Although two-party competition in the state persists (Hinchliffe & Lee, 2016), the distance ideologically between the two parties in both legislative chambers is not as wide as one might guess. Shor and McCarty (2015) place Nevada's lower chamber and upper chambers at about the middle of the pack nationally, 24th and 29th most polarized respectively. Much of this can be attributed to a relatively moderate caucus for both political parties in both these legislative chambers. Approximately 30 other states have a more liberal Democratic caucus than the ones in Nevada's lower and upper chambers and between 25 and 30 state Republican caucuses are more conservative than are Nevada's Republican caucuses. Party competition appears to pull both political parties toward the center in Nevada.

The gaming industry has an overwhelming presence in Nevada. During the 2016 election cycle, the industry donated to the campaigns of every member of the legislature. These donations amounted to almost a fifth of the aggregate total of campaign financing reported (Messerly, 2017). As will be evident, the activities of this powerful interest group appear to motivate efforts to monitor government entities. This encourages use of checks and balances more generally throughout state government.

[1490] The 2011 SB427 and several assembly bills in 2015 authorized the movement and reorganization of several state agencies. In 2017, AB469 passed into law and authorized the reorganization of the Clark County School District.
[1491] https://ballotpedia.org/Party_control_of_Nevada_state_government, accessed 6/29/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The legislature in Nevada is closely linked to its analytic support bureaucracies through a committee of legislators called the Legislative Commission (LC), which works in tandem with the Legislative Counsel Bureau. The Legislative Counsel Bureau (LCB), created by statute in 1945, is a staff agency supervised by the Legislative Commission, (LC) which consists of 12 legislators, six from each chamber. The LC is empowered to function between sessions, during which legislators receive a daily salary, per diem, and a travel allowance. The membership of this commission is established anew by a joint rule adopted at the start of each regular session of the legislature. Most of the LC members hold leadership positions within their chamber party caucuses. The 2018 LC members include six Democrats, five Republicans, and one Independent, which is much more balanced than the partisan composition of the two chambers (the senate: 11 Democrats, nine Republicans, and one Independent, and the assembly: 27 Democrats and 15 Republicans). This is another example of a state in which committees with oversight responsibility provide an opportunity for participation by the minority party. Three subcommittees within the LC are tasked with specific oversight responsibilities: The Audit Subcommittee, the Subcommittee to Review Regulation, and the Sunset Subcommittee.

The LC oversees the LCB, which has five staff divisions, two of which are relevant to legislative oversight: The Audit Division and the Fiscal Division. The commission appoints the Director of the LCB, who, in turn, appoints the directors for the LCB divisions, including the Chief of the Audit Division who serves as the legislative auditor. The legislative auditor is responsible for oversight over all state agencies, general audits, financial audits,[1492] and single audits,[1493] as well as auditing federal programs at the state level, school district reviews, child welfare case file reviews, and special license plate reviews. It works closely with an LC subcommittee, the Audit Subcommittee, which consists of five legislators. The LC has the authority to request special audits or investigations, thus, legislators can influence the legislative audit agenda. During the 2015-2016 biennium, the legislators, through the commission, requested two special audits, an audit of the Nevada State Board of Dental Examiners and an audit of Horse Power, a 501c3. These audits focused on the expenditures and performance of these agencies.

The LCB is empowered to conduct investigations, hold hearings, and may subpoena witnesses and compel the production of any documents necessary to its investigations (NRS, 218). Audits may vary in scope based on the agency and the purpose of the audit. Agency audits include fiscal affairs and performance of the agency. The audit division receives a state appropriation of $3 million and employs 27 professional staff to support its work. Almost all of its staff (23 of 27) work on performance audits and two staff perform IT audits. Some financial audits are completed by contracted CPAs.

After the Audit Division generates an audit report, the agency has 10 days to respond in writing to the findings and recommendations, either accepting or disputing them. Once an audit is complete and accepted by the Audit Subcommittee, the agency has 60 working days to produce a corrective action plan and submit it to the Audit Division (interview notes, 2018).

[1492] https://ballotpedia.org/Nevada_Legislative_Counsel_Bureau, accessed 1/3/19.
[1493] https://www.leg.state.nv.us/Division/Audit/, accessed 1/3/19.

Once a corrective action plan is agreed to, the agency has six months to implement it. At the end of the six months, the agency's operations are reviewed once more by the Audit Division. If the audit division is not satisfied, the division will make further recommendations and will take the information to the Legislative Commission and Audit Subcommittee. If an agency fails to complete a corrective action plan, the Director of the Office of Finance is notified (NRS, 218G.250, NRS, 218G.260). This can trigger a hearing to determine if appropriated funds will be withheld from the agency. Although this is an executive branch office, the process is triggered by request from the Audit Division, which as described above is supervised by a legislative entity, the LC. This hearing process has only been triggered once, and no funds were withheld because the agency complied (interview notes, 2018). This process for ensuring that corrective action plans are completed was highlighted in a 1991 Government Accountability Office document detailing best practices.[1494]

During the 2015-2016 legislative session, the Audit Division completed 13 agency performance audits, two information security audits, and a review of governmental and private facilities for children, which state statute required. The audited agencies are required to respond to all recommendations. The individual audit reports detail the recommendations provided, which recommendations the agencies accepted, and information on subsequent corrective action plans as necessary. The legislative auditor can also recommend the amendment of existing laws or enacting new laws. During the 2015-2016 biennial legislative session, the LCB recommended bills requesting performance audits for improving state government. This resulted in one piece of legislation signed into law on audit requirements for the Department of Education (A.B. 278 2015).

The other division of the LCB that is involved in oversight is the Financial Analysis Division (FAD), which aids legislators with budget and fiscal analysis, as well as tax issues. It is led by the senate fiscal analyst and the assembly fiscal analyst who supervise a staff of two deputy fiscal analysts and 23 program analysts.[1495] The FAD works with the Interim Finance Committee. This committee consists of seven senators and 14 assembly members chosen from the Senate Standing Committee on Finance and the Assembly Standing Committee on Ways and Means.[1496] The Interim Finance Committee provides continuity on budget and financial transactions between regular legislative sessions. It is empowered to provide contingency funds to state agencies. Agencies request these funds through the State Board of Examiners, which passes requests along to the Interim Finance Committee if it deems them justified.

The FAD staff produces an annual fiscal report that analyzes the governor's executive budget, summarizes revenue, expenditure trends, and tax changes, as well as budget information for each state government function. The division also produces an appropriations report. It annually forecasts the state's general fund revenues.

Vignette: Community Based Living Arrangements

Reporting by the Reno Gazette Journal in 2016 exposed terrible living conditions in housing paid by the state to privately owned, residential homes to house mentally ill patients (KNPR, 2018). This initial reporting did not result in corrective action from the agencies or the executive branch, but the legislature investigated through its Audit Division. The resulting audit

[1494] https://www.gao.gov/special.pubs/p0921.pdf, accessed 6/29/18.
[1495] https://www.leg.state.nv.us/Division/Research/Publications/Directory/Directory.pdf, accessed 6/29/18.
[1496] https://www.leg.state.nv.us/Division/Research/Publications/Misc/LCBOverview.pdf, accessed 6/29/18.

and the subsequent vigorous oversight demonstrates that Nevada has the capacity to gather actionable information about its agencies, transmit that information to legislative leadership, and develop a plan specific to the agency to ensure accountability. We trace this process from initiation to the most recent steps taken by the legislature to hold the agency accountable to highlight the effective practices found in Nevada's legislative oversight.

Media coverage and other risk-based factors led the Audit Division of the Legislative Counsel Bureau to put the government program, called, "community-based living arrangement homes," on its yearly audit schedule for 2017 (interview notes, 2018). The scheduled audit was added to a slate of other scheduled audits for the coming year, which is required by law to be submitted to the Legislative Commission Audit Subcommittee for a majority vote.[1497] The goal was to ensure the public resources were being spent in the manner intended, that the proprietors of the homes were providing a safe, clean living environment, and that the routine inspections conducted by state agencies to ensure compliance were working (interview notes, 2018).

Once scheduled and approved, the audit was assigned to an audit team. Part of the audit process included field trips to the group homes. Thirty-seven such homes were visited during the audit process. Each patient in the home brings in $1,450 a month for the proprietor and some homes have six to seven patients at once (Giwargis, 2018a). Once the investigation and audit report were completed, the document was given to legislators serving on the Legislative Commission Audit Subcommittee. The subcommittee members have eight days to review the report before their scheduled public hearing with Audit Division staff and the government agency responsible for implementing and monitoring group homes, in this instance, the Division of Public and Behavioral Health (Associated Press, 2018). By statute, the details of the audit remain confidential while it is being produced, and legislators are not permitted to see the audit report until eight days before the initial public hearing. At the hearing, the audit is presented, and then the Audit Subcommittee votes on whether or not to accept the audit—a formal procedure required by statute. Audits have always been accepted (interview notes, 2018).

Findings presented at the January 17, 2018 Audit Subcommittee public hearing exposed mismanagement and deplorable living conditions in 37 group homes. Photos in the audit report show animal infestations, mold, filth, piles of garbage, human waste, and broken glass. Some patients were expected to provide child care for the proprietors while they were at work, and medications were not securely stored. The audit noted failures on the part of inspectors, who did not flag these issues despite a mandatory monthly inspection of the homes. Annual reports that did identify problems did not trigger action—only an inspection again in another year (Giwargis, 2018f), allowing conditions in the homes to worsen (Giwargis, 2018f). A senator at the hearing called the program a "failure" and stated "taxpayers are basically paying slumlords to warehouse people with mental illness in unsafe and filthy conditions" (Giwargis, 2018a). An administrator for the program was grilled by legislators. She did not defend the conditions of the homes, but rather stated that the deputy administrator had been replaced, and they are working with the homes to make improvements. She would later resign after it came to light that the deputy administrator was replaced for other, unrelated reasons, and amid accusations that she lied to legislators during the hearing (Giwargis, 2018d). One of the difficulties identified in the

[1497] Practitioners stated that there are three audit sources: Legislative Commission, statute, and the Audit Division placing it on a schedule that must be approved by the Audit Subcommittee. The yearly schedule source of initiation was described as by far the most common source, with the other two being tied in frequency. We were also told that agency staff and the governor do not make requests of their office for audits, rather there is a parallel agency within the executive branch that performs the same function.

report and a possible explanation for some of the underreporting of unsafe or dirty living conditions is that there are not enough homes currently available to meet the needs of patients. This is an issue the agency is expected to address.

The hearing itself triggered efforts to correct the problems. Practitioners close to the issue said, following the hearing, oversight in this area was "vigorous" and corrective action from the agency was relatively swift. The Director of the Nevada Department of Health and Human Services, Richard Whitley, replaced the administrator. He made public his commitment to addressing the issues identified in the audit. A part of the plan is to inspect all homes in the community-based living arrangement program (Dornan, 2018), and he transferred responsibility for the inspections from case workers and clinicians to Health Care Quality and Compliance, a licensing and regulatory agency that oversees health care businesses (Giwargis, 2018f). Based on a home's condition, it would be put on a 10 or 30-day corrective action program (Giwargis, 2018e). Failure to make the required improvements in time could result in the home being ineligible for the program. 84 homes in Southern Nevada and 38 homes in Northern Nevada were put on a corrective action program in February 2018. One home was closed by the state, yet the University of Nevada Las Vegas mental health clinic continued to place patients in the home despite its closure. Once state officials learned that patients were still being sent to the home, the home was closed once again and the UNLV clinic that was sending patients to the closed home lost state support for the program (Giwargis, 2018c). Additional investigations into contracts associated with the community-based living arrangements program are ongoing and expected to be completed this summer.

In addition to agency corrective action, an interviewee stated three different legislative health committees held hearings during the interim at which the Audit Division staff presented information on this issue. Further legislative action is not expected; rather the governor and the executive branch are being given time to make corrections. In addition to the actions taken by the agency and the change in leadership, interviewees stated that the governor has made changes to oversight of the program, taking it out of the mental health agency. While it is possible for legislation to result from an audit—it happens two to three times every session— it is not expected (interview notes, 2018).

By tracing the audit from its initiation to implementation of corrective action plans, this case of community-based living arrangements demonstrates legislative capacity and utilization of legislative oversight through the analytic bureaucracy.

Oversight Through the Appropriations Process

The Fiscal Analysis Division (FAD) of the LCB conducts most of the analysis during the appropriations process. The Nevada Revised Statutes (NRS) outlines the composition and responsibilities of the division. As noted earlier, the division consists of the senate fiscal analyst, the assembly fiscal analyst, and 25 other staff as needed to provide the legislature with independent review and analysis of budgetary, tax, and fiscal matters. The FAD has the authority to request information from any elected official, agency, board, or other institution that receives state or federal funding for state programs for performing the duties of the division (NRS, 218). Prior to the beginning of each legislative session, the FAD is responsible for providing information and support to the appropriations committees from both legislative chambers in

advance of the committee budget hearings. The FAD coordinates all actions and information between legislative subcommittees, money committees,[1498] and the agencies.

The legislature is responsible for review of the biennial budget proposed by the governor, as well as agency funding requests. The legislature approves final budget appropriations. Reports completed by the FAD compare the budgets requested by the governor and state agencies with what the legislature actually approved. Reports from the legislative auditor can also impact the appropriations process (interview notes, 2018). An interviewee recalled budgets being "adjusted downward when the Audit Division has identified cost savings or revenue enhancements as part of . . . audit recommendations" (interview notes, 2018). As noted earlier in this summary, the money committees can also put pressure on agencies to implement audit recommendations during the budget process.

The following example illustrates oversight through the appropriations process. In February 2017, the Assembly Ways and Means and Senate Finance Committees held hearings with State Treasurer Dan Schwartz.[1499] The hearing was regarding the treasurer allegedly failing to follow the direction of the committees in situations regarding hiring and other projects. The Chair of the Assembly Ways and Means Committee, Maggie Carlton, asked a staffer a series of questions and other legislators followed up with both statements and questions to confirm the agency's failure to comply with legislative intent expressed several years prior. The following exchange exemplifies the legislature engaging in oversight in the hearing (approximately one hour and 40-minute mark):

> Legislator: This is the beginning of what in my notes seems to be a theme of the legislature having been asked for something, the legislature having said no, then your office doing it anyway and then coming back two years later to ask the legislature to pay for something they already said no to.....it seems to be a theme and I'm wanting to make sure I understand how that happened because the answer [the legislature] gave was no. . . .
>
> Dan Schwartz: We need that position..... you certainly have the right to give us a budget, no one is disputing that, okay, but we need that position. And again, we are members of respective branches of government and we believe since we stayed within the budgetary guidelines we had the right to [make that hire].

The agency then explained that because they had enough money at the time to make the hire, and they got permission from the executive branch, they went ahead and did it. To that, a legislator responded, "It feels like my son went to mom and mom said 'no,' then my son went to dad and dad said, 'you don't have to go back to mom.'" What followed was an argument about process with the chair making the final point that the legislature, not the executive, decides on these kinds of budgetary issues. The projects in question include the Educational Savings Account program and the expansion of the state's College Kick Start program (Margiott, 2017). There is no evidence of any punitive action against the treasurer as a result of the hearing. This is likely because the treasurer is an independently elected official, but the legislature, using its power of the purse, eliminated funding for the program.

[1498] In Nevada the common terminology for appropriation committees in money committees.
[1499] http://nvleg.granicus.com/MediaPlayer.php?view_id=29&clip_id=6693, accessed 10/5/18.

Oversight Through Committees

The volume of bills and resolutions introduced in a legislative session is unwieldy for a citizen legislature that meets, typically, for 120 days every two years. Because it is difficult for standing committees to handle the workload during the legislative session, Nevada relies heavily on interim committees, which meet when the legislature is not in session. In the 2017-18 interim there were 24 statutory committees and 9 legislative interim studies. Because the Nevada legislature meets biannually, the interim is long—20 months. Yet interim committees do not appear to meet very often. Some interim committees, according to the citizen's guide to Interim Committees of the Nevada Legislature, [1500] meet outside the state capital. For example Committee on High-Level Radioactive Waste the toured the Nevada National Security Site during one of its meetings during the 2017-18 interim. This committee made no recommendations in its report, nor did it propose legislation. The Legislative Committee on Education suggested nine bills, reporting that these bill draft requests would be available during the 2019 session.[1501]

The Legislative Commission's Audit Subcommittee, for instance, met three times, all in 2018. The Legislative Commission's Subcommittee to Review Regulations met twice, once in 2018 and once in 2017. On the other hand, the Legislative Committee on Health Care met seven times during the 2017-18 interim. The April 24th, 2018 meeting of this committee lasted approximately six hours and addressed numerous agenda items. Public agency officials were called to testify; interest group advocates and citizens gave public testimony. Legislators appeared to ask insightful questions, and meeting minutes indicate a lively debate among committee members and witnesses at several points during the hearing.

Interim and standing committee publish reports through the Research Division of the Legislative Counsel Bureau. These reports summarize their work, list recommendations and suggested legislation, assuming the committee has recommendations to make.

Despite the heavy workload, there is evidence that both standing and interim committees find time to exercise oversight and that they make use of their power to subpoena witnesses and documents for future legislative action (NRS, 218E).

Vignette: Gaming Control Board

The Nevada Legislature held hearings in March of 2016 to examine charges of improper conduct by the attorney general after the then Chair of the Nevada Gaming Control Board (GCB), A. G. Burnett, leaked surreptitious voice recording of a conversation between himself and Attorney General Adam Laxalt. The incident occurred after Attorney General Laxalt invited GCB Chair Burnett to an urgent, one-on-one meeting (ATDLEFT, 2017). From testimony and memos written by Burnett, he felt Laxalt's request might have to do with using the GCB to assist a campaign contributor of Laxalt, Sheldon Adelson, in an upcoming lawsuit. The lawsuit involved a former employee of a casino founded by Adelson, the Sands. The former employee had filed a wrongful termination lawsuit and was seeking documents held by the GCB in the

[1500] https://www.leg.state.nv.us/Division/Research/Library/Interim/InterimCommitteeBrochure.pdf, accessed 1/12/19.

[1501] https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2019/Bulletin19-13.pdf, accessed 1/12/19

discovery phase of the lawsuit. Burnett was worried that Adelson, through Laxalt, would request the GCB provide an amicus brief to the court agreeing with the Sands interpretation and supporting the confidentiality of the GCB documents—thus keeping them out of the wrongful termination suit. Burnett's concern of impropriety caused him to secretly record the conversation, write extensive internal memos documenting the matter, and report it to the FBI. While no wrongdoing was found by the FBI, the recording and memos were leaked to the press by a party unknown. The suggestion of impropriety set off serious efforts at oversight.

This incident was covered closely by area media, sparking legislative oversight initiated by the Assembly Ways and Means Committee (Noon, 2017). The legislative oversight included a hearing, draft legislation seeking to fundamentally change the relationship between the GCB and the Office of the Attorney General (OAG), a statute addressing the confidentiality of GBC documents, and a funding line for an internal lawyer at the GCB. This oversight occurred against the backdrop of political conflicts, tension between the attorney general and the legislature, and the beginning of Laxalt's gubernatorial campaign. Ultimately, despite both sides using the issue for partisan advantage, the incident demonstrates Nevada has both the capacity and can exercise meaningful legislative oversight to produce policy outcomes despite political distractions.

AB 513— a bill that would create an independent general counsel for the GCB—was drafted to address structurally the possible impropriety between the attorney general and the Chair of the GBC implied by the leaks (MyNews4, 2017). A hearing on the bill occurred on May 17, 2017, in the Assembly Ways and Means Committee at which Attorney General Laxalt and Chair Burnett gave testimony. The minutes and an video recording of the hearing are available online.[1502] The hearing included the subpoenaed tape recording and memos. At the hearing, legislators grilled them for nearly an hour each. Neither Burnett nor Laxalt felt a need to change to their methods of operations, and neither considered the proposed legislation appropriate. Burnett seemed annoyed by legislators' questions. Both insisted neither they nor the GCB acted improperly, and they both behaved as if nothing abnormal had occurred whatsoever, leading both parties to declare their version of a partisan victory (May 17, 2017 Hearing; Richardson, 2017a).[1503] The bill was heard without any further action. On May 23, 2017, Republican Governor Sandoval publicly expressed support for Attorney General Laxalt and opposed AB 513 (Joecks, 2017a). Even though AB 513 ultimately did not become law, it made the issue and the actors' accounts a matter of public record, providing a foundation for future structural changes.

Additional legislative oversight was conducted on this issue. As a result changes proposed in the earlier assembly bill passed. On June 5, 2017, the day before the end of the legislative session, SB 545 became law and included $100,000 for an independent lawyer within the Gaming Control Board.[1504] SB 545 is a budget bill that included the allocation from the

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[1502] https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Bill/5821/Overview, accessed 6/29/18.

[1503] Efforts were made by the legislature to understand the relationship, in particular the informal relationship between the attorney general and the GCB Chair, in order to better maintain both legislative oversight and confidence in GCB actions. Questions focused primarily on the informal relationship that had developed between the two and the effect their relationship had on GCB decisions. Burnett insisted the conversation he secretly recorded was a one-time issue. Furthermore, Burnett cited the Deputy Attorneys General as the agents with whom the GCB most often interacts, implying a further buffer between the GCB Chair and the elected AG. AB 513 was proposed to create a separate General Counsel for gaming boards and commissions to prevent informal relationships between the GCB and attorney general like the one between Burnett and Laxalt.

[1504] https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=1174, accessed 5/14/18.

earlier assembly policy bill. That policy bill was sponsored by the Chair of the Assembly Ways and Means Committee, Maggie Carlton (Snyder, Rindels, & Messerly, 2017). In addition to the funding line, on May 23, the legislature voted in favor of SB 376, which effectively clarified the law to ensure businesses licensed by the GCB could block government attempts at disclosing confidential information.[15051506] This bipartisan legislation came out of the Senate Judiciary Committee, which tackled the legal question of records disclosure at the heart of the controversy.[1507] This example illustrates the connection in Nevada appropriations committees and standing committees collaborating to make policy through legislative oversight (Associated Press, 2017).

A closer examination of the SB 376 reveals a shroud of secrecy.[1508] In March 2017, the SB 376 had to do with locating a deceased person's heirs. All hearings, public comments, and chamber votes deal with the issue of finding heirs. It was not until the bill came out of conference committee on June 5, 2017, that the substance of the bill dealt with confidentiality of GCB documents. There are no records of discussion and debate in conference committee, and this practice is viewed as "under the bar" and "below board" (interview notes, 2018). Although it can be useful to avoid public criticism on a thorny issue, a journalist pointed out the hypocrisy of Democrats' support for the bill, which aligned perfectly with the interests of Sheldon Adelson, while decrying Laxalt for allegedly doing the same during the GCB controversy (Joecks, 2017b). Another journalist mentions that despite the overwhelming bipartisan support for the passage of SB 376 on June 5, 2017, no legislator would immediately comment on the purpose of the bill, and there was no official statement about its relationship to the GCB controversy (Associated Press, 2017). The process used to pass SB 376 raises questions about the motivation of legislative oversight. Could the bill really have been about serving the interests of large casinos at public expense? On the other hand, gaming is a large part of the Nevada economy, and SB 376 can be interpreted as increasing the ability of regulators to do their job (interview notes, 2018).[1509] After the passage of SB 376 in conference committee, legislative leadership and the governor issued a joint statement citing "more certainty and predictability related to the protection of proprietary information" within the gaming regulatory environment (Chereb, 2017).

The political intrigue played out in a variety of ways before and during the legislative oversight. After the controversy became public but before the May hearing, the Democratically controlled legislature and Republican Attorney General Laxalt were publicly feuding (Richardson, 2017b). The legislature claimed the attorney general was failing to be accountable by not showing up to budget hearings that would determine the budget for the OAG for the coming year—instead, Laxalt sent a deputy (Whaley, 2017a; Whaley, 2017b). The attorney general claimed the legislature was failing to give the bills he sponsored a public hearing. Both sides claimed these offenses were just the latest examples of naked partisanship on behalf of the

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[1505] https://legiscan.com/NV/bill/SB376/2017, accessed 5/14/18.

[1506] https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Bill/5821/Overview, accessed 5/14/18.

[1507] https://legiscan.com/NV/bill/SB376/2017, accessed 6/29/18.

[1508] https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=838, accessed 5/14/18.

[1509] According to the source, what is good for gaming is good for the state. The gaming industry as a whole wants this level of confidentiality for the documents they disclose. Document confidentiality gives gaming confidence in handing over documents to the GCB and the greater the confidence gaming has in the GCB, the more the GCB can trust the documents provided by the gaming industry and the better they can hold gaming accountable, identify racketeering, fraud, and corruption. Therefore, ensuring document confidentiality increases the GCB's ability to police gaming.

other. Seizing on this opportunity, after the hearing, Attorney General Laxalt's Republican primary competitor, State Treasurer Dan Schwartz, called for Laxalt to resign and drop out of the governor's race, citing, among other things, the GCB controversy (Johns, 2017).

The GCB Controversy of 2017 demonstrates that oversight mechanisms and procedures do exist within standing committees. Clearly, the controversy led to vigorous oversight by standing committees, but at the same time it appears that this oversight had definite partisan dimensions.

Oversight Through the Administrative Rules Process

Nevada's Constitution (art. 3, section 1.2) permits the legislature the power to review all new rules before they take effect. The legislature acquired this power through a constitutional amendment passed in 1996. An individual agency has no inherent authority to adopt administrative rules according to NRS 233B, which defines regulations and rulemaking procedures. Several legislative organizations are involved in oversight over the administrative rules process. Depending on the stage of the rules review process, the Legislative Counsel (LC), the LCB, or the LC Subcommittee to Review Regulations may be involved. If an agency is proposing a new rule, the agency must submit the rule to the LCB to ensure that the language is clear, concise, and suitable for Nevada Administrative Code. If the LCB approves the language, then the rule plus analysis of its economic effects on businesses and public is submitted to the LC or Subcommittee to Review Regulations, which must take affirmative action to approve or reject the regulation.

Agencies must review all existing regulations every 10 years, but a rule review is recommended at the end of each legislative session in case new laws affect existing regulations. After the review, the agency must submit a report to the LCB for distribution to next legislative session. The LCB maintains a register of all administrative regulations.

The Legislative Counsel has 30 days to review the rule before it is sent to the Legislative Commission. Typically the Counsel tries to resolve problems by working with the agency informally prior to the review by the Legislative Commission. This, according to Schwartz (2010) minimizes problems prior to what he describes as "quite substantive" (p. 295) legislative review. Yet, there is evidence that the LCB does reject regulations. In 2010, the LCB failed to approve regulations proposed by the Substance Abuse Prevention and Treatment Agency (SAPTA). The LCB recommended an addition to the regulation to include language regarding an appeal process. The LCB later adopted the regulation with the recommended language as Nevada Administrative Code (NAC) 458.

In 2016, a ballot initiative approved recreational marijuana use. This resulted in the need for temporary regulations by the Nevada Tax Commission to oversee the issuance, suspension, and revocation of licenses related to the regulation and taxation of marijuana (NRS, 453D). The legislature fast-tracked the regulations. The LCB reviewed and approved the temporary rules in July 2017. Permanent rules were adopted in January 2018 (Thomas, 2018).

These instances demonstrate that the LCB and commission does not approve regulations without some consideration of the consequences. The SAPTA instance indicates agencies review recommendations made by the LCB for changes to regulations and subsequently implement the recommendations prior to approval. The action taken on recreational marijuana rules indicates

that the legislative organizations can also work with agencies to ensure that the administrative rulemaking process does not inhibit timely enactment of new legislation. The oversight of the organizations ensured that the regulations went through the process as indicated by Nevada law in a timely manner to allow for temporary regulations and move forward with permanent regulations. Their role allowed for efficient governance.

Oversight Through Advice and Consent

There is minimal oversight through senate action over gubernatorial appointments. Moreover, the governor directly appoints only 16 top executive branch officials. Out of the 16 officials, only one position, Director of the Department of Personnel, requires approval by the senate (Wall, 2016). There is no evidence that the senate has blocked any gubernatorial appointments of this position in recent history.

Nevada's governor can use executive orders to reorganize government, to respond to disasters and a wide range of emergencies, and to create various entities tasked with investigations. Executive orders may not be used to respond to federal programs and requirements or to administer government including state personnel administration. Legislative approval is not required for any of these types of orders, but clearly the legislature can pass legislation to countermand executive orders, which would be vulnerable, of course, to gubernatorial veto.

Oversight Through Monitoring of State Contracts

The legislature does not have oversight over state contracts with vendors. The state's Purchasing Division is responsible for coordinating the purchasing process, including bids for contracts. The State Board of Examiners (BOE) is an executive agency responsible for approving contracts (NRS, 353.010). The BOE consists of the governor, the secretary of state, and the attorney general. The budget director in the executive Finance Office is the ex-officio clerk of the BOE. The BOE must approve all bids over $50,000. However, agencies authorize no-bid contracts in certain situations, but the BOE must still approve the contract if it is over $50,000.

Over a period of four years (2011-2015), the competitive bidding process was skipped over 2305 times by Nevada agencies (Roerink, 2015). Awards occurred for a total of $1.7 billion in no-bid contracts. No-bid contracts can be awarded when no other company bids and when individuals or companies have an expertise or equipment not abundant in the marketplace; and agencies can award no-bids without limitations when they hire architects, accountants, engineers, expert witnesses, and attorneys (NRS, 332). Although the legislature does not have direct oversight over contracts, if there appears to be an issue with the exclusions to the competitive bid process, the exclusions can be taken away through legislative action (Roerink, 2015). The audit process is another tool the legislature can use to highlight concerns with contracted vendors in the state.

There are two examples of state contracts reviewed through the audit process that we discuss here: Horse Power and Industrial Relations Division. Both contracts attracted legislative attention through an audit. Their initiation was slightly different, the former required a special statute while the latter went through a normal process and will be detailed in a vignette below.

The Horse Power audit required a statute to permit an audit request. In 2015, legislation was passed to authorize the Commission on Special License Plates to request audits, which then must be approved by the Legislative Commission (LC). In 2016, the Audit Division performed an audit of Horse Power, a Special License Plate Organization. Horse Power is a 501-c(3) non-profit organization that receives license plate fees through the State. Horse Power uses these proceeds to "rescue abused and injured wild horses" and raised approximately $90,000 on 4,700 special license plates in 2012 (Vogel, 2012). The audit produced 15 recommendations and Horse Power's failure to implement all but one of these recommendations was detected by the Audit Division and communicated formally at a hearing to the commission. Audit recommendations[1510] discussed at the Commission on Special License Plates hearing included, but not limited to, the documentation of competitively priced bulk feed purchases, documentation of reimbursable travel, the requirement to provide documentation in the form of sales receipts, a written (as opposed to verbal) grant application process that includes disclosure of whether applicants are known to Horse Power management and board members, the taking of minutes of board discussions relating to the awarding of grants, and documenting certain aspects of the grant process (45 minute mark).[1511] The Commission on Special License Plates voted unanimously to eliminate funding for Horse Power as a result of this hearing with legislators citing Horse Power's failure to address recommendations despite extensions (one hour 40 minute mark). This vote shut Horse Power down because its main funding source was license plate fees (interview notes, 2018).

Vignette: Industrial Relations Division Third-Party Inspections

The Industrial Relations Division (IRD) in the Nevada Department of Business and Industry is responsible for overseeing the compliance of elevators, boilers, and mines through its Mechanical Compliance Section.[1512] During a regularly scheduled audit of the division by the LCB, it was determined that as of June 2017, approximately 5,500 elevators and boilers were operating without the required certificates (LA 18-19).[1513] These certificates are issued as proof that the equipment is operating safely and complies with state safety standards. The number of elevators without certificates (4,360) accounts for 35% of the elevators operating in Nevada (Giwargis, 2018b).

There are three reasons that certificates may not have been issued:

1) The inspections did not occur. This means that elevators and boilers may have been installed or allowed to continue to operate that did not meet safety compliance requirements.

2) The system failed a safety inspection, and code violations were not monitored or cleared. In some of the cases, it was years before follow-up on violations were completed. Although elevator related deaths are rare, they are not unheard of. In 1999, an elevator repairman died after falling down an elevator shaft while doing a repair. An elevator repairman believes this victim's death could have been prevented because flaws in wiring should have been discovered during a state inspection just before the accident (Baca, 2015).

[1510] https://www.leg.state.nv.us/audit/Full/BE2018/LA18-08%20Horse%20Power%20Report.pdf, accessed 10/17/18.
[1511] http://nvleg.granicus.com/MediaPlayer.php?view_id=34&clip_id=9716, accessed 10/17/18.
[1512] http://dir.nv.gov/uploadedFiles/dirnvgov/content/MCS/Forms/AIA%20List%20Rev%2002-06-18.pdf, accessed 1/3/19.
[1513] https://www.leg.state.nv.us/Division/Audit/Full/BE2018/LA%2018-19%20Division%20of%20Industrial%20Relations.pdf, accessed 6/29/18.

3) Fines for safety violations were not paid. The audit determined that the division failed to collect over $1.4 million in fees for code violations over a period of several years.

The division depends on contracts with third-party agencies for inspections and other regulatory responsibility.[1514] The contracting out occurred in 2015 as a result of an inspection backlog, after the adoption of new administrative rules (LCB R077-14).[1515] The oversight activities called for in the regulations have not been implemented. The IRD does not have adequate resources to monitor that inspections are completed or whether violations are resolved. Assemblywoman Maggie Carlton expressed legislators' concerns; "I'm concerned that by outsourcing this we're not getting what we thought we were getting" (Giwargis, 2018b).

The IRD has accepted all of the recommendations from the LCB Audit Division and the IRD was required to develop a corrective action plan within 60 days of the audit.[1516]

Although the legislature does not have statutory or constitutional authority for contract oversight, the audit process is a tool that can be used to highlight issues with contractor performance. The legislature is sometimes able to use this tool effectively.

Oversight Through Automatic Mechanisms

Nevada is one of ten comprehensive review states that facilitate oversight through sunset legislation. All statutory agencies are required to undergo a sunset review on a regulatory review schedule. Sunset clauses may also be present in selected programs or legislation (Baugus & Bose, 2015). Moreover, as discussed in the section on administrative rules review, all agency rules are reviewed at least once every decade.

In 2011, the legislature established the Sunset Subcommittee of the LC (NRS 232B). The commission is responsible for evaluating all boards and commissions created by means other than executive order or constitutional mandate. The committee determines whether the agency will continue and in what form (Wall, 2016). In 2013, because of the review, the Nevada Commission on Sports was terminated (Baugus & Bose, 2015). The subcommittee does not simply rubber stamp renewals, it also terminates boards or commissions. In its 2017 report, the subcommittee reviewed 34 entities, deciding to continue 16, terminate four, consolidate two, transfer the functions of four to another entity and then terminate, and to continue 10 entities, but with statutory revisions.[1517]

[1514] List of third-party agencies authorized to complete inspections: http://dir.nv.gov/uploadedFiles/dirnvgov/content/MCS/Forms/AIA%20List%20Rev%2002-06-18.pdf, accessed 6/29/18.

[1515] http://dir.nv.gov/uploadedFiles/dirnvgov/content/About/LCB%20R077-14%20Adopted%201-16-15.pdf, accessed 10/8/18.

[1516] https://www.leg.state.nv.us/Division/Audit/Full/BE2018/LA%2018-19%20Division%20of%20Industrial%20Relations.pdf, accessed 10/8/18.

[1517] https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2017/Bulletin17-14.pdf, accessed 6/29/18.

Methods and Limitations

Out of the 12 people that we have contacted, we interviewed 10 people for Nevada. For committee hearings in both chambers, there are agendas, minutes, and video recordings that are publicly accessible online. No transcripts exist for either of the chambers' committee hearings (interview notes, 2018). Overall, Nevada's readily available resources allowed us to better assess the legislature's levels of oversight.

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Legislative Oversight in New Hampshire

Capacity and Usage Assessment

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

Summary Assessment

The New Hampshire Legislature has some very strong oversight capacities as well as some very limited ones. The legislature has access to a variety of audit reports, though these reports are infrequently used. In areas where the governor lacks authority, committees step in and investigate issues. However, many oversight domains, such as advice and consent and the monitoring of state contracts, are left up to the executive branch rather than the legislative branch. Furthermore, administrative rules must be renewed every 10 years, but there are no other forms of automatic oversight mechanisms.

Major Strengths

The New Hampshire Legislature has some qualities that other states could emulate. Standing committees do wield a fair amount of power over their policy domains, and the various special committees that are convened to investigate particular issues do result in legislative action. Additionally, the Office of Legislative Budget Assistant produces a variety of audits, though they appear to be seldom used by the legislature—legislators say that this is due to a lack of time and clear procedure.

Challenges

The legislature can improve its oversight abilities. As mentioned, audit reports are infrequently used—sometimes recommendations are not acted upon and will reappear in subsequent audits. Also, most advice and consent issues and monitoring of state contracts are not in the hands of the two houses of the legislature at all, but they are instead entrusted to the Executive Council. De facto, this council, whose members are elected from districts (one each for five districts state-wide), functions as an additional branch of government that can exercise significant restraint upon the governor but appears to have no capacity to initiate policy. Finally, apart from administrative regulations, which must be renewed every 10 years, there are no sunset

laws or other automatic oversight mechanisms. In short, New Hampshire should be considered a mixed and unusual example of oversight.

Relevant Institutional Characteristics

The New Hampshire General Court is the 3rd largest legislature in the English-speaking world, with 424 total members (400 in the house of representatives and 24 in the senate). Despite its maximalist size, it is minimalist in the resources provided to members. Pay is low, at $200 per two-year term for most legislators, and $250 per two-year term for the president of the senate and the speaker of the house (NCSL, 2017). New Hampshire legislators do not receive a per diem. Legislators therefore need other sources of income. New Hampshire's legislature employs 150 people, with 129 being permanent staff (NCSL, 2015). Legislators are provided no full-time staff, and members of the house are not provided with offices to conduct their work. Members of the New Hampshire Senate must share offices (Haider-Markel, 2009). The NCSL (2017) classifies New Hampshire as having a "part-time lite" legislature, meaning that official duties entail the equivalent of a half-time job. The state is ranked last in terms of legislative professionalism (Squire, 2017). Despite their other constraints, legislators are not term-limited.

New Hampshire's governor is similarly weak and is tied with Texas for 8th place, among the least powerful state executive in the country (Ferguson, 2015), though the governor does retain the legislative veto and the power to call out the National Guard. Despite the limits on his or her power, the governor's $127,443 salary stands in sharp contrast to the minimal pay received by the state's legislators. His or her power, however, is sharply curtailed by a body unusual across the states—an Executive Council. The governor shares appointment power and budget power with this group of five individually elected councilors, each representing one of five councilor districts in the state. The Executive Council appears to operate as a separate mechanism of accountability within the larger legislative and executive branch system. Currently, its membership includes three Republicans and two Democrats. Executive Councilors receive a salary of $16,070, with an expense budget ranging from $6,000 to $9,000 depending on travel distance from the state capital. The Executive Council originated during colonial times to curb royal autocratic authority. During the colonial era, it operated as the upper chamber of the legislative assembly. The Executive Council describes itself as "without equal in the nation" and "the most democratic form of executive government in the nation, or elsewhere in the world."[1518] Its mission continues to be a check executive branch authority.

The governor shares appointment powers with the Executive Council. Specifically, the governor appoints and the council confirms his or her appointments for roughly 300 non-classified positions on boards, commissions, and in state agencies. In this capacity, the Executive Council performs duties often performed by the upper legislative chamber in other states in the modern era. It is the council that exercises advice and consent powers over gubernatorial appointments. The Executive Council also monitors state agency spending and monitors most state government expenditures. The council has veto power over gubernatorial pardons and over contracts with a value greater than $10,000. Finally, it oversees the State Transportation Plan. New Hampshire's governors, moreover, are not solely responsible for nominating appointees to

[1518] https://www.nh.gov/council/history/index.htm, accessed 11/2/18.

serve in key positions. For example, both the secretary of state and the state treasurer are elected by a majority of the legislature.

Another constraint on New Hampshire's governor's institutional powers is the lack of line-item veto with respect to the budget. Governors also serve terms of only two years, meaning they must campaign almost continually for reelection. However, the governor is not term-limited. Finally, the bureaucracy is small; in New Hampshire, 9.8% of the state's workforce is employed by either local or state government, with the national average being at 11.3%. They are tied with Minnesota and Wisconsin for having the fourth smallest bureaucracy, at both the national and local levels (Edwards, 2006). Also, many gubernatorial-council appointees serve for terms that are longer than the governor's or the councilors' two-year terms.

Political Context

New Hampshire has been characterized as "among the most conservative states" (Haider-Markel, 2009), and state politics is routinely dominated by the Republican Party. New Hampshire's political culture has been described as "moralistic," while at the same time valuing an individualistic and libertarian ethic that has led to the affirmation in the state constitution of gender equality and same-sex civil unions, among other things (Haider-Markel, 2009). Liberals and Democrats sometimes win office as Republicans, which has had the effect of "reduc[ing] cohesion within the Republican Party" (Haider-Markel, 2009). Recent years, however, have seen some gains by Democrats, as evidenced by their growing share of the legislature. Still, few elections have resulted in substantial gains for the Democratic Party in New Hampshire, with the 2006 midterm election being the only contemporary example of a Democratic sweep. Democratic governors are elected with low frequency, with four governors out of 12 since 1980 having been Democrats.

Currently, New Hampshire is the only Republican trifecta in the Northeast. As of March 2018, the governor is Republican, partisan control of the house is in the hands of 227 Republicans (with 173 Democrats), and the senate is controlled by 14 Republicans (with 10 Democrats). In 2010, however, Democrats controlled the lower legislative chamber, and in 2018, it is considered a battleground state legislature with the potential to shift to Democratic control. The New Hampshire Senate has consistently been controlled by the Republican Party during this decade, but the size of the Republican majority in the chamber is shrinking. Despite this competitive political climate, there is not much polarization between the political parties. The house is ranked as the 21st most polarized in the country, while the senate is rated as the 17th most polarized (Shor & McCarty, 2015). The history of liberals and Democrats running as Republicans described by Haider-Markel (2009) could explain this.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The principal analytic bureaucracy in New Hampshire is the Office of Legislative Budget Assistant (OLBA). The legislative budget assistant (LBA) is appointed by the Joint Legislative

Fiscal Committee each session. The OLBA's mission is twofold; (1) to provide technical staff to assist the legislature and its committees in the areas of finance and accounting, and; (2) to conduct audits and provide oversight of the executive and judicial branches. These two functions are delegated into two divisions of the OLBA: the budget and audit divisions, respectively (OLBA, 2017). The Budget Division, which employs six people, including a court reporter and an administrative assistant, "provides technical staff assistance in the areas of finance, accounting, and budgeting to members of the legislature and its committees . . . assists in preparing the operating and capital budgets . . . provides assistance to special study committees and commissions . . . [and] reviews all programs or activities of state government" (OLBA). The Audit Division is much larger, with a staff of 23 people, including a director of audits and an administrative assistant. Its duties are to "conduct audits of state agencies and programs, providing oversight over the executive and judicial branches of government." The Audit Division is also responsible for the Statewide Single and the Comprehensive Annual Financial Report (OLBA). Some audits, including the Lottery Commission, the Retirement System and other investment plans, and the Turnpike System, are conducted by external, private sector firms, namely KPMG, LLP and Price Waterhouse Cooper, LLP, under contract with the OLBA. The LBA budget for 2017 was $5.28 million in a state budget of $5.89 billion, or 9/100th of 1%.

Between 2015 and 2016, the OLBA released 27 audit reports, 16 of which were financial audits and 11 were performance audits. We are told performance audits are initiated in the Legislative Performance Audit and Oversight Committee, then communicated to the Joint Legislative Fiscal Committee, which is responsible for approving the audit before staff can begin work on it. The Joint Legislative Fiscal Committee can only block an audit with a unanimous vote. Therefore, we are told most audits are approved for initiation. Also, an informal practice has developed of staff developing an audit scope and presenting it to legislators on the Performance Audit and Oversight Committee for approval or amendment (interview notes, 2018). Once the scope is approved, the audit plan is created, executed, and then audit staff present the report to the Joint Legislative Fiscal Committee. The Joint Legislative Fiscal Committee is responsible for routing any suggested legislative changes to the relevant standing committee and the Executive Departments and Administration Committee in both the house and senate (RSA 14:31 VI).

In the New Hampshire House, the Executive Departments and Administration Committee is responsible for reviewing all performance audits (House Rule 30 (g)) and all audits to be reviewed by their relevant subject matter committee (House Rule 31). The New Hampshire Senate rules are silent regarding committee review of audits. Very rarely will a standing committee take up a routed audit report, but occasionally they will hold a hearing or a series of hearings, sometimes jointly, to question audit and agency staff (interview notes, 2018). An example of this is the House Health, Human Services, and Elderly Affairs Committee holding a hearing on unspent funds allocated to services with wait lists and will be discussed in the section titled "Oversight Through the Appropriations Process." Executive order number three in 2014 requires audited agencies to provide a remedial action plan report within 30 days of the audit's publication and then semiannually provide a progress report, both of which are to be published on the Department of Administrative Services' website. In addition to the committees and entities already named, copies of the completed audit report are given to the governor, the house speaker, the senate president, the Department of Administrative Services Commissioner, and the executive officer of the audited agency (RSA 12:31-a I (c)).

Audits include recommendations to agencies. We are told that audit staff and agency staff

attend the hearing for the audit report and sometimes the Joint Legislative Fiscal Committee will ask the agency to report back regarding audit recommendation (interview notes, 2018). There is also an executive order requiring all recommendations to be routed to the Department of Administrative Services. Some audits make explicit recommendations to the legislature regarding changes to the existing law to improve the function of the agency under report. During 2015 and 2016, the LBA reports that 31 of its 261 "observations and recommendations" called for legislative action. However, legislative action arising from OLBA reports does occur, even though it does not appear to be very common. One instance was an audit of the Department of Health and Human Services' Division of Child Services. The report made two recommendations; (1) that the state create alternative child support collection services, particularly, online child support payment mechanisms, and; (2) that Child Services prioritize grandparents whenever possible when appointing child guardians (OLBA, 2015). Both recommendations were eventually acted upon in the following two sessions (2016 and then in 2017, respectively).

Transcripts from a meeting of the Joint Legislative Fiscal Committee suggest that recommendations contained in audit reports are frequently ignored. One representative said that he was as a little "disturbed . . . that some of [the recommendations] have carried over from audit to audit" without any action being taken (Fiscal Committee, 2018). The Performance Audit Oversight Committee seems to suggest that the results of audits are not always acted upon because of a lack of time and clear procedures for disseminating information. One senator complained that "[t]here's no follow-up process" for when the results of an audit are referred to the appropriate committee. This lack of process has led to a situation in which many audits are, in the words of other committee members present at the meeting, "lost in the shuffle," despite the fact that performance audits are "the single most important function that we do . . . this is how we monitor the performance of our government" (Legislative Performance Audit and Oversight Committee). Thus, it would seem that confusion over how the legislature should handle audits means that this form of oversight is limited. An audit produced by OLBA on the Community College System New Hampshire will be discussed in the section "Oversight Through Committees."

Oversight Through the Appropriations Process

Although New Hampshire's legislature meets annually, it only prepares a budget biannually. Neither the governor nor the legislature are constitutionally required to submit a balanced budget, although the governor is required by statute to do so. The legislature, however, is not required to pass a balanced budget. After agencies submit requests to the Commission of the Department of Administrative Services, they are sent to the governor. Pending public hearings, the governor then prepares a budget and sends it to the general court (the legislature). At this point, "[u]sing the governor's budgets as a starting point, the house prepares and approves its own budgets, which are then submitted to the senate. The senate prepares and approves its budgets based on the house proposals" (State of New Hampshire Information Statement, 2016). A final budget is drafted by a joint committee from both chambers and, once approved by the legislature, is submitted to the governor. The governor does not have the power to line-item veto, however, and must either approve or veto the entire bill, subject to override by the legislature.

The Budget Division of the Office of Legislative Budget Assistant (OLBA), under the control of the Joint Legislative Fiscal Committee and the Joint Legislative Capital Budget Overview Committee, is responsible for the "overall post-audit and review of the budgetary process on behalf of the legislature. This responsibility involves conducting selected departmental audits and program result audits including, but not limited to, examinations as to whether the results contemplated by the authorizing body are being achieved by the department and whether such results could be obtained more effectively through other means" (State of New Hampshire Information Statement, 2016). RSA 14:31 requires "all state departments, boards, institutions, commissions and agencies" to provide any data, including confidential information, to the OLBA upon request. Transcripts of Joint Legislative Fiscal Committee meetings indicate that members of the committee regularly take testimony from agency heads, commissioners, and, at times, the governor. These hearings are fairly extensive and seem to result in action by the Joint Legislative Fiscal Committee, largely to approve the use of funding from federal sources or the creation of new personnel positions.

A performance audit of the Health and Human Services, Bureau of Developmental Services, was presented to the Joint Legislative Fiscal Committee by OLBA staff on February 12, 2016 (Office of the Legislative Budget Assistant, 2016). It found that a substantial portion of funds, approximately $40 million, were unspent despite waiting lists for bureau services. HB 1394 would allow these funds to remain with the bureau for an additional year for the purpose of service provision and prevent them from reverting back to the general fund. The bill was heard in the Health, Human Services, and Elderly Affairs Committee in the house, passed out of the house, referred to the Senate Health and Human Services Committee, and would be passed after a floor debate. The chair during the floor debate stated he was "furious" over the unspent funds and waitlist, a sentiment that was repeatedly shared by legislators during debate along with "shock."[1519] Officials testified during the floor debate.

Agencies must make a request to the Joint Legislative Fiscal Committee for authorization to accept and expend funds that are not in the agency's initial budget. An example of this is a request made February 12, 2016, by the Department of Safety for funds and a consultant position to be authorized by the Joint Legislative Fiscal Committee. The request was coded 16-023. An exchange between the chair of the committee and the agency head demonstrates oversight questioning (Joint Fiscal Committee, 2016):

> Chairman Kurk: It's a very simple question. This is an ongoing program. Why wasn't it in the budget?
> Mr. Lavoie: The—this aspect of the program is not in the budget ..... Crash record management system interface is a new component (of the J-One program). . . . We needed to go external to gain the expertise to connect those two systems.
> Chairman Kurk: But the whole J-One system, as well as the interface, has long been part of the budget. So if you folks determined that consultants were necessary ..... I don't understand why it wasn't in the budget.
> Ms. Leonard ..... this piece wasn't foreseen at the time.
> Chairman Kurk: When did you apply for funds?
> Ms. Leonard: I would have to find that information out.
> Chairman Kurk: The point is, if you're applying for something or you know you're going to apply for something during the budget process, it should be in the

[1519] Audio recording regarding HB1394 accessed 4/26/16.

budget. And you can very readily say as we do in many cases, if we don't get the funds for this, then we don't have the authority to expend. But that gives the legislature a more complete picture of what's happening and allows us to make better decisions.[1520]

16-023 was approved by the Joint Legislative Fiscal Committee.

Oversight Through Committees[1521]

Both the New Hampshire House and Senate have a standing committee on Executive Departments and Administration (EDA) that "consider[s] matters pertaining to the general administration of state laws and changes therein; matters of policy pertaining to the executive departments; matters relating to the New Hampshire Retirement System; matters pertaining to the administration of professional licensing; review of performance audits, and such other matters as may be referred to it" (2017-2018 House Rules). However, a review of the bills before these committees indicate and sources confirm that little of their activity is devoted to matters of oversight. We are told all standing committees share this in common with the EDA committee. Standing committees exist to produce and hold hearings on pending legislation within their substance matter jurisdiction and some of which deals with executive agencies with shared policy domains. Committees receive audit reports from the Joint Legislative Fiscal Committee, a statutory committee which receives OLBA reports, but there is no formal process other than the regular process of making law that engages the substantive standing committees in oversight of those agencies.

Instead, when the New Hampshire Legislature wishes to evaluate a program, a special committee is created. There are two types of special committees in New Hampshire: statutory committees and study committees. The former is codified in state law, is intended to exist for more than two years, and may include members of state agencies and other stakeholders, in addition to legislators. The Joint Legislative Fiscal Committee and the Performance Audit and Oversight Committee are both statutory committees. Study committees, meanwhile, are more temporary, are not codified in law, and typically only include legislators (Statutory and Study Committee). There were 37 special committees formed in 2017 to address issues such as helmet and seatbelt laws, healthcare balance billing, the legalization and regulation of marijuana, procedures relevant to the involuntary commitment of mental health patients, and vacation rentals.

The two primary statutory committees engaged in oversight are the Joint Legislative Performance Audit Committee and the Joint Legislative Fiscal Committee. The Joint Legislative Performance Audit and Oversight Committee is a statutory committee consisting of six

[1520] Transcripts of the Joint Fiscal Committee meeting.

[1521] Standing committees in NH typically only hold hearings on pending legislation. We are told in interviews that most oversight activity occurs in the statutory committees of which there are two kinds, commissions and study committees. These committees or commissions can be purely legislative entities consisting of only legislators or they can be a mixture of legislators, executive appointees, and legislative appointees. Some of these statutory committees only exist for a year or two while others in perpetuity. Most statutory committees include language requiring the creation of a report.

representatives and five senators.[1522] The committee was established by the NH RSA 17-N:1 and despite there being listed 11 total members on the website, that statute indicates that the committee shall consist of 10 members,[1523] five from the house, three appointed by the speaker and two by the minority leader, and five from the senate, three appointed by the president and two by the senate minority leader. The committee is charged with review of agencies and "shall make recommendations to the fiscal committee for such reviews as provided in RSA 14:30-a, II." RSA 14:30-a, II is the enabling statute for the Joint Legislative Fiscal Committee, allowing it to supervise and work with OLBA and "may at its discretion investigate and consider any matter relative to the appropriations, expenditures, finances, or any of the fiscal matters of the state."[1524] Their website lists minutes and transcripts of meetings.[1525] Minutes and transcripts demonstrate that the committee does call in officials for questioning. The Joint Legislative Fiscal Committee's 10 members are chosen in the following manner:

> Five shall be members of the house as follows: the Chairperson of the Finance Committee and two other members of the committee, appointed by the chairperson; and two other house members appointed by the speaker of the house. Five members shall be members of the senate as follows: the Chairperson of the Finance Committee and two other members of that committee, appointed by the chairperson; and two other senators appointed by the senate president. The Chairperson of the House Finance Committee shall be the Chairperson of the Fiscal Committee (RSA 14:30a).[1526]

The Joint Legislative Fiscal Committee considers recommendations for audits from the Legislative Performance Audit and Oversight Committee must adopt all recommendations unless the Joint Legislative Fiscal Committee by unanimous vote declines the recommendation (RSA 17-N:1, III).[1527]

An example of the work of the Joint Legislative Fiscal Committee and the Joint Legislative Performance Audit and Oversight Committee is their approach to an audit produced on the Community College System New Hampshire (CCSN). The August 2017 audit found questionable spending by CCSN, including "$32,500 on a car for a president who was already provided with a car by CCSNH and $34,000 on a college presidents inauguration" and a lack of clear policies (Duffort, 2017a). A Republican and Chair of the Performance Audit and Oversight Committee requested the audit because he had heard "a lot of management missteps or problems that had resulted in a lot of distress among the faculty and students" (Duffort, 2017a). In response, an agency official indicated they would adopt the recommendations and create a task force to monitor their implementation (Duffort, 2017a). State Sen. Chuck Morse, who chairs the Joint Legislative Fiscal Committee that reviews audit reports and routes their recommendations to the relevant standing committee for follow-up, was quoted saying that the audit was "concerning," but was supportive of the agency since they were willing to "make the necessary changes" (Duffort, 2017b). However, the legislator who sought the audit continued to be

[1522] https://www.gencourt.state.nh.us/statstudcomm/details.aspx?id=67&rbl=1&txtkeyword=oversight, accessed 11/5/18.
[1523] https://law.justia.com/codes/new-hampshire/2015/title-i/chapter-17-n/section-17-n-1/, accessed 11/5/18.
[1524] https://law.justia.com/codes/new-hampshire/2015/title-i/chapter-14/section-14-30-a/, accessed 11/5/18.
[1525] http://www.gencourt.state.nh.us/LBA/audit/LPAOC_AgendasMinutes/LPAOC_2018.aspx, accessed 11/5/18.
[1526] https://law.justia.com/codes/new-hampshire/2015/title-i/chapter-14/section-14-30-a/, accessed 12/7/18.
[1527] http://www.gencourt.state.nh.us/LBA/budget/fiscalcommittee.aspx, accessed 11/6/18.

skeptical, citing their lack of cooperation with the Public Higher Education Study Committee (Duffort, 2017a). A September 2017 Public Higher Education Study Committee reviewed the audit findings, questioned the chancellor, and took note of the fact that no legislative actions were suggested by the audit. An example of the questioning included a request for an explanation for how such mismanagement could occur despite the existence of two oversight bodies, to which the official answered that there are difficulties in getting it right: the sums involved ($130 million per year) are large, the pace of change in the education sector is rapid, and their focus is on student success. He also noted in his answer that many of the audit issues have already been addressed, all institutions are in good standing, their other audits with no findings, and their report to the Joint Legislative Fiscal Committee on how they would address the recommendations was accepted (Public Higher Education Study Committee, 2017).

Special committees in New Hampshire offer an important oversight mechanism to evaluate the performance of the executive bureaucracy, provide policy alternatives, and potentially pass them via statute. Half of the special committees formed were statutory. Some special committee reports address how an agency implements the law. For example, the Oversight Commission on Children's Services (RSA 170-G:19)[1528] monitors the implementation of a memorandum of understanding between two agencies to ensure the investigation and prosecution of abuse and neglect cases. More frequently, they examine a narrowly identified policy problem. Some examples include the provisioning of special education in charter schools, or probation and or parole reporting requirements. Special committee reports are often the basis of legislative action, more so than OLBA audit reports (interview notes, 2018).

Oversight Through the Administrative Rules Process

New Hampshire's Administrative Procedure Act (Section 541-A:2) establishes a Joint Legislative Committee on Administrative Rules (JLCAR), which is charged with reviewing proposed and adopted rules. Once a rule making proposal is filed, the JLCAR can approve it, file a conditional approval, or object to it. If a rule is conditionally approved, the committee submits an amendment to the rule at the same time. The agency may then adopt the amended rule. If the committee objects, then the agency may respond within 45 days by withdrawing the proposed rule, amending it, or taking no action. If no action is taken, then the rule is considered invalid, though agencies are not prevented from initiating the review process again. If an agency revises the rule, it can be considered once again by the JLCAR, at which point it can be adopted or declared invalid. If the rule is not declared invalid, it is submitted to the full legislature for a vote. Existing rules expire every 10 years and must be re-authorized by the JLCAR (DiStaso, 2017).

In addition to weighing in on smaller regulations, JLCAR exercises influence over more visible and contentious policy questions, such as whether Medicaid money can be spent on sex change operations (Solomon, 2018) and increasing access to opioid treatments in New Hampshire (DeWitt & Brooks, 2018).

Since most rules in New Hampshire are governed by statute, the legislature wields substantial power over the rules-promulgation process, which has led to friction with the executive. Upon coming to office in January 2017, New Hampshire's new governor attempted to

[1528] https://law.justia.com/codes/new-hampshire/2017/title-xii/chapter-170-g/section-170-g-19/, accessed 12/7/18.

impose a moratorium on the adoption of new rules and instructed agencies to prepare justifications for regulations or to repeal them (Rogers, 2017). The legislature, however, resisted the governor's attempt to interfere in the rulemaking process, arguing that he "lack[ed] the authority to put a freeze on rulemaking." According to one member of the JLCAR, "The committee respects the governor's interest in the rulemaking process; however, this is a role that the Joint Legislative Committee on Administrative Rules already serves . . . We heavily scrutinize the rules coming forward from the administrative agencies, and the committee will continue business as usual" (Sutherland, 2017). The committee even went as far as to unanimously endorse the release of a letter to the governor explaining the rulemaking process and defending it against potential encroachment by the executive (Reagan, 2017).

Oversight Through Advice and Consent

As described in the first section of this discussion on the state's political institutions, the state legislature in New Hampshire does not have the authority to exercise advice and consent powers over gubernatorial appointments. Instead, New Hampshire has a separately elected Executive Council of constitutional officers. The council has five members, each elected for two-year terms in the district they represent. Among the council's responsibilities is to approve the appointments of judges, notaries public, commissioners, and other gubernatorial appointments, and no appointment can occur without majority approval by the council (Constitution of New Hampshire, Article 46). One of the stated criteria for approval is that appointees "are all responsible to the citizens of New Hampshire and not to special interests" (Executive Council).

The governor does not have the authority to reorganize the bureaucracy via executive order, though the governor does have the power to establish committees and commissions. Agency reorganization occurs through legislation, though executive officials are sometimes the drivers of such plans. For example, in 2017, the Commissioner of the Education Department proposed a reorganization of said department, a proposal that was "introduced unexpectedly" in the legislature by the Republican Chair of the Senate Education Committee as an "amendment to an unrelated education bill" (Moon, 2017). The changes would consolidate power over programs, funding, and personnel in the commissioner's hands, leading to allegations by Democratic legislators of a "power grab" by the commissioner (Solomon, 2017). Ultimately, a different measure, also supported by the Education Commissioner, received "unanimous, bipartisan support" from the Senate Education Committee (Moon, 2018). The new bill was more modest in its aims, renaming the Education Department's different divisions and "reshuffle[ing] some of the responsibilities between them" (Moon, 2018) rather than placing them under the direct control of the commissioner. The new bill also gave the commissioner less authority to make unilateral decisions about personnel, funds transfers, and program operations, vesting some of these powers in the deputy director (SB 358).

New Hampshire's governor has statutory power to issue executive orders in the following areas: all types of disasters and emergencies, creating committees and commissions, and responding to federal programs and requirements (Council of State Governments, 2014). In 2017, Gov. Chris Sununu issued nine executive orders.[1529] Eight of these created a commission

or council to assist with the implementation or creation of policy. Only one executive order dealt with the immediate fallout of an emergency. The legislature lacks the power to suspend or challenge an executive order except by statute or concurrent resolution.

The governor cannot use executive orders to reorganize the executive branch or create new state agencies or to conduct state personnel administration (Council of State Governments 2014). Media reports on reorganization of the state education department to concentrate more power in the education commissioner's hands and limit the authority of the State Board of Education indicate that the legislature proposed this action as an amendment to legislation. This suggests that the legislature rather than the governor plays a central role in the reorganization of state government agencies.[1530]

Oversight Through Monitoring of State Contracts

The legislature does not appear to be involved in the monitoring of state contracts. Instead, New Hampshire's Executive Council, as opposed to the legislature, possesses this authority (Executive Council). For example, the governor must seek approval from the council for granting contracts in excess of $10,000.[1531] Minutes from meetings of the Executive Council indicate that the council approves most contracts, and frequently increases the amount of previously approved contracts retroactively. There have been cases, however, when contracts are canceled or rejected, sometimes for political reasons. A recent example was the reinstatement of a Planned Parenthood contract 10 months after it had been canceled, which was seized upon by the Clinton campaign and Democratic activists in the 2016 presidential campaign (Rogers, 2016). The deciding vote in both cases was Gov. Sununu, who was campaigning at the time.

Oversight Through Automatic Mechanisms

New Hampshire has few automatic mechanisms for oversight. The state's sunset laws were repealed in 1986. At this time, the only other existing mechanism pertains to administrative regulations, which expire every 10 years and must be renewed by the JLCAR.

[1530] https://www.concordmonitor.com/Bill-amendment-would-let-Edelblut-completely-restructure-the-Department-of-Education-9270970, accessed 1/2/19.
[1531] https://www.nh.gov/council/about-us/index.htm, accessed 11/2/18.

Methods and Limitations

For New Hampshire, four people were interviewed out of the ten people that we reached out to. New Hampshire's senate does not provide online access to audio, video, minutes, agendas, or transcripts. Transcripts, minutes, and agendas may be requested of the senate clerk (interview notes, 2018). For the house, audio, video, agendas, transcripts, and minutes are lacking online. They have a webpage for committee hearing audio, however, it reads, "There is no committee audio as of yet."[1532] However, joint committees provide online access to their agendas and most transcripts and minutes. Joint committees are starting to record their hearings (interview notes, 2018) but audio recordings are not posted online and must be requested.

[1532] http://www.gencourt.state.nh.us/house/committees/committee_audio/default.aspx, accessed 12/9/18.

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Legislative Oversight in New Jersey

Capacity and Usage Assessment

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

Summary Assessment

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

Major Strengths

There are several indications that New Jersey approaches oversight as a bipartisan responsibility. The Legislative Services Commission (LSC), which oversees the work of the Office of the State Auditor (OSA), consists of equal numbers of legislators from the two major political parties. New Jersey's budget oversight committee is a joint committee, so whenever the two legislative chambers are controlled by different political parties this committee is also bipartisan. The OSA reports rates of agency compliance with audit recommendations, typically at a rate of approximately 80%. Legislators use these compliance reports during budget hearings and are willing to impose financial consequences on non-compliant agencies.

Challenges

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

Relevant Institutional Characteristics

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

New Jersey is a state perhaps as well known today for a highly influential governor as it is for highly contentious and notoriously corrupt machine politics (Haider-Markel, 2008). Though he has now been succeeded by Gov. Phil Murphy, former Gov. Chris Christie was described publicly as one of the most infamous and powerful governors nationwide, a perception fostered by regular media coverage that regularly identified the governor as holding a uniquely powerful office (McArdle, 2012; Zernike & Martin, 2013; Lizza, 2014). As George Will (2011) put it, Christie's notoriety has earned the governor a reputation as the "America's Caesar"—the most powerful U.S. governor. More objectively, the New Jersey Office of the Governor was never indeed the most powerful such institution in the country, and in recent years the institutional powers of the governor's office in New Jersey has eroded significantly (Ferguson, 2013; Ferguson, 2016).

Using data from the Council of State Governments' *Book of the States* (BOS), Margaret Ferguson compiled a Governors Institutional Powers Index (GIPI) using 2010 data in the 10th edition of *Politics in the American States* (the beginning of Christie's tenure as governor), and 2015 BOS data in the 11th edition of the book. Comparing the two tables illustrates a decline in the institutional powers of the New Jersey Governor's office. In 2010, Ferguson's analysis

assigned a GIPI rating of four to New Jersey's governor, tied for third most powerful governor in the U.S. behind Maryland and Massachusetts. The New Jersey governorship scored substantially lower in 2015 with a GIPI score of 3.47. Part of this is the result of legislative actions to rein in the governor's institutional powers. Specifically, the governor lost some of his appointment powers and some of his power to control the state's budget. But the governor still exercises significant amount of control of New Jersey's budget. He or she still has the line-item veto (Ferguson, 2016), and it takes a two-thirds vote of the legislature to override this veto. Moreover, New Jersey's governor has a "reduction" veto over any line item in the budget, allowing him or her to cut, but not increase, the amount budgeted (Haughey, 2016).[1533]

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

Political Context

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

Although a plurality of the electorate in New Jersey identify as Democrats, a greater number of New Jersey residents identify as "Independents" than as Republicans (Haider-Markel, 2008). This relatively large centrist group of potential "switchers" proves to be a strong moderating force for the New Jersey Republican Party which can move towards the political center to appeal to these voters. Once in the legislature, the relatively liberal Democrats (17th most liberal Democratic party in a state House and 16th most liberal Democratic party in a state senate) and the center-left Republican party (3rd least conservative Republican party in each chamber) have some common ground, making New Jersey one of the least polarized state legislatures in the country. Its lower chamber is the 9th least polarized lower chamber in the country, and its senate is the 6th least polarized upper chamber (Shor & McCarty, 2015).

The absence of a divided legislature or crippling polarization between the parties in the legislature does not necessarily mean that there is political harmony in the state as demonstrated by government shutdowns in 2006 and 2017, and a near-shutdown in 2018. The ensuing budget battles have left New Jersey with one of the worst state bond credit ratings in the country. Recently, Moody's Investor Services downgraded New Jersey from an A2 to an A3 rating and

[1533] https://info.cq.com/resources/state-by-state-guide-to-gubernatorial-veto-types/, accessed 6/26/18.

considers the state presently stable at that rating (Rizzo, 2017), while Standards and Poor's Global Ratings downgraded New Jersey to the present rating of A- (The Pew Charitable Trust, 2017).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Office of the State Auditor (OSA) is the legislative analytic bureaucracy in New Jersey responsible for producing audit reports. Established by law in 1934 (P.L. 1933, c.295), the OSA currently falls under the provisions of the Legislative Services Act as a unit within the Office of Legislative Services (OLS). The mission of the OLS is to provide a wide range of non-partisan analysis and support services to the legislature, in addition to the state audit functions. Other divisions in the Office of Legislative Services include the Legislative Counsel, the Legislative Budget and Finance Office, the Office of Public Information, the Administrative Unit, the Data Management Unit, and the Human Resources Office.[1534] The OLS is overseen by the legislature through the Legislative Services Commission (LSC). This Commission consists of 16 members and is required by law to have an equal number of Democrats and Republicans and must have eight legislators from each chamber. The commission establishes general operating and budgetary policies for all divisions of the OLS, but it grants the OSA discretion in the day-to-day discharge of its duties.[1535] The OSA derives authority to carry out its duties from the State Constitution (Article VII, Section I, Paragraph 6 of the State Constitution) and New Jersey statutes (N.J.S.A. 52:24-1 et seq. and Public Laws of 2006, Chapter 82), which mandate that the OSA conduct "post-audits of all transactions and accounts kept by or for all departments, offices, and agencies of state government," and any entity that receives public funding.[1536] Mandatory follow-up reports determine whether agencies have complied with audit "recommendations." The typical compliance rate is around 85%.[1537] The OSA reports its findings to the legislature, governor, and the OLS Executive Director. All communication with legislators is strictly confidential, a stringent policy clarified by staff, as follows:

> Confidentiality between staff and legislators is an important feature of the relationship. State law requires it. NJSA 521170 states that any legislative work product that OLS provides is confidential unless the legislator gives consent to release that information to a third party. It is similar to attorney client privilege (interview notes, 2018).

As noted above, the authority for the New Jersey state auditor is the New Jersey Constitution. It stipulates that the state auditor be appointed to five-year terms by the legislature. Qualifications for the position are listed in the New Jersey code Section 52:24-2 which requires applicants to be made to the Legislative Service Commission, and for that commission to provide

[1534] https://ballotpedia.org/New_Jersey_Office_of_Legislative_Services, accessed 6/21/18.
[1535] http://www.njleg.state.nj.us/legislativepub/oview.asp, accessed 6/21/18.
[1536] http://www.njleg.state.nj.us/legislativepub/about_us.asp#about, accessed 6/27/18.
[1537] http://www.njleg.state.nj.us/legislativepub/auditor/17ann.pdf, accessed 6/27/18.

the names of qualified applicants to the president of the Senate and speaker of the general assembly. The president and speaker are then responsible for convening a joint meeting for the appointment of a state auditor.

Staffing and deliverables indicate substantial capacity with ample corresponding output. According to the auditor's 2016 annual report, they have 91 professional audit staff and six support staff. Its $7.2 million budget, however, is fairly small for such a populous state.[1538] The OSA conducts five types of audits: financial audits, performance audits, information technology audits, school district audits, and responses to legislative requests. The allocation of staff time across these types of reports indicates that performance audits are an important part of the OSA's work. In 2016, the Office of the State Auditor completed 15 performance audits accounting for 72.1% of the office's working hours; two IT audits consumed the next largest time commitment at 12.9% of the office's total work hours, followed by two financial audits including the Comprehensive Annual Financial Report CAFR (8%) and two school districts (7%).[1539] The distribution of audit hours is similar for 2017: performance audits 73.8%, financial audits 10.6%, information technology audits 10.7%, and school district audits 4.9%.[1540]

Most audits are initiated at the discretion of the state auditor. His decision of which audits to schedule is based on a risk assessment. As noted above, this authority is based on NJ Public Laws of 2006, Chapter 82. There do, however, appear to be some limits on the OSA's audit authority.[1541] It appears that OSA is constrained in auditing certain large agencies, such as the Port Authority of New York & New Jersey (PANYNJ), due to complexity, legal questions about authority to audit, and issues with subpoena power (interview notes, 2018). Another example is the New Jersey Transit Corporation. While audits have been conducted on elements of the New Jersey Department of Transit, the OSA has not conducted an audit of the New Jersey Transit Corporation. These prohibitions can be overcome when "fire alarm" oversight (i.e., a response to a crisis) is triggered. Following a train crash in 2016, the OSA is initiated an audit of the New Jersey Transit Corporation with an expected publication date some time in 2019. The audit is expected to have a somewhat narrow focus, thus reducing the overall complexity. Typically, agencies are audited at least once every five years, which is a built-in feature of the risk-based assessment.[1542] Importantly, in 2011, the OLS budget was cut by $250,000, and legislative staffing in both the assembly and senate was cut by a total of $4 million (Statehouse Bureau Staff, 2011).[1543] Fewer resources for OSA staffing limit its capacity to produce high quality audits reports, which means that legislators will be less informed (interview notes, 2018).

While legislators can follow a process to request an audit, these are rarely the source of an audit's initiation: only two in a five-year period (interview notes, 2018). In addition to audits, studies may be requested by legislative leadership or the Legislative Services Commission, but a perusal of the OSA's work product indicates most of the OSA's work is usually at their own discretion based on risk assessment.[1544] An example of legislative initiation is a 2016 public

[1538] For reference, this is about half of what Michigan's auditor general receives and roughly the same amount Colorado's audit agency receives, even though Colorado's population is less than two-thirds the size of New Jersey's.
[1539] http://www.njleg.state.nj.us/legislativepub/auditor/16ann.pdf, accessed 6/21/18.
[1540] http://www.njleg.state.nj.us/legislativepub/auditor/17ann.pdf, accessed 6/27/18.
[1541] http://www.business.rutgers.edu/sites/default/files/documents/2017-agaauc-state-auditor.pdf, accessed 6/21/18.
[1542] An agency not audited for five years will almost certainly place them on the audit schedule (interview notes, 2018).
[1543] http://www.nj.com/news/index.ssf/2011/07/christie_signs_state_budget_af.html, accessed 6/19/18.
[1544] http://www.njleg.state.nj.us/legislativepub/about_us.asp#about, accessed 6/21/18.

request by the assembly speaker and a fellow assemblyman to audit a school district that was operating at a $2 million deficit (Lin, 2016).[1545]

It appears that there might be more audits triggered by legislator requests if the current structure, which funnels such requests through legislative leaders, were changed. Every year for at least the past ten years an average of eight bills were introduced that would in some way change the functioning of the OSA with respect to audits, its process, and its methods of analysis. Starting with 2008 and ending in 2018, bills have been introduced that would allow any legislator to make an audit request, permit formation of a special performance audit committee, and direct the state auditor to audit any contracts with private corrections companies.[1546] The most recent bill was co-sponsored by a legislator serving on the LSC, the legislative commission that oversees the work of the OSA.[1547]

The performance audits produced by the New Jersey Office of the State Auditor emphasize improving the efficiency of government agencies. Each year, the OSA produces reports summarizing their activities and the value added. A 2016 report states that the OSA "identified $75.9 million in new cost savings and revenue enhancements.[1548] The subsequent annual report claims that in 2017 OSA "identified $34.6 million in new cost savings and revenue enhancements."[1549]

Most performance audits include recommendations for improving the efficacy of the audited agency. The OSA tries to convince audited agencies to address its recommendations rather than framing recommendations as something the legislature should take up (interview notes, 2018). The agency is viewed as the appropriate actor to solicit legislative change, rather than the OSA (interview notes, 2018). Once the OSA completes an audit, by statute a copy is sent to the governor, the president of the senate, the speaker of the general assembly, and the Executive Director of the Office of Legislative Services. Additionally, the OSA routinely sends copies to each member of the state legislature, executive directors of partisan staff, management of audited agency, the state treasurer, the state comptroller, and the New Jersey State Library. The reports are also posted prominently on the state auditor's webpage (interview notes, 2018). There is no requirement that an audit receive a legislative hearing (interview notes, 2018). Only about once a year to audit staff testify at committee hearings (interview notes, 2018). Two examples are background checks for education employees and a requirement for insurance companies to check death records before suspending a policy (interview notes, 2018). Additionally, we identified two examples of the state auditor giving testimony at a committee hearing, once in 2008 (Livio, 2015c),[1550] and once in 2014.[1551] The OSA does not track bills that might have been introduced in connection with audit report recommendations.

Moreover, New Jersey law forbids OLS staff from initiating legislative policymaking. Rather, a legislator must seek staff assistance, and within that context, staff may only offer suggestions on the issues.[1552] The standard practice involves physically distributing the audits to government officials and informally communicating with them. The OSA does not envision

[1545] http://www.nj.com/jjournal-news/index.ssf/2016/12/assembly_asks_for_audit_of_bay.html, accessed 6/21/18.
[1546] http://www.njleg.state.nj.us/2016/Bills/A1000/745_I1.PDF, accessed 6/21/18.
[1547] http://www.njleg.state.nj.us/2018/Bills/A2000/1939_I1.PDF, accessed 6/21/18.
[1548] http://www.njleg.state.nj.us/legislativepub/auditor/16ann.pdf, p.2, accessed 6/27/18.
[1549] http://www.njleg.state.nj.us/legislativepub/auditor/17ann.pdf, p.2, accessed 6/27/18.
[1550] https://www.loc.gov/item/2009416611/, accessed 1/7/19.
http://www.nj.com/politics/index.ssf/2014/12/nj_assembly_panel_delves_into_problems_with_118_million_canceled_social_service_contract_food_stamp.html, accessed 6/21/18.
[1552] http://www.njleg.state.nj.us/legislativepub/oview.asp, accessed 6/21/18.

itself as a source of legislative changes, but rather encourages agencies to seek legislative response (interview notes, 2018). Yet sometimes audit issues are taken up by legislators.

In 2016, the OSA completed a performance audit of the Department of Environmental Protection's tire recycling policies that did produce a legislative response. The auditor's report made a single recommendation, that "the department should develop a process to periodically identify illegal scrap tire piles within the state" (Office of the State Auditor, 2016). Within six months, assembly bill A4395 was introduced, "requiring the continued identification and remediation of waste tire sites." Another bill on this topic, S2422, passed in the senate and died in a general assembly committee in 2016 (Johnson, 2016).[1553] The bill was reintroduced as A2399 on February 1, 2018, and was referred to the Assembly Environment and Solid Waste Committee.[1554] As of March 2018, the bill was dead in the Senate after having passed unanimously through the general assembly in 2017.[1555] Thus, it is not clear how effective the legislature is in responding to audit findings, even on an issue that impacts public health and safety and received some media coverage. [1556]

Vignette: OSA Audit of Group Homes for the Disabled

In 2014, 204 people with profound disabilities were transferred to group homes after closing the New Jersey Developmental Center and the Woodbridge Development Center (Livio, 2014b).[1557] The transfers were a part of a government program to free dollars "locked into supporting the infrastructure of the institutions" and reinvest that money into community services where patients are integrated into society. The move, however, was met with anxiety from some of the patient's families, some of whom filed a federal lawsuit (Livio, 2014b).[1558] Gov. Christie publicly responded to the concerned families, espousing the choice provided by the new living arrangements and the promise of community services, while decrying institutionalization (Livio, 2014a).[1559] The move was done quickly, in two-and-a-half-years, rather than the five years recommended by a task force (Livio, 2012).[1560] The Office of the State Auditor (OSA) scheduled an audit in 2016 of the program to assess the level of service received by patients living in group homes, a common community living arrangement for people with disabilities.[1561] The audit found serious failures. The 2016 audit[1562] examined 40 of the 204 people with disabilities and found serious treatment failures: lactose intolerant patients being fed milk,

[1553] http://www.njspotlight.com/stories/16/11/28/fine-print-getting-a-handle-on-new-jersey-s-tire-dumps/, accessed 6/21/18.
[1554] https://legiscan.com/NJ/bill/S2422/2016, accessed 6/21/18.
[1555] https://legiscan.com/NJ/bill/A4395/2016, accessed 6/21/18.
[1556] http://www.njleg.state.nj.us/bills/BillsByKeyword.asp, accessed 6/21/18.
[1557]http://www.nj.com/politics/index.ssf/2014/12/last_residents_at_woodbridge_developmental_center_moved_out_by_christie_administration.html, accessed 6/19/18.
[1558]http://www.nj.com/politics/index.ssf/2014/12/last_residents_at_woodbridge_developmental_center_moved_out_by_christie_administration.html, accessed 6/19/18.
[1559]http://www.nj.com/politics/index.ssf/2014/02/christie_defends_closing_developmental_centers_in_woodbridge_and_totowa.html, accessed 6/19/18.
[1560] www.nj.com/news/index.ssf/2012/08/nj_task_force_ordering_closure.html, accessed 6/19/18.
[1561] https://mn.gov/mnddc/parallels2/pdf/80s/86/86-DHP-UCP.pdf, accessed 6/18/19.
[1562] http://www.njleg.state.nj.us/legislativepub/auditor/544714.pdf, accessed 6/18/19.

missed medical appointments, and service gaps (Livio, 2016a).[1563] The audit also found that the Department of Human Services failed to make the required number of site visits.

In a written response included in the audit document,[1564] the Human Services Commissioner stated that the failure to make the required number of visits was the result of case managers showing up to the site only to find no one home and failing to document the reason. The corrective action proposed was to ensure the proper documentation by case managers going forward. The Chief Executive Officer of the New Jersey Association of Community Providers, which represents 55 group homes and supervised apartments (Stainton, 2017),[1565] promised to change group homes operations.

A bill search of "group homes" on the New Jersey Legislature's website shows that the only bill during that period dealt with group homes required fire suppression and alarm systems (A2769).[1566] It does not appear that the 2016 audit resulted in legislative action. Prior to the audit, however, Assemblywoman Valerie Vainieri Huttle, who opposed the transition, cited the speed with which patients were transitioned, the limited supply of living facilities, and the value in keeping the developmental centers open (Valerie Vainieri Huttle, 2015).[1567] In 2015, she sponsored a bill that would regulate group homes for Alzheimer's patients, which was eventually signed into law by Gov. Christie (NJTV News, 2015).[1568] The demand for such a bill became clear by reports of patients wandering away from the homes while unsupervised (Rizzo & Koloff, 2015).[1569] While the legislature was successful in passing legislation to regulate group homes generally, nothing specific seemed to happen after the audit report.

Oversight Through the Appropriations Process

Aided by the staff of the Legislative Budget and Finance Office (LBFO), the committees involved in the budget and in appropriations in both chambers demonstrate capacity and proficiency at holding officials and agencies accountable for their performance. These monetary committees use budget hearings and audit reports, including the OSA annual compliance report to monitor the performance of state agencies. Additionally, the Joint Budget Oversight Committee, responsible for approving agency transfers during session, demonstrates oversight capacity by monitoring agency spending. The LBFO prepares annually an analysis of the governor's proposed budget and tracks the hundreds of individual budget resolutions proposed by legislators. It also provides state revenue estimates and acts as the committee staff for the Joint Budget and Oversight Committee.

The Senate Budget and Appropriations Committee, the Assembly Budget Committee, and the Assembly Appropriations Committee are the committees responsible for reviewing the

[1563] http://www.nj.com/politics/index.ssf/2016/07/audit_move_to_group_homes_caused_problems_for_some.html, accessed 6/19/18.
[1564] http://www.njleg.state.nj.us/legislativepub/auditor/544714.pdf, accessed 6/18/18.
[1565] http://www.njspotlight.com/stories/17/12/20/major-payment-reforms-to-programs-for-developmentally-disabled-in-new-jersey/, accessed 6/19/18.
[1566] http://www.njleg.state.nj.us/bills/BillsByKeyword.asp, accessed 6/18/18.
[1567] http://www.valeriehuttle.com/new_jerseys_developmental_centers_should_stay_open, accessed 6/18/18.
[1568] https://www.njtvonline.org/news/video/bill-one-step-closer-to-officially-ending-return-home-new-jersey-program/, accessed 6/18/19.
[1569]http://www.valeriehuttle.com/new_jersey_families_welcome_regulations_of_group_homes_for_dementia_patients, accessed 6/18/19.

budget. The LBFO, a unit of the Office of Legislative Services, prepares fiscal information for the budget committees.[1570] A budget battle demonstrates how evenly matched the legislative and executive branches can be during the appropriations process. In July 2017, Gov. Christie threatened to use his line-item veto to cut Democratic spending priorities from the appropriations bill unless Democrats passed an unrelated bill that would require the state's largest non-profit health insurance company, Horizon Blue Cross Blue Shield, to contribute $300 million dollars to the state opioid-treatment program. After three days of government shutdown and media coverage, much of it unfavorable to the governor, Democrats in the legislature and the governor struck a deal that did not require the insurance company to immediately pay the $300 million.

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

Over a two-year period, the rate of audit compliance for fiscal year 2015 recommendations rose to 88%.[1571] Some of the increase in compliance is attributed to the appropriations hearings (interview notes, 2018). There was a slight decline in 2016. The 2017 Annual Report, the compliance review on findings related to audit reports issued during the fiscal year ending June 30, 2016, shows 83% of recommendations have been complied with, or management has taken steps to achieve compliance. If audit recommendations and compliance issues are not resolved after a three-year review period, they are added to the list of issues to look for when the next audit of the entity is conducted because most agencies are audited every three to five years (interview notes, 2018). Moreover, the agency's response to an audit recommendation constitutes corrective action. This is usually understood as the agency choosing how to correct the problem that the audit identified. The agency is expected to have a certain level of commitment to the corrective action it proposes (interview notes, 2018).

The Joint Budget Oversight Committee can also provide crucial ongoing oversight after the state budget is adopted. The committee consists of six members, three appointed by the president of the Senate and three appointed by the speaker of the Assembly.[1572] The minority party is guaranteed one seat from each chamber. This committee oversees budget "transfers as prescribed in the annual appropriation act, bond authorization or bond appropriation acts, bond refinancing proposals, and claims presented to the Legislature." The Legislative Budget and Finance Office staffs the Joint Budget Oversight Committee.[1573] A review of five years of activity shows three meetings during the 2016-2017 session[1574] (10:33, 8:52, 9:13), four meetings during the 2015-2014 session[1575] (7:31, 2:36, 6:58, 7:35), and four meetings during the 2013-2012 session[1576] (42:43, 3:32, 13:04, 5:50). The typical meeting is no more than 13 minutes. These meetings fall into three categories: meetings of six minutes or less were pro forma—roll call, approval of previous minutes, and then votes on the agenda items— without

[1570] http://www.njleg.state.nj.us/legislativepub/budget.asp, accessed 6/19/18.
[1571] http://www.njleg.state.nj.us/legislativepub/auditor/17ann.pdf, accessed 6/21/18.
[1572] http://www.njleg.state.nj.us/legislativepub/Rules/SenRules.pdf, accessed 6/19/18.
[1573] http://www.njleg.state.nj.us/legislativepub/budget.asp, accessed 6/19/18.
[1574] http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=JBOC&SESSION=2016, accessed 6/19/18.
[1575] http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=JBOC&SESSION=2014, accessed 6/19/18.
[1576] http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=JBOC&SESSION=2012, accessed 6/19/18.

any questions; meetings between seven minutes and 14 minutes were more involved with legislators, mostly the committee chair, questioning officials; the lone 40-minute meeting that included substantial discussion of the agenda items with more questioning of officials.

An example of the first group is the July 30, 2012, meeting[1577] that had two items: a Department of Treasury request to transfer various bonds funds and appropriations and a New Jersey Environmental Infrastructure Trust Request for Issue Refunding Bonds. An official from the Department of Treasury and Department of Environmental Protection was on hand to provide testimony and answer any questions, but in both cases, no questions were asked, and the meeting went right to a vote.

An example of the second group is the May 10, 2012, meeting[1578] dealing with a request from the Department of Environmental Protection (DEP) to reallocate $8 million in previously appropriated green trust local and non-profit program project funds. The proposal was for the funds to be shifted from various Green Acres bond acts and Garden State Preservation trust funds to a Blue Acres block grant appropriation for acquisition by counties and municipalities. In addition to the fund transfer, the DEP was seeking to broaden the number of municipalities eligible for Blue Acres funds. Legislators' questions were pointed and direct about why the funds were still available and how much of the transfer funds would go to projects as opposed to soft costs (such as survey, appraisal, preliminary assessment costs), and why the particular towns were chosen to be added. The motivation to change the funding in part was a result of damage by Hurricane Irene. The reallocation was passed by the committee.

The longest meeting during this period occurred on March 18, 2013.[1579] This meeting dealt with the sale of bonds and was rather technical. The officials seemed to be seeking the option to receive more money up front and offload greater costs on future New Jersey citizens. The chairman probed both this fact and its merits. At one point the chairman took time to develop a metaphor—a couple buying their first house and borrowing from their parents for the down payment—in what seemed to be a clear effort to both make a point in his discussion with the official and to communicate with a wider audience in New Jersey. The officials were quick to point out that institutional borrowing should be distinguished from personal borrowing. The officials were also quick to point out that their request would simply give them this option if conditions became right to deploy it. At one point the chairman stated:

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

In addition to the hearings during the budget process, the Senate Budget and Appropriations Committee is involved in other hearings related to fee increases and other decisions with financial implications. For example, during the NJ Transit Corp. hearings, the

[1577] http://www.njleg.state.nj.us/media/mp.asp?M=A/2012/JBOC/0730-0945AM-M0-1.M4A&S=2012, accessed 6/19/18.
[1578] http://www.njleg.state.nj.us/media/mp.asp?M=A/2012/JBOC/0510-0230PM-M0-1.M4A&S=2012, accessed 6/18/19.
[1579] http://www.njleg.state.nj.us/media/mp.asp?M=A/2013/JBOC/0318-1200PM-M0-1.M4A&S=2012, accessed 6/19/18.

Senate Budget and Appropriations Committee called officials in, asked questions, and discussed the merits of Gov. Christie's 90% subsidy reduction and considered the merits of restoring the subsidy. This committee also became involved in a regulatory conflict over the rules governing the hair braiding profession, which we discuss in the section on "Oversight Through Administrative Rule Review."

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

Oversight Through Committees

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

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

On the other hand, the 2014 the Fort Lee lane closures scandal resulted in multiple state legislative committees investigating the lane closures and Gov. Christie and his administration's involvement in them. These hearings had strong political overtones. The investigation began in the Assembly's standing Transportation Committee, which used its authority to subpoena witnesses from the Christie Administration to testify before the committee. Four months into the Assembly Transportation Committee investigation, both chambers formed separate special committees to investigate the scandal. Shortly after this, the legislature formed a Joint Special Committee to oversee the investigation. Eventually, the parallel U.S. Attorney's office investigation led to the indictment and convictions of David Wildstein, Bridget Kelly, and Bill Baroni. While the investigations by the state legislature and later the U.S. Attorney's office failed to implicate the Governor himself, the investigation demonstrated a concerted effort to hold the executive branch accountable.

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

Vignette: The New Jersey Transit Corporation

A focusing event, a train crash in Hoboken September 29, 2016, drew attention to 90% reduction in NJ Transit Corp. subsidies accompanied by a $3.44 billion diversion of its capital funds for operations. Federal inspectors conducted an audit, finding 787 rule violations during the first nine months of 2017 (Young, 2018).[1580] Both of New Jersey's legislative chambers also investigated, demonstrating its ability to exercise oversight despite three major obstacles: (a) challenges to committee authority by officials during hearings, which limited access to important agency information; (b) an apparent breakdown in ability to direct the OSA to audit; and (c) limited authority or capacity of the OSA to audit. The newly-elected governor, Phil Murphy, campaigned on fixing the trains, and has requested a state audit of the NJ Transit Corp. So, the train crash triggered multipronged oversight of a public corporation, the NJ Transit Corp.

During an August 2017 hearing, the Joint Legislative Oversight Committee, consisting of the Senate Legislative Oversight Committee and the Assembly Judiciary Committee, questioned Former Transit Executive Todd Barretta, who identified mismanagement, patronage, and corruption as rife within the commuter rail (Higgs, 2017a).[1581] On September 11, 2017, the NJ Transit Corp. sued Baretta for "maligning" the agency during his testimony at the joint legislative committee in August 2017 (Hetrick & Cronin, 2017),[1582] indicating the confrontational nature these hearings.

The Joint Legislative Oversight Committee held further hearings in September 2017. These uncovered key maintenance and safety positions left vacant (Higgs, 2016),[1583] violations cited by federal officials (The Associated Press, 2016),[1584] the highest breakdown rate among commuter railroads, overcrowding, delays, horrific details of the crash from first-hand witnesses, and a possible explanation for the crash: the train engineer suffered from an undiagnosed sleep disorder (Higgs, 2017b).[1585] NJ Transit Executive Director Steven Santoro was questioned at the hearing and assured the committee that steps were being taken to improve safety.

On January 4, 2018, the Senate Budget and Appropriations Committee became involved, and considered supplemental funding for the NJ Transit Corp (Alfaro, 2017).[1586] The committee considered supplemental funding of $85 million to address capacity and safety improvements, noting the diversion by former-Gov. Christie of capital improvement designated moneys to operations.

[1580] https://www.bloomberg.com/news/articles/2018-02-21/nj-transit-s-hidden-danger-bad-brakes-bare-wires-rotten-parts, accessed 4/21/18.

[1581] http://www.nj.com/traffic/index.ssf/2017/08/ex-nj_transit_officer_calls_agency_dysfuctional_ri.html, accessed 4/21/18.

[1582] http://observer.com/2017/09/nj-politics-digest-nj-transit-sues-ex-worker-over-explosive-testimony/, accessed 4/21/18.

[1583] https://www.nj.com/traffic/index.ssf/2016/11/feds_nj_transits_trains_are_the_worst_breakdown_th.html , accessed 4/21/18.

[1584] https://www.nj.com/hudson/index.ssf/2016/10/source_agency_found_nj_transit_violations_before_c.html, accessed 4/21/18.

[1585] http://www.nj.com/traffic/index.ssf/2017/09/nj_transit_still_in_crosshairs_a_year_after_fatal_hoboken_train_cra sh.html, accessed 4/21/18.

[1586] http://observer.com/2017/12/heres-what-the-nj-legislature-will-focus-on-before-the-end-of-lame-duck/, accessed 4/21/18.

On January 5, 2018, former NJ Transit Corp. officials were subpoenaed and questioned at a two-hour Joint Legislative Oversight hearing that has been described as the legislature doing its best to "aid Gov.-elect Phil Murphy with his focus on issues with New Jersey Transit" (Khemlani, 2018).[1587] This hearing focused on staffing, but past funding issues were raised, along with the need for a new "positive train control system" to improve safety. At a follow up hearing on January 8, 2018, of the Senate Legislative Oversight Committee and Assembly Judiciary Committee, legislators took an active role in questioning administrators including NJ Transit Executive Director Steven Santoro.[1588]

In February 2018, the Senate Transportation Committee considered bills but took no action (Higgs, 2018b).[1589] The Assembly Transportation and Independent Authorities Committee passed a bill out of committee, A1241, which would change the governance of the commission overseeing NJ Transit Corp. to include three members who are regular NJ Transit commuters.[1590] Republican legislators have made public their desire to discontinue what has been described as a "raft of reforms" (Reitmeyer, 2018).[1591] The bill, approved by the Assembly committee by an 11-0 vote, is currently in Senate (Reitmeyer, 2018).[1592] The 30 pages worth of reforms to the NJ Transit Corp. include mandating internal memos be reported to the legislature routinely.

The new governor signed an executive order (5) on January 22, 2018, directing the Commissioner of Transportation to authorize an independent audit of the NJ Transit Corp (ABC7NY, 2018).[1593,1594] with performance, strategic, and financial dimensions.[1595] It appears likely that an OSA audit will be forthcoming in fall 2018 in addition to the audit the governor has requested from his commissioner, but conducting an audit on the NJ Transit Corp. in all its functions is simply too large a task to be done by the OSA (interview notes, 2018). Therefore, it is important define a scope that is feasible for OSA and appropriate to address concerns and, moreover, does not overlap with the other audits.

The NJ Transit Corp.'s annual report indicates a financial audit conducted by Ernst and Young and an internal audit is completed on a yearly basis, but with no indication of performance audits.[1596] The US Department of Transportation reviewed the Ernst and Young audit and passed it without recommendation.[1597] Although the OSA audits the Department of Transportation and its Trust Fund Authority from time to time, these audits expressly excluded

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[1587] http://www.roi-nj.com/2018/01/09/industry/nj-transit-officials-testify-staffing-revenue-woes/, accessed 4/21/18.

[1588] http://www.njleg.state.nj.us/legislativepub/pubhear/sloaju01082018.pdf, accessed 4/21/18.

[1589]http://www.nj.com/traffic/index.ssf/2018/02/can_these_watchdogs_reform_nj_transit_from_being_n.html, accessed 4/21/18.

[1590] http://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A1241, accessed 4/21/18.

[1591] http://www.njspotlight.com/stories/18/02/04/state-lawmakers-call-for-30-pages-of-reforms-at-new-jersey-transit/, accessed 4/21/18.

[1592] http://www.njspotlight.com/stories/18/02/04/state-lawmakers-call-for-30-pages-of-reforms-at-new-jersey-transit/, accessed 4/21/18.

[1593] http://nj.gov/governor/news/news/562018/approved/20180122a_eo.shtml, accessed 4/21/18.

[1594] http://abc7ny.com/traffic/governor-signs-order-calling-for-new-jersey-transit-audit/2977751/, accessed 4/21/18.

[1595] http://nj.gov/infobank/eo/056murphy/pdf/EO-5.pdf, accessed 4/21/18.

[1596] http://www.njtransit.com/pdf/NJTRANSIT_2014_Annual_Report_Final.pdf, accessed 4/21/18.

[1597]

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

the NJ Transit Corp., merely citing the NJ Transit Corp.'s own internal audits within the OSA's audit report.[1598]

Even before the crash, the Federal Railroad Administration uncovered a variety of problems with the NJ Transit Corp. (Fitzsimmons, 2016).[1599] *Despite this attention, the legislature only became involved after the crash. A journalist who has studied the NJ Transit Corp. for 20 years said the legislature ignored it, looking for opportunities to spend money on projects in their own districts, while the governor has done leg work to make reforms happen (Higgs, 2018a).*[1600]

However, the NJ Transit Corp. is resisting (Young, 2017).[1601] *For example, health and human services administrators refused to answer questions when subpoenaed in a $118 million contract for a software program that the contractor failed to deliver (Livio, 2015c).*[1602]

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

Yet, some problems identified by auditors receive limited attention for the legislature despite the need to change laws to facilitate agency performance. The New Jersey Prescription Drug Monitoring Program (NJPMP)[1603] gathers data to detect patients shopping for doctors to prescribe opiates or other controlled substances (Brodesser-Akner, 2016).[1604] An OSA audit[1605] recommended that the Department of Law and Safety Consumer Affairs Division "seek legislation for allowing NJPMP data sharing to the New Jersey Medicaid program and other state sponsored and private prescription drug insurance programs" (p. 8). This recommendation arose because New Jersey state law prohibits Medicaid from allowing public access to its data (Livio, 2016b).[1606] Other states' laws permit this access, so it is clear there are solutions to this problem. Yet, since the audit, there is no evidence on the New Jersey Legislative website of bills or laws addressing this issue despite a clear need for legislative action.

Despite these occasional lapses, the New Jersey General Assembly appears to conduct more oversight through standing committees than most other states. Further evidence that the New Jersey legislature pursues oversight is provided by a list of the hearing during the 2017

[1598] http://www.njleg.state.nj.us/legislativepub/Auditor/033016.pdf, accessed 4/21/18.

[1599] https://www.nytimes.com/2016/10/02/nyregion/nj-transit-was-under-investigation-before-fatal-crash-federal-rail-official-says.html?mtrref=www.google.com, accessed 4/21/18.

[1600] http://www.nj.com/traffic/index.ssf/2018/01/opinion_what_could_be_the_big_reveals_from_an_nj_t.html, accessed 4/21/18.

[1601] https://www.bloomberg.com/news/articles/2017-12-05/nj-transit-withholds-data-subpoenaed-for-lawmakers-safety-probe, accessed 4/21/18.

[1602] http://www.nj.com/politics/index.ssf/2014/12/nj_assembly_panel_delves_into_problems_with_118_million_canceled_social_service_contract_food_stamp.html, accessed 4/21/18.

[1603] http://www.njconsumeraffairs.gov/pmp/Pages/default.aspx, accessed 6/19/18.

[1604] http://www.nj.com/politics/index.ssf/2016/04/christie_adds_new_state_to_prescription_monitoring.html, accessed 6/19/18.

[1605] http://www.njleg.state.nj.us/legislativepub/auditor/661014.pdf, accessed 6/19/18.

[1606] http://www.nj.com/news/index.ssf/2016/09/njs_prescription_drug_monitors_are_outmanned_and_r.html, accessed 6/19/18.

lame duck session.[1607] These include meetings of a joint legislative task discussing improvements to drinking water infrastructure, meetings of the Senate Health Human Services and Senior Citizens Committee to discuss problems with the medical examiners, and meetings of the Senate Law and Public Safety Committee examining media reports about alleged sexual misconduct at women's correctional facility.

Oversight Through the Administrative Rules Process

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

A source summarizes the next steps as follows:

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

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

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

> The public can challenge a rule within one year after the rule is promulgated for almost any reason. They can basically say [the agency] didn't follow the process. A member of the public can file a petition with the agency to change a rule. However, this does not have the same bite as a concurrent resolution. If a legislator really wanted to block a rule, they'd use the legislative process. It is certainly the case that legislators and the influence they have in the community could pursue a challenge to an existing rule or petition to change a rule, but that doesn't have the force of a joint resolution. Of course, legislators know when the

[1607] https://observer.com/2017/12/heres-what-the-nj-legislature-will-focus-on-before-the-end-of-lame-duck/, accessed 1/10/19.

> votes aren't there to challenge a rule, or they might know that the effort would be in vain so they could pursue a rule change with constituents or an advocacy group, that's for sure (interview notes, 2018).

The legislature does not often successfully use the power of a joint resolution to invalidate an administrative rule. Most attempts at concurrent resolutions to invalidate administrative rules simply fail to get the requisite votes (interview notes, 2018). There were three rules the legislature tried to block: one created by the Civil Service Commission[1608] in 2013 (Johnson, 2016),[1609] one created by the Department of Environmental Protection in 2016 (Johnson, 2018),[1610] and one created by the Division of State Police regarding justifiable need for issuing concealed handgun permits in 2016.

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

The Department of Environmental Protection (DEP) proposed a rule regarding septic system density standards in a protected area of the state known as the Highlands. The rule would increase septic density to improve development and economic opportunities in the area. The Highlands are an important source of water for most the state's population. The legislature passed a concurrent resolution citing concerns about the environmental impact of the rule change and its violation of the intent of the 2004 bill to limit threats to the water supply and environment. Prior to the concurrent resolution, the rule was challenged in court, where it was upheld. In response to the concurrent resolution, the DEP claimed it was flawed substantively and insisted the agency would go ahead with the rule, citing the court case that upheld the rule after weighing the evidence of environmental and economic impact considering the legislative intent (Goldshore, 2018; Danzis, 2018).[1611,1612] Although the legislature's efforts appear procedurally flawed, Gov. Murphy is likely to be more sympathetic than his predecessor to the policy concerns expressed in the concurrent resolution.

The Division of State Police wanted to expand the definition of justifiable need for issuing a concealed handgun carry permit. The 2016 rule was met with the passage of two concurrent resolutions, one distinguishing the rule from legislative intent and the other reinstating the definition of justifiable need, NJAC 13:54-2.4.[1613] This issue did not receive media coverage but seems to be an example of the legislature insisting that an agency be accountable to legislative priorities on gun control.

[1608] https://caselaw.findlaw.com/nj-superior-court-appellate-division/1756147.html, accessed 6/21/18.

[1609] https://www.nj.com/politics/index.ssf/2016/12/nj_court_rejects_christie_administrations_civil_se.html, accessed 6/21/18.

[1610] http://www.njspotlight.com/stories/18/01/08/lawmakers-rap-dep-roll-back-rule-on-septic-tanks-in-highlands/, accessed 6/21/18.

[1611] https://www.law.com/njlawjournal/sites/njlawjournal/2018/01/26/highlands-septic-system-density-rule/?slreturn=20180227114756, accessed 6/21/18.

[1612] http://www.njherald.com/20180114/highlands-rule-will-stand-dep-chief-says#, accessed 6/21/18.

[1613] http://www.njsp.org/news/pdf/pr/20170403_d063_njr668a.pdf, accessed 6/21/18.

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

Vignette: Occupational Regulatory Oversight: Hair Braiding Establishment Advisory Committee

The New Jersey State Board of Cosmetology and Hairstyling[1614] is the executive agency responsible for creating occupational regulations for hairstylists and barbers. The board requires practitioners to be licensed to do their craft professionally. Part of licensure requires graduating from beauty school which comes with a $17,000 cost and 1,200 hours of cosmetology. Although the 1984 enabling legislation did not explicitly grant the board authority to regulate hair braiding—the closest activity that if granted is hair weaving—the board has acted within its discretion unchecked by the legislature until recent action. The practices of the State Board of Cosmetology and Hairstyling became the focus of a joint budget oversight committee hearing.

Melek Ustunluk, a professional hair braider, was arrested in 2014 by an officer for hair braiding in an unregistered establishment and without a license. The officer was a recent patron of Melek's services, and a judge later dismissed the charges.[1615] Another hair braider in 2015 was fined $1,150 for practicing without a license. The New Jersey Hair Braiding Freedom Coalition and the Institute for Justice have taken up advocacy for reforming occupational regulations on this issue.[1616] The Institute for Justice has branded itself as "the National Law Firm for Liberty,"[1617] and has close connections to the Cato Institute.[1618] Its publication, "Barriers to Braiding, How Job-Killing Licensing Laws Tangle Natural Hair Care in Needless Red Tape" (Erickson, 2016),[1619] has been cited in numerous state efforts seeking regulatory reform (Slone, 2016).[1620]

Assembly Bill 3754 would remove hair braiding from the board's regulatory authority and create a new Hair Braiding Advisory Committee for registering and regulating hair braiding establishments.[1621] The bill has three primary sponsors (two Democrats, one Republican), eight co-sponsors (five Democrat, three Republican), and was passed (74 Ayes, 0 Nays, and six abstentions). The bill was referred to the Senate Budget and Appropriations Committee. While it made it out of the Senate Budget and Appropriations Committee (12 Aye, 0 Nay, one Abstention) At the time of writing, it awaits a floor vote.[1622] The handling of the issue demonstrates a capacity on the part of the legislature to act in a bipartisan manner to hold an agency accountable for its performance and engage constructively in the regulatory environment.

[1614] http://njpublicsafety.com/ca/cosmetology/, accessed 5/28/18.
[1615] http://www.nj.com/news/index.ssf/2018/05/hair_braiding_new_jersey.html accessed 5/28/18, accessed 6/19/18.
[1616] http://njhairbraidingfreedom.com/, accessed 5/28/18.
[1617] http://ij.org/about-us/, accessed 5/28/18.
[1618] https://www.sourcewatch.org/index.php/Institute_for_Justice, accessed 5/28/18.
[1619] http://ij.org/report/barriers-to-braiding/, accessed 5/28/18.
[1620] http://www.indianapolisrecorder.com/business/article_117a2d7e-a1e9-11e6-86bd-372a67e94abd.html accessed 5/28/18.
[1621] http://www.njleg.state.nj.us/2018/Bills/S3000/2510_S2.PDF, accessed 6/18/18.
[1622] http://www.njleg.state.nj.us/legislativepub/calendar/061518.pdf, accessed 6/18/18.

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

Oversight Through Advice and Consent

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

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

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

On the other hand, government reorganization in New Jersey depends on legislative action. Three examples of state government reorganization in New Jersey in 2010 all involve legislation passed by the legislature. For example, SB 2406, which converted the state's public broadcast system.[1623]

Oversight Through Monitoring of State Contracts

In general, the legislature does not systematically oversee state contracts; contracts are overseen by the state comptroller, an executive agency. The exceptions are audits produced by

[1623] http://www.ncsl.org/documents/fiscal/eliminations2011.pdf, accessed 1/10/19

the OSA and active investigations or probes conducted by the legislature. Two examples to be discussed exemplify some of the difficulties the legislature has had policing contracts: Aramark contracts for food services in jails and prisons and Hewlett-Packard and Maximus.

In 2013, journalist Chris Hedges reported that Aramark, a private vendor, which has had a contract with New Jersey since 2004, delivered spoiled food to inmates (Hedges, 2013).[1624] In addition to concerns about the quality of food Aramark was serving, in 2005 an Aramark employee was arrested for attempting to sell drugs to kitchen prison workers (Dannenberg, 2006).[1625] Prison officials considered contracting for food service from another provider, but continued the contract on a month-to-month basis because Aramark was the only bidder (Dannenberg, 2006).[1626] This situation demonstrates a need for legislative oversight, but we can find no evidence that any monitoring occurred. This issue received no coverage on the OSA website,[1627] the legislature's website,[1628] and media coverage of the legislature using the search terms "prison," "jail," and "food."

New Jersey entered into a $118.3 million contract with Hewlett-Packard to produce a computer system to simplify citizen enrollment into social welfare programs, called the Consolidated Assistance Support System (CASS) that would replace a system from the 1980s (Livio, 2015b).[1629] The system is needed due to the length of time it takes for recipients to receive benefits. For example, the US Department of Agriculture has threatened financial sanctions unless New Jersey reduces the time it takes applicants to receive SNAP benefits (Livio, 2014c).[1630] Discussions about CASS began in 2005; work began in 2007 with an expected completion date of 2010. Former-Gov. Christie cancelled the project in November 2014 without explanation, citing ongoing talks with Hewlett-Packard. A December 2014 audit[1631] showed the contract lacked a key "element found in nearly every other state contract: language that would have given the state power to penalize the vendor should something go wrong" (Livio, 2015c).[1632] The audit also revealed the cost ballooned to $227 million and that the state could be liable for a much larger share of the cost if the project was left unfinished, otherwise the federal government pays 90% for a program seen to completion. An agreement was reached with Hewlett-Packard to finish the project by April 2016 (Seidman & Hanna, 2014)[1633] but a month after the agreement was made, both Hewlett-Packard and Gov. Christie reached termination agreement (Livio, 2015a).[1634]

[1624] https://www.truthdig.com/articles/food-behind-bars-isnt-fit-for-your-dog/, accessed 6/19/18.
[1625] https://www.prisonlegalnews.org/news/2006/dec/15/aramark-prison-food-service-with-a-bad-aftertaste/, accessed 6/19/18.
[1626] https://www.prisonlegalnews.org/news/2006/dec/15/aramark-prison-food-service-with-a-bad-aftertaste/, accessed 6/19/18.
[1627] http://www.njleg.state.nj.us/legislativepub/auditreports_department.asp, accessed 6/19/18.
[1628] http://www.njleg.state.nj.us/, accessed 6/19/18.
[1629]http://www.nj.com/politics/index.ssf/2014/11/nj_ends_118_million_contract_to_boost_enrollment_in_obamacare_other_social_service_programs.html, accessed 6/19/18.
[1630]http://www.nj.com/politics/index.ssf/2014/08/njs_slow_handling_of_food_stamp_program_could_cost_it_money_feds_say.html, accessed 6/19/18.
[1631] http://www.njleg.state.nj.us/legislativepub/auditor/543213.pdf, accessed 6/19/18.
[1632]http://www.nj.com/politics/index.ssf/2014/12/nj_assembly_panel_delves_into_problems_with_118_million_canceled_social_service_contract_food_stamp.html, accessed 6/19/18.
[1633] http://www.valeriehuttle.com/medicaid_enrollment_problems_plague_n_j, accessed 6/19/18.
[1634]http://www.nj.com/politics/index.ssf/2015/01/it_company_will_refund_nj_75_million_but_will_not_deliver_on_contract_to_automate_social_service_pro.html, accessed 6/19/18.

Maximus was hired as an additional quality assurance consultant, paid $10 million, and advised the state that the project was in danger of losing federal support. All the while stories were written about the deplorable benefit wait times (Kitchenman, 2014):[1635]

> News reports from 2014 showed pictures of floors in county hallways lined with stacks of applications that needed to be processed by hand and quoted county officials complaining that their employees had stacks under their desks to get to "someday." New Jersey ranked dead last in the time it took to deliver benefits (Nurin, 2016).[1636]

The legislature, for its part, held hearings into the project and benefit delays. In December 2014, the Assembly Human Services Committee,[1637] chaired by Valerie Vainieri Huttle, held a hearing[1638] at which State Auditor Stephen Eells testified regarding the audit. He criticized the Human Services Department for not letting the Treasury Department know about the problems with the contract (Livio, 2015c).[1639] Chairwoman Huttle also wrote an open letter to the Human Services Commission seeking an explanation for the delays.[1640] The State Human Services Commission's longest serving member resigned in February 2015, on the heels of the CASS contract revelations and the closure of the developmental centers that were described earlier in this report (Livio, 2015d).[1641] As of 2016, KPMG was hired at a cost of $850,000 and recommended implementing "incremental strategies and establish clear leadership." Since then, a series of stop-gap measures have been adopted (Nurin, 2016),[1642] but the state is still depending on private vendors to fulfill contract obligations.

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

Oversight Through Automatic Mechanisms

New Jersey lacks a regular mechanism that brings programs up for review, but legislators may attach sunset provisions to bills in a case-by-case basis. Baugus and Bose (2015) describe

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[1635] http://www.njspotlight.com/stories/14/12/11/endless-computer-delays-threaten-food-health-aid-to-low-income-families/, accessed 6/19/18.
[1636] http://www.njspotlight.com/stories/16/02/24/stopgap-system-helps-social-services-speed-medicaid-application-process/, accessed 6/19/18.
[1637] https://ballotpedia.org/Human_Services_Committee,_New_Jersey_General_Assembly, accessed 6/19/18.
[1638] http://www.njleg.state.nj.us/media/mp.asp?M=A/2014/AHU/1211-0100PM-M0-1.M4A&S=2014, accessed 6/19/18.
[1639]http://www.nj.com/politics/index.ssf/2014/12/nj_assembly_panel_delves_into_problems_with_118_million_canceled_social_service_contract_food_stamp.html, accessed 6/19/18.
[1640] http://www.assemblydems.com/pdf/1415Session/SNAPletterDHS.pdf, accessed 6/19/18.
[1641] http://www.nj.com/politics/index.ssf/2015/02/njs_longest-serving_human_services_commissioner_to.html, accessed 6/19/18.
[1642] http://www.njspotlight.com/stories/16/02/24/stopgap-system-helps-social-services-speed-medicaid-application-process/, accessed 6/19/18.

New Jersey's system as an irregular or *ad hoc* sunset mechanism, meaning that legislators may elect to add sunset provisions to bills on a case-by-case basis. Although the legislature could add sunset provisions, no examples could be identified, (interview notes, 2018).

Methods and Limitations

New Jersey provides public and online access to transcripts, agendas,[1643] as well as audio of committee hearings and video for voting sessions (interview notes, 2019). The legislature has copies of meeting minutes that can either be ordered through a physical book or sought by contacting "the OLS committee aide for specific committees . . . [to] see if they have the minutes available . . ." (interview notes, 2019). For New Jersey, out of the five people that were contacted, five people were interviewed.

[1643] http://www.njleg.state.nj.us/legislativepub/pubhearings2017.asp#SFF, accessed 1/5/19.

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Legislative Oversight in New Mexico

Capacity and Usage Assessment

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

Summary Assessment

New Mexico's legislature has strengths and weaknesses with respect to oversight. Analytic bureaucracies play an active role in monitoring government performance in New Mexico. For a state the size of New Mexico, the Office of the State Auditor (OSA) has a large staff and is well-funded. The Program Evaluation Unit (PEU) with its close working relationship with the legislature is highly effective. PEU staff is small and funding is limited compared to the OSA, but Legislative Finance Committee (LFC) involvement leverages the power of PEU's evidence to influence agency performance. New Mexico's interim committees appear to be exceptionally active in conducting oversight, both with respect to the state's budget and agency program performance. On the other hand, there seems to be little or no concern about overseeing agency rules, which can easily subvert legislative intent. And gubernatorial powers are not checked through legislative advice and consent. The legislature has no power to monitor state contracts, and the executive branch has exempted many state contracts for internal oversight.

Major Strengths

The Legislative Finance Committee (LFC) is a crucial agent of legislative oversight in New Mexico. This committee vigorously pursues its oversight responsibilities, working with the PEU, in concert with the LFC, to produce detailed evaluations of agency programs. Based on this evidence the LFC recommends changes to agency budgets and programs. The LFC then works through the legislature to enact these changes. All program evaluations are presented to the LFC, and the LFC makes recommendations directly to the agency. The LFC makes excellent use of the uninterrupted time available to an interim committee by holding meetings that last for two to four consecutive days and often feature site visits. The LFC acts as a budget clearinghouse, proposing a budget to the legislature independent of the executive budget. Performance-based budgeting, which guides agency budget requests, facilitates LFC's role in oversight.

Challenges

The LFC is active and effective, but it is a small subset of the entire legislature. Its role in the budget is to advise the legislature to take action based on its recommendations, so this is a two-step process in which the standing committees could choose to ignore input from the LFC. The legislature plays no role in administrative rule review, fails to use its powers to scrutinize gubernatorial appointees, and has no role in the oversight of state contracts. A lot of the state's money is spent through contracts, but most of these contracts are exempt from review even by the executive branch. The absence of any centralized administrative rule review process means that legislative intent can be undermined through agency implementation.

Relevant Institutional Characteristics

New Mexico has a citizen or "Part-time Lite" legislature[1644] that Squire (2017) ranks as 43rd in legislative professionalism nationally. An extremely short session, low pay, and limited staff all contribute to its low ranking for professionalism. Legislators do not technically earn a salary. Instead, they are given $164/day while they are in session (Simonich, 2018). In odd numbered years, the legislature is in session for a maximum of 60 days. In even numbered years, the legislature is in session for a maximum of 30 days. Therefore, legislators make less than $15,000 over their two-year term in office unless a special session is called or the legislator serves on an interim committee that meets frequently. Section 6 of article IV [1645] allows the governor to call special sessions of the legislatures. Section 6 also allows the legislature to meet in a special session if three-fifths of each house petitions the governor with a request for a special session. Special sessions are not to exceed 30 days.

The New Mexico State Legislature has a permanent staff of 168 people. However, while the legislature is in session, an additional 506 supporting staff members are available to assist the legislators (Council of State Governments, 2016). In even numbered years (the 30-day session), the legislature can only address budgetary matters, bills that deal with issues raised by special messages of the governor, and bills vetoed in the previous session.

Based on the Governor's Institutional Power Index (GIPI) New Mexico's governor is the 12th most power in the nation (Ferguson, 2015). A large salary, higher than average tenure potential, and veto power all contribute to this level of power. The governor of New Mexico earns $110,000 annually, as of 2018, which is a substantial salary given the minimal pay accorded to legislators. Although no one may hold the governorship for more than two consecutive terms, the time out of office is only one full term after which a former governor may run for office again. New Mexico's governor is likely to be able to sustain his or her vetoes because it takes a supermajority of 2/3rds of the legislators present to override a veto. Vetoes can be overridden in a special session or when the next regular session convenes, even if an election has occurred.[1646] On the other hand, the appointment powers of New Mexico's governor are limited due to the election of many high-level executive branch officials, such as the secretary of

[1644] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 11/2/18.
[1645] https://ballotpedia.org/Article_IV,_New_Mexico_Constitution, accessed 11/2/18.
[1646] https://ballotpedia.org/Veto_overrides_in_state_legislatures, accessed 11/2/18.

state, attorney general, treasurer, and state auditor. The election administrator is also a constitutionally established office elected by the public.

The state and local government employees comprise 14.5% of the state workforce while the national average is 11.3% (CATO, 2006). Of these employees, 8% work in K-12 Education, 2% work in Public Safety and Welfare. 1.5% of the state and local government employees work in services such as highways and transit, parks and natural resources, sewage and solid waste.

Political Context

Currently, there are 26 Democrats and 16 Republicans in the senate and 38 Democrats and 32 Republicans in the house. Because the Governor of New Mexico is Republican, control of the state is divided.[1647] Both chambers of the legislature have been solidly in Democratic Party hands since 1992. But the governorship alternates between Republicans and Democrats, with partisan control typically changing when there is no incumbent running. Recent data rank New Mexico's house as the 7th most polarized lower legislative chamber nationally and its senate as the 14th most polarized upper chamber (Shor & McCarty, 2015). This suggests that divided government in New Mexico has not moved either political party toward the center of the ideological spectrum.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

New Mexico has three analytic bureaucracies. These include an independently elected state auditor (OSA), the State Budget Division and the Legislative Finance Committee's Program Evaluation Unit. The Office of the State Auditor (OSA) is a constitutionally established executive office with the auditor eligible to serve up to two four-year terms. According to the Audit Act, 12-6-1 to 12-6-14 NSMA 1978,[1648] the OSA must audit every agency and ensure that the financial correctness every agency is thoroughly examined each year.

The State Budget Division is a part of the New Mexico Department of Finance and Administration, an executive branch agency. The State Budget Division is responsible for providing high quality, timely and easy to understand analyses and recommendations for agency budgets, legislation and performance issues. Moreover, the division prepares and presents the governor's annual budget recommendation to the New Mexico Legislature as well as monitors expenditures by state agencies during the fiscal year.[1649]

The Program Evaluation Unit (PEU), under the Legislative Finance Committee, aims to provide the legislature with objective fiscal and public policy analyses, recommendations, and oversight of state agencies to improve performance and ensure accountability through the effective allocation of resources. The Legislative Finance Committee is responsible for providing the legislature with objective fiscal and public policy analyses, recommendations and oversight

[1647] https://www.nmlegis.gov/Publications/Handbook/political_control_17.pdf, accessed 11/2/18.
[1648] https://www.saonm.org/about_nmosa, accessed 11/2/18.
[1649] http://nmdfa.state.nm.us/Budget_Division.aspx, accessed 11/2/18.

of state agencies to improve performance and ensure accountability through the effective allocation of resources. PEU assists the committee with this by reviewing the costs, efficiency and effectiveness of activities of the state agencies and political subdivision and recommending changes to the legislature.[1650]

In 1911 when New Mexico's leaders drafted its first constitution, they created a strong, independent Office of the State Auditor to oversee how government officials spend the taxpayers' money. The New Mexico State Auditor is a separately elected official in the executive branch independent from both the governor and the legislature. It received a state appropriation of approximately $2.9 million in 2015 (NASACT, 2015). It is the only agency with audit responsibilities spanning state, county and municipal law enforcement agencies, the City of Albuquerque and the Department of Public Safety labs.[1651] It does not conduct performance audits, concentrating instead on financial audits. The OSA also conducts special investigations into cases of corruption, fraud, or suspected waste, including conflicts of interest and favored treatment; fraud and theft of time by an employee; procurement and contracting violations; improper loans to executives or governing body members; excesses in benefits; travel and/or meal allowances; and financial and cost reporting irregularities.[1652] The OSA consists of 35 employees divided between subunits: the Financial Audit Division, Special Investigation Division, Government Accountability Office, Compliance and Regulation Division, and the Administrative Division. The first three of these divisions are involved in auditing state government entities, as described below.

The OSA's Financial Audit Division (FAD) consists of 14 employees who oversee financial reporting requirements of over 1,000 government entities. While the staff of the FAD may perform audits, a majority of the financial audits are conducted by independent public accounting firms (IPAs) who partner with the OSA. The FAD ensures that the work conducted by IPAs is completed in accordance with the audit rules and professional standards through a report process and annual work-paper reviews.

The OSA's Special Investigation Division consists of seven employees who conduct special audits and investigations of state and local government agencies. The SID has the ability to conduct or direct a variety of audits including agreed upon procedures, performance audits, or any other special audits the state auditor deems necessary. This division also oversees a hotline that allows the public to report allegations of financial fraud, waste or abuse. This tool allows individuals to report 24 hours a day, seven days a week either on the record on anonymously.

The OSA's Government Accountability Office (GAO) reports to the public on statewide issues relating to the issue of public funds. These reports are statewide studies that aggregate and analyze trends revealed by audit information—showing how public dollars are managed and spent. The GAO is integral in fulfilling the OSA's constitutional mandate to bring transparency and accountability to the use of public funds. Annual financial audits of state and local governments are intended to provide insight into New Mexico's finances. The GAO makes this information accessible to the public to show how the government spends the citizens of New Mexico's tax dollars. Risk advisories within the GAO give notice of concerns that the OSA has discovered regarding transparency, accountability or compliance. The purpose of risk advisories is to bring attention to issues of financial reporting or compliance, to notify independent public accountants of possible areas of risk in their audits and to tell the public about trends in audit

[1650] https://www.nmlegis.gov/Entity/LFC/Overview, accessed 11/2/18.
[1651] https://www.saonm.org/media/uploads/SAEK_Audit_12-5-16.pdf, accessed 11/2/18.
[1652] https://www.saonm.org/issues_we_handle, accessed 11/2/18.

findings.[1653] Risk reviews are used to communicate issues of concern to those charged with governance of state and local governmental agencies and other decision-makers.[1654]

Recently, the OSA conducted a special audit in Silver City, NM, regarding allegations of embezzlement and fraud by a former city employee. State Auditor Wayne Johnson discovered more than $12,000 in potential fraudulent use of the former employee's town credit card. Silver City municipal officials noticed irregularities on credit card purchases and the state auditor worked with an independent accountant and a Silver City forensic unit (Udero, 2018). As a result of this investigation, the former head of New Mexico's Taxation and Revenue Department was charged with embezzling over $20,000 with five counts of violating ethical principles of public service. The New Mexico AG Office alleges that the employee advocated as tax secretary for abatement of a tax penalty against a trucking company. The investigation stems from complaints in 2015 to a fraud hotline at the OSA and letters from unidentified department employees sent to the governor's chief of staff, Keith Gardner, and then to state auditors (Lee, 2018).

In another example of oversight conducted by the OSA, in 2017, an annual audit conducted by former State Auditor Tim Killer revealed $850,000 was stolen from the Otis Mutual Domestic Water Consumers and Sewage Works Association. In an April 27 letter to fifth district judge Dianna Luce, Keller explain how an independent audit revealed possible larceny, fraud, and embezzlement by the water association's office manager (Onsurez, 2017).

Although the OSA does not work closely with the legislature, generally legislators review OSA audits in an effort to determine if better, more efficient laws need to be written. For example, by requesting audits on procurement a legislator may be able to determine if the current procurement laws are not stringent enough or need to be amended or re-written. Cases of fraud, corruption and waste are not passed directly to any committee or single member of the legislature automatically. Through the Inspection of Public Records Act, members of the legislature may request case files. Legislators or committees may request information on the nature of the case or the entire case file. Requests are submitted in writing—there are approximately 50 requests annually. Legislators frequently request information on cases involving waste, but the OSA may not release any information about an ongoing investigation.

The State Budget Division (SBD) facilitates the budget process for the executive branch. The director of the SBD is appointed by the secretary of the Department of Finance and Administration with the governor's consent. Although this is another executive branch agency, it too collaborates with the legislature." Chapter 6, article 3, section 4 of New Mexico's State Acts[1655] states that "The state budget division shall cooperate fully with the legislature and legislative committees and shall supply them with information relating to the budget requirements of all state departments and institutions." Various other laws empower the SBD to inspect all state agency books and records, aid state agencies in formulating their budget requests, conduct research into the efficiency and effectiveness of government entities, to investigate ways to improve the performance of government entities. The SBD is also responsible for overseeing the Accountability in Government Act. The purpose of this act is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes, and performance measures to annually evaluate the performance of state government programs.[1656] The SBD is required to share reports on its

[1653] https://www.saonm.org/risk_advisories, accessed 11/2/18.
[1654] https://www.saonm.org/risk_reviews, accessed 11/2/18.
[1655] http://nmdfa.state.nm.us/uploads/files/Budget%20Division/HomePage/Article3-StateBudgets.pdf, accessed 11/2/18.

findings and its recommendations with both the governor and the legislature.

In addition to its reports, there are two other ways that the SBD contributes to the legislature's capacity for oversight. Prior to June 15 of each year, every agency must submit to the SBD and the Legislative Finance Committee (LFC) their proposed changes to their current program structure. The SBD, in concert with the LFC and the agency, review any requested changes and make a recommendation to the LFC about whether to approve the change. This provides an opportunity for the legislature to involve itself in government reorganization.

The other way that the SBD facilitates legislative oversight is in the development of agency performance measures. Before agencies submit their budget requests, the SBD, with the LFC, must determine instructions for the development of performance measures for evaluating programs. Agencies must submit their performance-based budget requests no later than September 1. The SBD, with the LFC, may select agencies and specify performance measures for those agencies that must be reported on a quarterly basis. These quarterly reports will compare the actual performance for the report period with the performance targets. These reports are filed with the SBD and the LFC within thirty days of the end of a reporting period. The SBD has no authority to reduce budgets, but the LFC does have this power as we discuss below.

Of New Mexico's three analytic bureaucracies, the only one exclusively controlled by the legislature is the Program Evaluation Unit (PEU). The PEU, which is part of the Legislative Finance Committee (LFC), works in tandem with the legislature to evaluate program performance. Prior to 1991, the PEU was part of the OSA, but in 1991 the LFC assumed responsibility for performance and program audits. The PEU has a relatively small staff (15) and a limited budget (approximately $1.3 million per year).[1657] Therefore, its capacity to review state agencies is limited. Programs to be evaluated are chosen by the LFC from a list prepared by the PEU. Programs that receive larger sums of taxpayer dollars are prioritized. Within 30 days of issuing its report, the PEU asks the agency to submit a plan to address the evaluation recommendation. Then the unit follows up with the agency at regular intervals to assess progress in addressing findings and implementing recommendations. Progress reports are also generated at this time to inform the Legislature as well as the public on how the agencies are performing six months to a year after the initial program evaluation. In addition to these responsibilities, the PEU collaborated with the Pew-MacArthur Results First Initiative to improve the use of cost-benefit analysis by state governments. More than $100 million is cost savings has been attributed to New Mexico's use of evidence-based program evaluation.[1658]

The PEU produces five types of reports: 1) program evaluations, which are described as "large projects assessing the results of agency spending and activities,"[1659] 2) progress reports that check on agencies' progress six months after an evaluation, 3) Results First Reports, which address specific cost-benefits questions about programs, 4) information technology reviews to determine the value of technology investments, and 5) health notes about the state's healthcare finance, policy and performance. The PEU completed five program evaluations during the first half of 2018. In 2017, PEU completed nine program evaluations. Between 2010 and 2017, it completed an average of nearly 11 evaluations per year. PEU reviews one or two IT projects

[1656] http://nmdfa.state.nm.us/uploads/files/Budget%20Division/HomePage/Article3A-AccountabilityInGovernment.pdf, accessed 11/2/18.
[1657] http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESExcelAwardNar2015NM.pdf, accessed 9/9/18.
[1658] http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESExcelAwardNar2015NM.pdf, accessed 9/9/18.
[1659] https://www.nmlegis.gov/Entity/LFC/Evaluation_Unit_Reports, accessed 9/9/18.

annually. It completed one Results First Report in 2017, three in 2014, and one in 2013. It completes one or two health notes per year on a wide range of topics such as procurement, Medicaid expansion mental health service, and the state's healthcare workforce. The PEU presents each of its reports to the LFC in hearings that are open to the public and also responds to requests to present this information to other legislative committees and to other interested groups outside the legislature. The reports are widely disseminated through nearly 100 public presentations by PEU staff and on Twitter. Given its small staff and limited funding, this is an impressive set of achievements. An in-depth example of how the PEU conducts a program evaluation will be provided in the *Legislative Oversight through Standing Committees* section.

Oversight Through the Appropriations Process

In New Mexico, both the legislature (through the LFC) and the executive branch (through the governor) propose a state budget.[1660] The Legislative Finance Committee (LFC), established in 1957, operates as a budget clearinghouse for both legislative chambers. It is a large (16 members) joint interim committee that meets year-round and is responsible for submitting budget recommendations to the entire legislature annually. The committee employs 13 fiscal analysts and two economists. The LFC holds budget hearings beginning in September. The LFC submits its budget recommendations to the legislature in December after the general fund revenue estimate is finalized. The committee's 16 members must include the chair of the House Appropriations and Finance Committee, the chair of the House Taxation and Revenue Committee, and the chair of the Senate Finance Committee, as well as six other representatives and seven other senators. Party affiliation of its members is in proportion to the party's share of the seats in each legislative chamber.

State law requires the governor to submit a budget to the LFC and each member of the legislature no later than January 5 in even-numbered years and no later than January 10 in odd-numbered years. This is later than the LFC budget recommendations, which are finalized in December. Thus, in the New Mexico's budget process the legislature makes the first moves.[1661]

The PEU and the LAC work closely to formulate budget recommendations to the entire legislature. The location of the PEU, in the legislative committee (LFC) responsible for making budget recommendations to the entire legislature, means that its reports are used extensively during New Mexico's budget process. For example, according to its 2015 application for NCLS' National Legislative Program Evaluation Society (NLPES) award, a PEU report that quantified the value of prekindergarten education and also the benefits of an extended school year for the state's poorest students led the legislature to increase funding for these programs by 265 percent from FY 2012 to 2014.[1662]

Despite LFC's crucial role in the budget process, other committees, hold budget hearings and participate actively in the budget process. On the first day of the session the House Appropriations and Finance Committee (HAFC), a standing committee, conducts a side-by-side comparison of the legislative proposal and the executive proposal.[1663] Some sections of the

[1660] https://www.nmlegis.gov/Entity/LFC/Documents/brochure.pdf, accessed 9/9/18.
[1661] https://www.nmlegis.gov/Entity/LFC/Documents/brochure.pdf, accessed 9/9/18.
[1662] http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESExcelAwardNar2015NM.pdf, accessed 9/9/18.
[1663] https://www.nmlegis.gov/Entity/LFC/Documents/Finance_Facts/finance%20facts%20appropriation%20process.pdf, accessed 11/2/18.

recommendation are duplicated in separate legislation and considered by other standing house committees. Those bills are rolled into the House Appropriations and Finance Committee Substitute for the General Appropriation Act for Consideration by the full house.

The House Appropriations and Finance Committee (HAFC) holds hearings on every agency budget. As a standing committee, the HAFC does not have the luxury of meeting year-round, which affords the LFC an opportunity to spend much more time examining various state programs and budgets. Consequently, HAFC hearings are fairly short, approximately 25 minutes long and often not all committee members are present for the entire hearing. The HAFC hearings begin with an explanation of the differences between the executive budget recommendation and the LFC budget recommendations. The budget is not read line for line—specific areas of interest are presented to the HAFC. The HAFC then asks questions about proposed programs, their costs and about progress on current programs. Often there is a discussion of how specific funds for proposed program will be spent.

We did not find evidence of the HAFC cutting budgets due to audit issues or probing for explanations of problems revealed by audits. Questions requested information rather than probed for alternative practices or reasons for any problems—asking what rather than why. For example, in a hearing with the House Transportation and Public Works Committee, the HAFC engaged in a discussion concerning how much money will be spent to fix roads in specific HAFC members' districts in the proposed FY19 budget.

Once the HAFC members finished asking questions, they voted on whether to accept the budget request. Sometimes the HAFC will ask for certain line items to be stricken before voting to support the request.

Oversight Through Committees

Compared to its interim committees, standing committees in New Mexico's legislature have limited opportunities to hold hearings and engage in oversight. As we discovered in the discussion of New Mexico's appropriations process, standing committees enter the discussion after the interim committees have devoted several months of hearings to budget requests. They appear to do so after the LFC has paved the way through its hearing on PEU reports.

Among its varied responsibilities, described earlier, the LFC conducts oversight of state programs and agencies on behalf of the legislature. It relies on the PEU to evaluate program performance, but unlike many states, the PEU does not make recommendations to the evaluated agency. Nor does the PEU negotiate and persuade the agency to comply with its recommendations. Rather, as the following vignette illustrates, the LFC holds a hearing during which the agency defends itself against challenges from the LFC that are based on evidence provided by the PEU. Moreover, in the case described below the LFC takes initiative in requesting an evaluation rather than waiting for a crisis to trigger an investigation, performing police patrol rather than fire alarm oversight.

Vignette: Juvenile Justice Reform

Since 2008, the Children, Youth and Families Department (CYFD) has transformed New Mexico's juvenile justice system from punishment to a system focused on rehabilitation, adopting

a variety of community-based programs based on the Cambiar[1664] initiative. After these changes fewer youths entered Juvenile Justice Services (JSS) and the ones that did have been less likely to recidivate. Yet, from FY2008 to FY2015, spending increased 30%, while one-third of the juvenile justice beds were empty.

The LFC was concerned about this and a series of other resource allocation problems listed below. Therefore, it instructed PEU to evaluate CYFD ensure that CYFD was using its resources in a cost-effective way. The problems that triggered LFC's concern were:

- *costs of probation and field services continue to rise with limited evidence of their effectiveness;*
- *costs of programming through CYFD's own probation field offices, as well as state-funded but locally managed juvenile justice continuum sites, were distributed unevenly around the state;*
- *CYFD lacked reliable data needed to gauge the impact of its programs on recidivism and youth outcomes; and*
- *a proven treatment program for youth, Multisystem Therapy (MST), has been affected by provider instability and access issues.*

The PEU produced an extensive report (Report #16-06), Effectiveness of Juvenile Justice Facilities and Community-Based Services, analyzing costs, capacity and needs in the Juvenile Justice System (JJS) and identified opportunities to improve outcomes and efficiencies, including up to $2.7 million in potential savings. The PEU presented this nearly 60-page report to the LFC on August 24, 2016, following a conference with the CYFD on August 15, 2016, to discuss the report. CYFD was required to submit a plan to the LFC (not the PEU) to address the recommendations in the report. Unlike many states in which an audit report would be sent directly to the agency with recommendations made by the auditor, the LFC itself made recommendations for corrective action and LFC itself received the CYFD compliance plan. Moreover, the recommendations for change were made not just to the agency, but also to the legislature as a whole. Some of these recommendations included cuts to the CYFD's budget. But to improve safety at the facilities, the LFC recommended that the legislature should establish "a mechanism for regular, independent inspections of CYFD facilities" to deal with an increase in violent incidents. The agency response to the report's findings was sent to the LFC rather than to the PEU, underscoring the central role the legislative committee in this process.

An example of one LFC recommendation from this report illustrates the process. The LFC recommended that the legislature should consider reducing the JJS facilities budget by $1.2 million to reflect declining facility populations. The CYFD responded by explaining that although their average daily population decreased by 13.5% between FY09 and FY16, they effectively used the available resources. For example, the CFYD has assigned a behavioral health therapist to every residential unit, whereas Missouri, the state that pioneered the Cambiar initiative, only has a traveling behavioral health provider.[1665] Despite the LFC's

[1664] https://cyfd.org/facilities, accessed 11/2/18.

[1665] https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Program%20Evaluation%20-%20%20Effectiveness%20of%20Juvenile%20Justice%20Facilities%20and%20Community-Based%20Services.pdf, accessed 11/2/18.

recommendation to the legislature that it cut CFYD's budget, there is no evidence of a budget cut in the 2017 budget overall[1666] and in 2018 CFYD's budget increased.[1667]

In many states, this sort of debate over audit recommendations occurs between the agency and the auditors without involvement of the legislature. In those states it is less likely that agency performance will have financial consequences for the agency and even less likely that the legislature would have been involved in establishing a mechanism to measure the incidence of violent incidents.

The LFC meets monthly, typically for three or four days in succession. Its meetings often include a site visit to a government entity related to a featured agenda item. For example, on September 25, 2018, the LFC considered, among other topics, the effectiveness of early childhood education. In conjunction with this, the committee scheduled two site visits in Silver City, NM: one to a prekindergarten program and the other to a child development center. The committee meeting for that day was scheduled to last for three hours. The committee also schedule hearings on the following three days—two full day meetings lasting from 8:30 or 9:00 a.m. to 5:00 or 5:30 p.m. and one half-day meeting from 8:30 a.m. until 11 a.m. The agenda included presentations on seven different topics from teams of academics, executive branch officials, expert practitioners, and other sources. The PEU delivered two presentations: one full program evaluation and one on health notes. The committee also reviewed the state's monthly financial reports and other routine business. This is a very full agenda that suggests that the LFC is actively following the work of state agencies and the performance of public programs. During the remaining months of the interim (October, November, and December), the LFC was tentatively scheduled to hold 10 more full-day meetings.

To see whether the standing committees followed up on the LFC recommendations to CYFD (a subunit of the Department of Health and Human Services), we listened to several hearings of the Health and Human Services Committee. This committee met for only six minutes during its first meeting of the 2018 legislative session, on January 17, to consider a compact between states to allow nurses to work in any of the compact states. It held an organizational meeting the following week. Subsequent meetings were longer, but only involved presentations about proposed legislation that did not seem to be connected to any program performance or oversight reports. It appears that the ongoing oversight of the juvenile justice program was transferred to the interim committee, The Courts, Corrections and Justice Committee, created on June 5, 2017, included juvenile justice reform on its agenda.[1668] This reinforces our impression that legislative oversight in New Mexico is the purview of interim committees. Moreover, the agenda for this committee indicates that these interim committees pursue their oversight responsibilities with some vigor. As we noticed in other states, providing legislators with uninterrupted blocks of time to pursue oversight and paying them for the days they spend on this task seems to focus attention on oversight. Interim committees provide both these conditions.

[1666] https://www.nmlegis.gov/Publications/Session/17/Highlights%202016S%202017%20and%202017S.pdf p. 84, accessed 9/9/18.

[1667] https://www.nmlegis.gov/Publications/Session/17/Highlights%202016S%202017%20and%202017S.pdf, p. 37, accessed 9/9/18.

[1668] https://www.nmlegis.gov/Publications/interim_reports/ccj17.pdf, accessed 9/9/18.

Oversight Through the Administrative Rules Process

Currently there is no legislative review of rules in New Mexico (The Council of State Governments' Survey, November 2014). Moreover, New Mexico has no uniform rulemaking procedure. When it enacted its Administrative Procedure Act it did not force agencies to comply with the act. Agencies had the option of "opting in", but by and large they did not. According to Schwartz (2010) the result is that 226 agencies in the state have established their own process for promulgating rules. Therefore, there is no legislative oversight of the promulgation of new administrative rules in New Mexico. Agencies have free rein in formulating their own rules.

The only role played by the legislature with respect to administrative rules involves review of existing rules. Here again it is an agency driven process. Agencies must review their existing rules every three years. A report describing this review must be filed with the LFC and with the Department of Finance and Administration (Schwartz, 2010). Thus, the legislature and the executive branch are both informed about agency activities to reconsider the need for existing rules. The extent of the review consists of the agency filing a report of its own design.

Oversight Through Advice and Consent

The Governor of New Mexico has extensive appointment powers that are not checked by the legislature. Although many executive branch officials are elected in New Mexico, the governor can appoint an adjutant general national guard, someone to oversee the state's budget, as well as leaders of state's insurance division and licensing and public utility regulation without any legislative confirmation (Wall, 2014).

There are also gubernatorial appointees whose nomination must be approved by the legislature. He/she needs legislative approval for his/her nominees to lead the departments of emergency management, environmental protection, finance, general services, health, information systems, labor, natural resources, revenue, tourism, transportation, and higher education with the approval of the senate (Wall, 2014)

Typically, the confirmation process is noncontroversial, though there was some conflict this year. According to a news media source, the senate regularly approves the governor's appointees without opposition. Most picks are for less integral positions, such as spots on the boards of state museums or for bodies such as the Hospital Equipment Loan Council. However, in 2017, there were 69 appointees to various boards awaiting confirmation and according to the governor's office, the senate was stalling, slowing the process and accumulating a pile of nominations awaiting a vote. Some Republicans believed that the Democratic-controlled senate was stalling on confirmations as the governor's term enters its final year in order to allow her successor to more easily fill those seats. The slow pace of the confirmation process incited a rift between the governor and the senate. This led to the governor accusing the senate of dodging its constitutional responsibility. The governor pulled 53 appointees from the confirmation process, leaving the senate to act on what she described as priorities—heads of government departments, university regents and members of boards with control over state investments (Oxford, 2017).

New Mexico's governor does not need legislative approval to issue executive orders. Most of the executive orders issued involve emergencies and disaster relief and are not controversial.

Government reorganization in New Mexico relies on a task force composed primarily of legislators—members of the Legislative Council, a joint interim committee—and a few representatives from the executive branch. The most recent reorganization effort, 2010, resulted in a lengthy (200+ page) report that called on the governor to implement a vast array of changes. The process in 2010 was driven by the legislature rather than the executive branch.

Oversight Through Monitoring of State Contracts

New Mexico has three separate agencies that monitor state contracts. All of them are executive branch agencies. The Contracts Review Bureau of the Department of Finance and Administration (DFA) along with the Department of Information Technology (DoIT) review and approve all professional services and contracts that result in expenditures greater than $5,000, while the General Services Department (GSD) monitors contracts for non-professional services. There is no official role for the legislature in state contract monitoring, despite the fact that this sort of spending constitutes the majority of New Mexico's expenditures.

The LFC requested a PEU program evaluation of the state's procurement process, because it was concerned that only a small fraction of the funds spent through state contracts were being monitored by the executive branch agencies responsible for this. LFC estimated that only $1.25 billion out of an estimated $10 billion to $13 billion spent on procurement in New Mexico was overseen by GSD, DFA or DoIT,

According to PEU's evaluation, *Obtaining Value in State Procurement and Issues with Non-Competitive Methods,* Report # 16-09, [1669] there were numerous exemptions to the contract reporting requirements, the three agencies require different information about contracts, and long timelines for contract approve encourage state agencies to engage in non-competitive procurement practices. Based on this report, the LFC recommended that New Mexico's procurement process increase its transparency, openness, and accountability. For example, New Mexico does not currently require all sole source and non-competitive procurement to be posted on a single website. State statute does require the posting of sole source and emergency contracts, but agencies and public bodies have wide discretion on where the information is posted. Thus, the information might be posted on the various agency websites or through notices placed in local newspapers. This makes it difficult to find a posting. Additionally, The LFC also concludes that non-competitive procurement is overused resulting in the potential for higher costs to state agencies. The types of non-competitive procurement discussed include sole source contracts, emergency procurements, contract amendments, procurement code exceptions, small purchase abuse and receiving services without a valid contract in place.

Nowhere in its recommendations does the LFC recommend that the legislature undertake contract monitoring. The recommendations for legislative action involve increasing the requirements for the three executive branch agencies to provide fewer exemptions and to streamline and centralize their oversight processes. As we find in many other states, the legislature is not empowered to oversee state contracts, but legislators sometime manage to monitor this sort of spending through audits and, in this case, program evaluations.

1669

https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Obtaining%20Value%20in%20State%20Procurement%20and%20Issues%20with%20Non-Competitive%20Methods.pdf, accessed 11/2/18.

Oversight Through Automatic Mechanisms

New Mexico is a state with selective sunset review laws (Baugus & Bose, 2015). According to table 3.27, Summary of Sunset Legislation (Council of State Governments),[1670] the entities selected for review are regulations, such as occupational licensing, and administrative agencies, such as highway, health and education departments. The sunset process begins with a preliminary evaluation by the LFC. Then, a public hearing is held before termination. There is a phase out period of one year, and each agency has a lifespan of six years. There are no other provisions or reviews conducted by any other legislative body. Many of the laws that sunset rules are applied to are extended before being terminated.

Methods and Limitations

We contacted nine people in New Mexico and succeeded in interviewing three of them. Archival recordings of committee hearings are available and easy to access. Transcripts of the hearings are not routinely included with the archival recordings.

[1670] http://knowledgecenter.csg.org/kc/system/files/Table_3.27.pdf, accessed 11/2/18.

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Legislative Oversight in New York

Capacity and Usage Assessment

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

Summary Assessment

Legislative leadership controls the chambers, and as a result budgets and other issues are often decided in closed door deals between the chamber leaders and the governor. When oversight or even calls for more oversight occur, they are often reactive, fire-alarm oversight, as in the cases of nurse licensing or the SUNY bid-rigging scandal. Public access to information about the legislature's activities is also hampered by websites that are difficult to navigate and by limited information about committee activity.

Major Strengths

There is substantial institutional capacity to conduct audits within the OSC**.** Joint public hearings during the appropriations process are quite substantial and involve testimony from agency representatives, questions from legislators, and public comments. The legislature also has substantial influence over government reorganization. And while it appears that advice and consent on gubernatorial appointees has often been somewhat pro forma in the past, there are indications that this may be changing (although such changes are driven partly by partisan concerns).

Challenges

Despite the institutional resources available to conduct audits, there appears to be little coordination between the Comptroller and the legislature, and little evidence exists that audit reports are frequently the subject of committee hearings. The reactive nature of legislative attention to issues like contracts and the sporadic nature of committee hearings means that oversight does not always occur in an effective way. Even when hearings do occur, remedial legislation often has a difficult time making it through committees to face a vote. This is partly a result of the dominance by legislative leadership over both the functioning of committees and the legislative process. This influence extends into the realm of appropriations, which, despite

substantial hearings, appears largely to be the result of bargaining between the governor and legislative leaders. A lack of any general sunset provisions, combined with inadequate review capacities mean that the legislature has little influence over the state's regulatory regime.

Relevant Institutional Characteristics

The New York State Legislature is classified by the National Conference of State Legislatures (NCSL) as one of the most professionalized in the United States, with Squire (2017) ranking it at 3rd in the nation, after California and Massachusetts. Legislators work full time, are well paid, and have large staffs (NCSL, 2017b).[1671] Legislators receive a $79,500 salary, plus a $175 per diem for each full day in session. The legislature meets year-round (NCSL, 2017a).[1672] The legislature as a whole employed 2,865 staff members as of 2015, 2,776 of whom were full-time. This was the most in the country, but nearly 1,300 less than New York had in 1988 (NCSL 2016).[1673] New York legislators are not term-limited, and both assembly and senate members run for reelection every two years.

New York's legislature "relies on a strong leadership system," and "[t]he powers granted to the leaders by their party conferences are sweeping" (Haider-Markel 2009). One of the most crucial powers is the ability to appoint chairs and membership in all standing committees, which "allows legislative leaders…to coordinate the policy process within each house by regulating the flow of legislation to the floor." This system, however, has also led to accusations that "the majority leaders of each house and the governor constitute 'three men in a room' who make public policy for the state (Haider-Markel 2009).

New York's Governor is also powerful, rated by Ferguson (2015) as 13th most powerful among the 50 states, tied with Wyoming. This rating is derived in part from the governor's power over the budget, including the line-item veto and executive budget authority. According to the New York Division of the Budget, "[u]nder this system, the Executive is responsible for developing and preparing a comprehensive, balanced budget proposal, which the Legislature modifies and enacts into law (New York State Division of the Budget)."[1674] According to Haider-Markel (2009), this power "allows the governor to set the fiscal agenda each year and forces the legislature to negotiate directly with the governor." Besides the governor, there are not many other separately elected executive positions in New York, the only others being the lieutenant governor, the comptroller, and the attorney general. New York's governorship is also distinguished by its substantial informal power, much of which is a function of the office's national prominence and prestige, a side-effect of New York City's "sheer size and economic importance…to the rest of the nation" (Haider-Markel 2009).

New York has traditionally been characterized as having an "activist" state government and "long history of progressive politics." Consequently, during the 20th century New York institutionalized a social welfare state, under both Democratic and Republican Governors (Haider-Markel 2009). This philosophy has meant that an above average percentage (13.4%) of New York's workforce is employed in state or local government. Larger than average

[1671] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx Accessed 07/11/18
[1672] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx Accessed 07/11/18
[1673] http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf Accessed 07/11/18
[1674] https://www.budget.ny.gov/citizen/process/process.html Accessed 07/11/18

proportions are employed in public safety and welfare (2.3% in each compared to national averages of 1.7% and 1.6% respectively) and services (1.8% in California compared to 1.3% nationally). The proportion employed in education, 6.2%, is only slightly above the national average of 6.1%. (Edwards 2006).

Political Context

New York State politics has been heavily influenced by the Democratic Party, in no small part due to the dominance of New York City. The more rural upstate regions, meanwhile, traditionally have held solid Republican majorities. There are over twice as many registered Democrats in the state as there are Republicans (NYS Board of Elections),[1675] and currently the governor and lieutenant governor, the attorney general, and the comptroller are Democrats. The New York Assembly consists of 150 members. The assembly is dominated by the Democratic Party, which controlled the chamber consistently even prior to the 1990s through 2018. In 2018 Democrats held a commanding 104-41 majority, with 1 member of Ross Perot's Independence Party and 4 vacancies.

The story is more complicated in the New York Senate, which varies in size from a constitutional minimum of 50 members. The variation is a relic of New York's 1894 Constitution that created a formula to expand the number of state senators in response to increases in population. There have been legal disputes over this because there are three different ways to calculate the number of seats, and these methods have been used by political parties to add or subtract districts to their advantage. Currently, there are 63 Senators. The Democrats won control of the Senate in 2008 only to have a breakaway faction, unhappy with the party's choice for chamber leadership, caucus with the Republicans. Initially only one of the four disgruntled Democrats caucused with the Republicans, but that created a 31 to 31 split within the chamber. In 2010 Republicans gained control the NY Senate. The so called Independent Democratic Caucus (IDC) bargained with Senate Republicans for chair positions of major committees in exchange for their support of the Republican caucus, and apparently were given extra stipends (called "lulus") in a clandestine deal that eventually led to legal consequences. By 2018 the IDC had grown to eight members and was preventing Democrats from exerting majority control over the chamber. As a result of primary challenges, the IDC power in the chamber ended. In 2019 Democrats reestablished majority control of the chamber.

Despite these political maneuvers, Shor and McCarthy (2015), do not report especially high levels of polarization in either chamber. The New York Assembly is the 33rd most politically polarized lower chamber in the nation, while the Senate is the 23rd most polarized upper chamber. Moreover, some legal mechanisms exist to ensure bipartisan representation in oversight processes. For instance, the Senate rules stipulate that its Ethics and Internal Governance Committee be comprised of an equal number of members from each of its two largest parties (usually Democrats and Republicans). This stands in contrast to other Standing Committees, whose composition is proportional to the chamber's overall partisan makeup (New York State Senate).[1676] (Senate Rule VII.1.d.) During the period of IDC activity in the Senate, with the Republicans and the IDC comprising a majority coalition, the Ethics Committee

[1675] https://www.elections.ny.gov/NYSBOE/enrollment/county/county_apr16.pdf Accessed 07/11/18
[1676] https://www.nysenate.gov/legislation/laws/CMS Accessed 07/11/18

consisted of three Republicans, three Democrats, and three Independent Democrats. This effectively gave three of the eight Independent Democrats in the senate membership on this committee. So, a bipartisan rule in practice gave extraordinary power to one faction in the senate.

The State Constitution also requires partisan balance on some commissions, such as the Independent Redistricting Commission (Article III.5.b, p. 7-8) and the Commission on Judicial Nomination (discussed above, Article VI, 2.c-e, p.14-15) (New York Department of State).[1677] Other commissions require bi- or multi-partisan representation, but not necessarily balance. One such commission is the Joint Commission on Public Ethics, in which twelve slots are allotted for appointment by the Governor and majority conferences in each legislative chamber, with only one slot each appointed by the Assembly and Senate's respective minority leaders. Thus, the electoral and numerical preeminence of the Democratic Party in the state does not translate into one-party hegemony in policy-making.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Financial oversight of state agencies and municipalities in New York State is primarily conducted by the Office of the State Comptroller (OSC), an exceptionally large analytic bureaucracy led by an elected comptroller. The entire OSC employs 2,700 people and receives a state allocation of $46.3 million to support its work (NASACT 2015). The audit division has 495 of these positions allocated for its work (NASACT 2015). The OSC conducts financial oversight of state agencies, public authorities, and local governments. It monitors the financial condition of local governments and school systems through its ongoing Local Government Fiscal Stress System Report. It hires outside CPA firms to conduct the state's single audit.

The OSC has numerous responsibilities other than those associated with audits. It manages and issues public debt, administers the state's payroll of $16.7 billion, monitors the Justice Court Fund and the Oil Spill Fund, provides technical assistance and training to all levels of government, and monitors unclaimed funds of approximately $15 billion. Additionally, it administers the New York State and Local Retirement System and investigates acts of corruption by public officials and fraud involving public funds (NY State Comptroller).[1678] To do this, it maintains a hotline for tips on fraud and corruption (NASACT 2015).

Of interest to our discussion here, the OSC conducts audits of state agencies, reviews state contracts and audits contract payments. The Comptroller's Office also performs performance audits**,** which are intended to "provide the Legislature and Executive Branch with an independent and objective view of how State and City government can operate more efficiently and effectively."[1679] Within the Comptroller's Office, it is the Division of State Government Accountability (SGA) that conducts audits of New York State and New York City agencies and public authorities."[1680] For the reporting year 2016-17, the SGA "issued 115 audit reports addressing the operations of state agencies and public authorities." Of these,

[1677] https://www.dos.ny.gov/info/constitution.htm Accessed 07/11/18
[1678] https://www.osc.state.ny.us/about/response.htm Accessed 07/11/18
[1679] https://www.osc.state.ny.us/recruit/mgmtaud.htm Accessed 07/11/18
[1680] http://osc.state.ny.us/audits/annualreport16_17.pdf Accessed 07/11/18

approximately 35 reports annually are performance audits rather than financial audits. Stressing the value of all 115 audits, the Comptroller's annual report claims that its work saved the state over $320 million, with the potential for another $316 million in savings. It notes, however, that "[i]n these cases, more action is usually required to realize the savings (e.g., legislative action or agency follow-up investigations with vendors to determine actual amounts)." The heads of audited agencies, moreover "must report to the Governor, the State Comptroller, and the leaders of the Legislature and the legislative fiscal committees on any steps taken to implement the State Comptroller's recommendations, and on reasons why any particular recommendations were not implemented."[1681] Of the 113 recommendations made in the 2016-17 reporting period, 94% were acted upon in full or in part by agencies.

The comptroller also regularly proposes legislation "to increase the accountability and transparency of New York state and local government. During the 2017-18 legislative session, for example, the comptroller proposed 19 bills on topics ranging from accruing debt to responding to acts of terrorism, promoting transparency in the state procurement process, strengthening ethics and conflict of interest laws, and fire protection contracts, among other things. Of the 19 bills, only 4 were ultimately signed into law (Office of the State Comptroller).[1682]

It is less clear, however, to what extent legislators actually use the audit reports generated by the comptroller for oversight purposes. An archive search of transcripts and video on the Assembly's website, for example, turns up only passing references to audits, and, as noted above, most of these are financial rather than performance audits.[1683] Conversations with practitioners indicate a lack of familiarity with what the legislature did with audits (interview notes 2019), and a lack of interest in legislative oversight of the executive (interview notes 2019). The latter may be changing, as recent calls for stepping up legislative investigations of the executive branch were made by the new chair of the Assembly Investigations Committee (interview notes 2019; Campanile, 2019).[1684] The independence of the elected OSC could explain this level of detachment between the legislature and the audit division, a situation that we found in other states that have only an elected auditor.

Other divisions of the OSC work with the legislature providing information used during the appropriations process. These units are the Division of Budget, Senate Finance, and Assembly Ways and Means, each have staff involved in fiscal matters, including fiscal notes on bills and budget forecasting. It is difficult to determine exactly how many staff positions are assigned to each entity, but the Empire Center's data on the state budget indicates that there are 294 staff in the Division of Budget and 100 staff serving the Assembly Ways and Means Committee.[1685]

Oversight Through the Appropriations Process

As described above, the Governor of New York enjoys executive budget powers. Under this model, "[t]he Governor is required by the State Constitution to seek and coordinate requests

[1681] http://osc.state.ny.us/audits/annualreport16_17.pdf Accessed 07/11/18
[1682] https://www.osc.state.ny.us/legislation/index.htm Accessed 07/11/18
[1683] http://nyassembly.gov/av/ Accessed 07/12/18
[1684] https://nypost.com/2019/01/02/cuomo-threatens-to-investigate-state-lawmakers-funding/ accessed 2/5/18
[1685] Seethroughny.net/payrolls 2/5/18

from agencies of State government, develop a 'complete' plan of proposed expenditures and the revenues available to support them (a 'balanced budget'), and submit a budget to the Legislature along with the appropriation bills and other legislation required to carry out budgetary recommendations (New York State Division of the Budget)."[1686] Among these are "Article VII Bills," which contain "other provisions necessary to implement the Executive Budget. Such legislation typically amends existing State laws governing programs and revenues."

Once the budget is submitted to the legislature, the Senate Finance and Assembly Ways & Means Committees analyze the Governor's budget. They are advised during this process by the Division of the Budget (DoB), which is an executive agency that "works closely with state agencies to coordinate the development and execution of their policy programs, ensuring the Budget Office is involved in every facet of New York State's government."[1687] Extensive committee hearings are held throughout this process. The Assembly Ways and Means Committee, for example, held 26 meetings on different aspects of the budget (higher education, public protection, human services, etc.) between January 24 and February 27, 2017.[1688] The primary purpose of these meetings is "to provide the appropriate legislative committees with public input on the Executive Budget proposal (New York State Legislature)."[1689]

Hearings are quite substantial, and routinely last 6-8 hours or more. These hearings feature testimony from agency representatives who also take questions from committee members, as well as activists, NGOs, and social services organizations. The meetings are also an opportunity for committee members to exercise oversight of agency activities. During a joint budget hearing on environmental conservation held on February 27, 2018, for example, committee members asked the Commissioner of the Department of Environmental Conservation to justify several budget lines, including money allocated for zoos, initiatives intended to combat algal blooms, and the elimination of a soil health program. Similar inquiries were made of other agency representatives who testified at this and other hearings.[1690]

Once the public hearings conclude, the legislature proposes amendments to the governor's budget; these amendments are subject to a line-item veto, which can be overridden by a two-thirds veto in each chamber. Any parts of the budget not added by the legislature or pertaining to appropriations for the legislature and judiciary, however, automatically become law. Any changes by the legislature to the executive budget must be compiled in a legislative report, which is published online. The most recent report indicates that, depending on the agency in question, the number of such amendments varies significantly. For example, the legislature accepted without any changes the governor's budget for the Department of Audit and Control, while the Division of the Budget received an extra $827,000 for membership dues and other operational purposes. The Division of Criminal Justice Services, however, received $26.28 million in extra funding, split between dozens of different programs and initiatives. The legislature also modified or disapproved several of the governor's Article VII proposals to implement the budget. For example, the legislature did not approve "Executive proposals to amend speedy trial requirements; conditions for bail and pre-trial detention; or changes to the

[1686] https://www.budget.ny.gov/citizen/process/process.html Accessed 07/12/18
[1687] https://www.budget.ny.gov/division/history.html Accessed 07/12/18
[1688] http://nyassembly.gov/comm/?id=41&sec=hearings Accessed 07/12/18
[1689] http://nyassembly.gov/Press/files/20180116.php Accessed 07/12/18
[1690] http://nystateassembly.granicus.com/MediaPlayer.php?view_id=8&clip_id=4551 Accessed 07/12/18

criminal discovery process," and also rejected "the Executive proposal to limit law asset seizure and forfeiture activities."[1691]

Despite the Governor's preeminence in the appropriations process, the legislature does not serve as a "rubber stamp." The 2018 budget process, for example, was fraught, with controversy, with Governor Cuomo facing off against the legislature over a number of issues (Campbell, 2018a),[1692] including school funding, taxes, and a proposed bailout for the del Lago Resort and Casino, which was opposed by the governor but supported by many legislators, including the powerful senate Republican majority leader (Spector, 2018).[1693] The 2018 budget showdown, however, also revealed the importance of the legislative leadership in decision-making: most of the important negotiations were held during "closed-door meetings (Campbell & Spector, 2018)"[1694] between the House and Senate majority leaders and the Governor. Indeed, when the final budget was passed, it occurred at 4 am on March 30, after "[Governor] Cuomo and top lawmakers struck a deal" late in the night to avoid a government shutdown (Campbell, 2018b).[1695]

Oversight Through Committees

The rules of the assembly require that all committees conduct oversight "of the activities…of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction"[1696] (Assembly Rule IV.1.d, p. 11). The senate rules similarly declare that "each standing committee is required to conduct oversight of the administration of laws and programs by agencies within its jurisdiction."[1697] (Senate Rule VIII.5.c, p. 14) According to New York Legislative Law, "the chairman, vice-chairman or a majority of a legislative committee may issue a subpoena requiring a person to attend before the committee and be examined in reference to any matter…[pertaining to an] inquiry or investigation being conducted by the committee…"[1698]

It appears, however, that committees seldom exercise this power. For instance, during 2016 hearings by the Senate Health Committee and Environmental Conservation Committee on the Hoosick Falls water-contamination scandal,[1699] senators from both parties bemoaned the unwillingness of officials from companies implicated in the crisis to testify before the committee, with one minority party committee member insisting that such officials should be subpoenaed

[1691] http://nyassembly.gov/Reports/WAM/2018changes/2018changes.pdf Accessed 07/12/18
[1692] https://www.democratandchronicle.com/story/news/politics/albany/2018/03/28/10-things-know-new-yorks-state-budget-talks/467550002/ Accessed 07/12/18
[1693] https://www.democratandchronicle.com/story/news/politics/albany/2018/03/27/del-lago-casino-struggling-revenue-seeks-state-bailout/462198002/ Accessed 07/12/18
[1694] https://www.democratandchronicle.com/story/news/politics/albany/2018/03/29/time-late-lawmakers-cuomo-race-toward-budget-deadline/470325002/ Accessed 07/12/18
[1695] https://www.democratandchronicle.com/story/news/politics/albany/2018/03/30/new-york-budget-talks-reach-breaking-point-albany/472895002/ Accessed 07/12/18
[1696] http://nyassembly.gov/Rules/ Accessed 07/12/18
[1697] https://www.nysenate.gov/legislation/laws/CMS Accessed 07/12/18
[1698] http://codes.findlaw.com/ny/legislative-law/leg-sect-62-a.html Accessed 07/13/18
[1699] https://www.nysenate.gov/calendar/public-hearings/august-30-2016/drinking-water-contamination Accessed 07/13/18

(Hoylman, 2016a).[1700] Although the committee chairman, under public pressure, eventually did issue subpoenas (Hamilton, 2016), [1701] he delayed publicizing the results (French, 2016; Hoylman, 2016b).[1702] Similarly, a 2017 audit of the Education Department's oversight of nurse licensing,[1703] found that the department failed to address the majority of serious complaints (83%) within the department's own 6-week timeframe. Many investigations, in fact, were open for an average of 7 months. An earlier report on this subject by ProPublica[1704] was enough to spur the Senate to pass legislation[1705] to address some of these issues (Porat, Adams, & Huseman, 2016; The New York State Senate, 2016 & 2018; Huseman, 2017).[1706] However, the Assembly failed to pass any legislation, leading senators to complain that "The roadblock lies squarely at the hands of the Assembly. At some point they have to bow to the need for action (New York State Senate, 2015)."[1707] Despite promises to enact legislation during the 2018 legislative session, however, no further action appears to have been taken.

In practice, the quality and frequency of deliberate oversight conducted by the legislature varies by chamber and by committee. Some committees, like the Assembly Energy Committee and the Senate Health Committee, held 7 public hearings each in 2017. On the other hand, several committees in both chambers did not hold any hearings at all in the past two years, although they did hold meetings. But these meetings were often perfunctory and consisted largely of votes on legislation.

The activities of the Assembly and Senate committees explicitly charged with conducting oversight seem similarly modest, at least in recent years. The Assembly's Standing Committee on Oversight, Analysis, and Investigation, for example, has held only one public hearing in the last two years, with another scheduled and subsequently canceled.[1708] It did conduct investigations into a handful of state agencies, although these were limited in scope, and essentially intended to identify best practices.[1709] That committee also considers itself a "resource" for other standing committees, and publishes "A Guide to Legislative Oversight" for use by other legislators (Brennan, 2005).[1710] The document outlines the authority for legislative oversight in New York and techniques that can be used to engage in oversight (hearings, special studies, communications with the media, subpoenas, etc.). Meanwhile, the Senate Standing Committee on Investigations and Government Operations has held only two public hearings, and its regular meetings often lasted 10 minutes or less and consisted on up-or-down votes on legislation. A newly appointed committee chair appears to be scheduling more frequent

[1700] https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/hoylman-demands-subpoena-compel-polluters-testify-hoosick-falls Accessed 07/13/18
[1701] https://www.timesunion.com/local/article/Democrats-seeks-release-of-subpoenaed-Hoosick-10551702.php Accessed 07/13/18
[1702] https://www.politico.com/states/new-york/albany/story/2016/10/hoylman-demands-results-of-hoosick-falls-subpoenas-be-made-public-106854; https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/senator-hoylman-demands-ny-senate-leadership-produce-documents Accessed 07/13/18
[1703] http://osc.state.ny.us/audits/allaudits/093017/16s83.htm Accessed 07/11/18
[1704] https://www.propublica.org/article/weak-oversight-lets-dangerous-nurses-work-in-new-york Accessed 07/13/18
[1705] https://www.nysenate.gov/legislation/bills/2015/S7791;
https://www.nysenate.gov/legislation/bills/2017/s1380/amendment/a Accessed 07/13/18
[1706] https://www.propublica.org/article/state-audit-slams-new-york-oversight-of-nurses Accessed 07/13/18
[1707] https://www.nysenate.gov/legislation/bills/2015/A10532 Accessed 07/13/18
[1708] http://nyassembly.gov/comm/?id=30&sec=hearings Accessed 07/12/18
[1709] http://nyassembly.gov/write/upload/pdfs/20171215_79158.pdf Accessed 07/12/18
[1710] http://www.judgewatch.org/library/nys/feb2005-report-legislative-oversight.pdf Accessed 07/12/18

meetings, underscoring the impact the particular people can have on legislative oversight when the processes is dependent on individual motives and motivation.

Political motives, environmental disaster, and human failure combined to produce an oversight hearing said to be one of the only major oversight hearings in all of 2018 (interview notes 2019). A Nor'easter, a kind of storm, had hit the New York coast leaving many without power and leaving some to question the time it took to restore power. The public hearing titled, *To evaluate the reason behind widespread power outages and slow restoration of power in the Hudson Valley over the past two weeks,* was held jointly by the Senate Standing Committee on Investigations and Government Operations, Senate Standing Committee on Energy and Telecommunications, and Senate Standing Committee on Aging on March 27th, 2018.[1711] Chair of the hearing, Republican Senator Terrence Murphy, was motivated in part by a need to firm up support in his district when he chaired hearings into the state's response to a natural disaster (interview notes 2019). The hearing resulted in SB S7262A authored by Senator Murphy. The bill passed in the senate but died in the assembly.[1712] Murphy would go on to lose his reelection bid to a Democrat 7 months later, despite featuring his investigation of the slow response to the outages prominently in his campaign (Weinberger, 2018).[1713]

The hearing itself featured CEOs of public utilities and an official from the Department of Public Service. The former provided detailed answers regarding staffing, hours needed to complete repairs, and specific challenges including downed power lines and uprooted mature trees on private property that impeded repairs. The Public Service Commission (PSC) provided information about their investigation into power restoration delays, hardening of the power system, the emergency plans, and the PSC's role in approving the emergency plans. The depth of senators' knowledge of the relationship between the utilities and PSC seemed at times superficial. For instance, the chairman didn't know or realize the PSC had staff overseeing the utilities' response to the storms in real time. The chair didn't know that the PSC had staff at each of the utilities' emergency response centers and their corporate offices working with utility management and staff. Several exchanges involved Republican Senators inquiring about the effect that the Democratic governor's sending crews to Puerto Rico, an island also experiencing power outages due to storm, had on power restoration times. The officials replied the effect would be minimal. CEOs encouraged legislators to attempt to find solutions to the major source of outages during the storm, large trees outside of the right a way. However, in response to this suggestion, few legislators seemed eager to pursue legislative remedies to this problem, perhaps out of fear of the legal and electoral consequences of tree trimming or tree removal on private property. Senator Murphy's bill, SB S7262A, would have made changes to emergency planning, restoration of service reporting, and vegetation management during emergencies, but it died in the assembly.[1714]

This hearing did not demonstrate high quality, evidence-based, solution-driven oversight by the legislature of an executive branch agency. During the hearing legislators made limited use of evidence and information about the problem addressed—response time during power outages. Moreover, the performance of a state agency, the PSC, does not appear to have been the focus of the investigation. Indeed, legislators demonstrated little knowledge about the role played by the

[1711] https://www.nysenate.gov/calendar/public-hearings/march-27-2018/joint-public-hearing-evaluate-reason-behind-widespread-1 accessed 2/5/18
[1712] https://www.nysenate.gov/legislation/bills/2017/s7262/amendment/a accessed 2/5/18
[1713] https://www.tapinto.net/towns/yorktown/articles/state-senate-candidate-terrence-murphy accessed 2/5/18
[1714] https://www.nysenate.gov/legislation/bills/2017/s7262/amendment/a accessed 2/5/18

PSC. The problems addressed arise from choices made by utility companies and their performance in a crisis.

Oversight Through the Administrative Rules Process

The Administrative Regulations Review Commission (ARRC) is a joint legislative committee that reviews all new rules and regulations proposed by state agencies. The ARRC is "a bi-partisan watchdog over every state agency's rules and regulatory activities to make sure they are legal and effective (Legislative Commission on Administrative Regulations Review, 2017)."[1715] Although the membership from each chamber reflects the partisan composition of that chamber, when one chamber is controlled by each of the two major political parties, a joint commission is also a bipartisan commission. The ARRC reviews rules "from the viewpoint of how they affect the average taxpayer, small business owner or family."[1716]The committee also has the power to "hold hearings, subpoena witnesses, administer oaths, take testimony and compel the production [of evidence](Justia NY Legis L Section 87, 2015a)."[1717] While agencies are required to submit proposed rules to the ARRC for review, the ARRC does not have the independent authority to block the adoption of rules; it can only "make recommendations to an agency based upon its review of that agency's rule making process, or any of the agency's proposed, revised or adopted rules(Justia NY Legis L Section 88, 2015b),"[1718] For example, then ARRC Chair Ken Zebrowski compiled a report showing 12 comments that resulted in changes for 2013 and 2014 (Legislative Commission on Administrative Regulations Review, 2017).[1719] This report also shows that over the same period AARC was responsible for introducing 5 bills regarding rules and rule procedure, with one being signed into law in 2013 (ibid). The ARRC, however, is required to report to the governor and the entire legislature periodically on the rules it has reviewed. Schwartz (2010) reports that the effort to coordinate rule review across the two chambers has largely failed with each conducting separate reviews. That said, it appears that both chambers do not vigorously exercise their rule review prerogatives. The committees often lapse into inactivity and even when they are active, their assessment is only advisory.

There is also another layer of rules review, the Governor's Office of Regulatory Reform (GORR). This was created via executive order in 1995 by then Governor Patacki, but all subsequent governors have renewed this order (Schwartz 2010). GORR makes recommendations about rules to the Governor's cabinet, known in New York as the Executive Chamber, which also "reviews proposed rules for necessity, clarity, consistency and efforts to reduce burdensome effects (Division of Administrative Rules)."[1720] In the absence of any major revisions as a result of ARRC, GORR, or Executive Chamber review, the rule is adopted and filed with the Department of State's Division of Administrative Rules.[1721] Existing rules are also reviewed "no

[1715] https://nyassembly.gov/comm/?id=44&sec=story&story=72406Accessed 07/17/18
[1716] http://nyassembly.gov/comm/ARRC/20150603/index.pdf Accessed 07/17/18
[1717] https://law.justia.com/codes/new-york/2015/leg/article-5-b/87/ Accessed 07/18/18
[1718] https://law.justia.com/codes/new-york/2015/leg/article-5-b/88/ Accessed 07/18/18
[1719] https://nyassembly.gov/comm/ARRC/20150603/index.pdf accessed 1/11/19
[1720] https://www.dos.ny.gov/info/ruledіagram.html Accessed 07/18/18
[1721] https://www.dos.ny.gov/info/index.html Accessed 07/18/18

later than in the fifth calendar year after the year in which the rule [was] adopted, and, thereafter…at five-year intervals (FindLaw, NY SAP Section 207)."[1722]

A bill, S05982 (2017), that would strengthen the ARRC's powers by requiring agencies to respond in writing to ARRC objections was considered in 2018. It required "at least a brief explanation of the agency's rationale for either agreeing with the objection, or requiring additional time for consideration, or for disagreeing with the objection (New York State Assembly, 2017)."[1723] The bill has so far passed the Senate and died in the Assembly Governmental Operations (ibid.).

Oversight Through Advice and Consent

The Constitution of New York guarantees the Senate's right to confirm or reject gubernatorial appointments to lead state agencies, as well as "the members of all boards and commissions, excepting temporary commissions" appointed by the governor (New York Department of State).[1724] Confirmation hearings occasionally feature questions by members of substantive standing committees and testimony from nominees, though such hearings often are left until the very end of the legislative session, when they have typically been rushed through. Most nominees "are usually interviewed in the morning and confirmed…later in the day (Karlin, 2017)."[1725] In one case, "the Senate rushed through [Governor] Cuomo's same-day appointment of Joe Lhota as MTA chairman, with a committee confirmation hearing taking place late at night via Skype while the nominee was in his home (Lovett, 2018)."[1726] This practice has left some senators disgruntled, prompting complaints that "committee[s] and…nominees should have the respect that they deserve, rather than having [hearings] jammed at the end of session (Lombardo, 2018)."[1727] Consequently, starting with the 2018 legislative session nominees are now divided into Tier One and Tier Two groups, with the first being "those who are being nominated for a paid or policymaking position" and Tier Two consisting of those who are not (Flanagan, 2018).[1728] Henceforth, there is "a prohibition on the Senate considering Tier One nominees the same day that such nomination is submitted to the Senate" and a prohibition on considering Tier Two nominees whose names were submitted to the senate at least one month prior to the end of the legislative session. Some have interpreted these changes in the light of partisan conflict between the Republican-dominated senate and the Democratic governor, who "has publicly pledged to try and help flip the chamber to Democratic control (Lovett, 2018)."[1729]

[1722] https://codes.findlaw.com/ny/state-administrative-procedure-act/sap-sect-207.html Accessed 07/18/18

[1723] http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S05982&term=2017&Summary=Y&Actions=Y Accessed 2/8/19

[1724] https://www.dos.ny.gov/info/constitution.htm Accessed 07/18/18

[1725] https://www.timesunion.com/local/article/PSC-nominee-testifies-unclear-when-confirmation-11201171.php Accessed 07/18/18

[1726] http://www.nydailynews.com/news/politics/state-republicans-warn-cuomo-nominee-appointments-article-1.3949383# Accessed 07/18/18

[1727] https://www.timesunion.com/news/article/Senate-Republicans-overhaul-confirmation-process-12885129.php Accessed 07/18/18

[1728] https://www.scribd.com/document/378114115/Appointments-Letter-Senator-Flanagan Accessed 07/18/18

[1729] http://www.nydailynews.com/news/politics/state-republicans-warn-cuomo-nominee-appointments-article-1.3949383# Accessed 07/18/18

The governor has the power to appoint the majority of the Executive Chamber, with the exception of the comptroller, the attorney General, and the lieutenant governor, who are elected separately, and the head of the Department of Education, who is selected by the State Board of Regents, which is itself appointed by the legislature (Haider-Markel 2009). As with appointments to executive agencies, the Senate may approve or reject appointments to the Court of Appeals, New York's highest court (New York Department of State).[1730]

Government reorganization is largely in the hands of the legislature, owing to the fact that the divisions of the executive branch are established in statute (New York State Senate, Section 31).[1731] According to the state constitution, "the legislature may… assign by law new powers and functions to departments, officers, boards, commissions or executive offices of the governor, and increase, modify or diminish their powers and functions… (and may create) temporary commissions…" (Article V.3, p. 13). However, the governor does have the power to "establish, consolidate, or abolish additional divisions and bureaus" not already established by law. Any appropriations required by such actions would require legislative action. In recent years, a number of different agencies have been merged, including the Division of Parole and the Department of Correctional services, the Consumer Protection Board and the Department of State, and the Banking and Insurance Departments. These changes were enacted as part of the budget, and thus received legislative approval (Murphy, 2011).[1732]

New York's governor has the power to issue executive orders only if they are related to disasters and emergencies or to establish study commissions or similar entities. This is more limited authority than many other state governors have in this area. The legislature does not have the power to review these, which seems quite sensible with respect to disaster warnings where speed is of the essence. It is therefore somewhat surprising to find that the governor issued 50 executive orders in 2018. While most of these concern disasters and emergencies of a physical nature such as floods, some involve protecting women's reproductive rights, ensuring parolee's voting rights, and other threats that are less environmental. The legislature has no authority to intervene to stop these orders other than to pass laws.

Oversight Through Monitoring of State Contracts

As discussed above, the Comptroller monitors all state financial transactions, including pre-approval of state contracts. Some watchdog groups have called on the legislature to increase its oversight of this domain, citing instances of "rigged" contract bidding and a general lack of transparency (Gullo, 2016).[1733] In one case, the former President of SUNY Polytechnic Institute was convicted for "steer[ing] hundreds of millions of dollars in state contracts to favored companies in Buffalo and Syracuse,"[1734] even though "an audit of 924 procurements across several SUNY campuses between…2012 [and] 2014…didn't find any major issues (Weiser &

[1730] https://www.dos.ny.gov/info/constitution.htm Accessed 07/18/18
[1731] https://www.nysenate.gov/legislation/laws/EXC/31 Accessed 07/19/18
[1732] http://www.ncsl.org/documents/fiscal/eliminations2011.pdf Accessed 07/19/18
[1733] https://www.news10.com/news/groups-calling-on-ny-legislature-to-hold-emergency-hearing-on-historic-bid-rigging-scandal_20180313103045100/1037579415 Accessed 07/19/18
[1734] https://www.nytimes.com/2018/07/12/nyregion/kaloyeros-guilty-buffalo-billion-cuomo.html Accessed 07/19/18

Mckinley, 2018; Clukey, 2016)."[1735] An aide to the Governor was also caught up in that scandal, "extort[ing] developers who built multi-million dollar facilities for the SUNY Polytechnic Institute" and "and squeeze[ing] companies with pending business before the state to pay him and his wife (Vielkind, 2016)."[1736] As a result, some legislators began calling for changes to laws that "provided SUNY more flexibility by eliminating the need for pre-approval from the state comptroller for all SUNY procurements (Clukey, 2016)."[1737] Others, however, warned that "red tape" would slow down economic development (ibid.). In the words of one legislator, "I'm all for more transparency and oversight, but instead of jumping to be the first to legislate in response to a controversy, why don't we take a slower, more deliberative path and hold public hearings to see what's best (ibid.)."

Some measures to increase oversight were attempted by the legislature, including "a 'Database of Deals' listing all projects awarded to a particular company, detailing subsidies received, and what New Yorkers are receiving for their return on investment in the taxpayer cost per job (Camarda, 2018)." Ultimately, that bill "passed out of committees in both houses last year but never made it to the floor for a vote (ibid.)."[1738] While legislative leadership claims to support other proposals that would give more power to the Comptroller to approve contracts, Senate and Assembly leaders have also said that they "are working towards a 'three-way agreement' with the governor before advancing the legislation (Silberstein, 2017).[1739]"

The Governor, meanwhile, "has been defiant, saying that the powers should not be returned to the Comptroller," proposing instead to expand the powers of executive inspectors general (ibid). Some legislators, however, dismiss the idea:

> What [the Governor] wanted in the budget was to have an independent inspector general, appointed by him to review his contracts. I don't think you have to be a lawyer, you just have to be somewhat sane to realize that that's not a check and balance on anybody. He doesn't want to lose that control and have that oversight. There's no other logic why he wouldn't do it (ibid.).

Consequently, activists, and even some legislators, have pushed lawmakers to pass legislation without the Governor's support, overriding a veto if necessary. However, veto overrides in New York are exceedingly rare—the last one happened in 2006 (Hakim, 2006).[1740] In 2011 the Comptroller lost some power to monitor procurement (Interview 2018). Senate Bill 3984A would have restored those powers, but died in the Assembly Government Operations in 2018 (New York State Senate, S3984A).[1741] Therefore, the legislature's involvement in contract

[1735] https://www.politico.com/states/new-york/albany/story/2016/10/legislators-look-to-change-suny-contract-procurement-repeal-law-that-diminished-state-oversight-106197 Accessed 07/19/18
[1736] https://www.politico.com/states/new-york/albany/story/2016/09/cuomo-aide-percoco-charges-105711 Accessed 07/19/18
[1737] https://www.politico.com/states/new-york/albany/story/2016/10/legislators-look-to-change-suny-contract-procurement-repeal-law-that-diminished-state-oversight-106197 Accessed 07/19/18
[1738] http://www.gothamgazette.com/opinion/7542-sunlight-for-subsidies Accessed 07/19/18
[1739] http://www.gothamgazette.com/state/7007-with-session-ending-and-trial-looming-no-legislative-response-to-bid-rigging-scandal accessed 2/8/19
[1740] https://www.nytimes.com/2006/04/27/nyregion/legislature-overrides-most-budget-vetoes-but-pataki-says-he-will.html Accessed 07/19/18
[1741] https://www.nysenate.gov/legislation/bills/2017/s3984/amendment/a accessed 1/11/19

oversight is likely to remain minimal and even the OSC's role is limited by gubernatorial actions.

Oversight Through Automatic Mechanisms

According to Baugus and Bose (2015), there is no automatic sunset provision in New York State, although sunset clauses may be attached to legislation. New York also has no sunrise provisions in place.

Methods and Limitations

New York's Legislature provides access to some archived videos for the Assembly. The link to archived videos for the state's senate does not work. The video software for the assembly hearings includes the hearing agenda, and it is possible to move easily through the hearing to key parts of testimony and questioning. On the other hand, the capacity to search for archived videos is limited and cumbersome to use. We contacted 6 people to ask about oversight in the New York Legislature, but we were only able to talk to 4.

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Legislative Oversight in North Carolina

Capacity and Usage Assessment

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

Summary Assessment

The North Carolina legislature has developed exceptionally strong analytic bureaucracies to facilitate oversight of the executive branch. It has expansive powers of advice and consent to check gubernatorial initiatives and nominations, although it sometimes uses these for partisan rather than good government purposes. The legislature lacks its own audit agency and its own administrative rules review committee. Recognizing its need for information that might often be provided in performance audits, the legislature recently (2007) created a Program Evaluation Division to produces multiple high quality program evaluations working closely with an oversight committee, the Joint Legislative Program Evaluation Oversight Committee. The legislature uses its lawmaking authority as a tool to conduct oversight often sponsoring legislation rather than directly seeking compliance from evaluated programs and agencies. The legislature also seeks assistance from other agencies to request oversight, including agencies in the executive branch such as a state auditor and the executive branch rule review commission.

Major Strengths

Oversight through the appropriation process appears to be thorough and effective. Work of the Fiscal Research Division (FRD) supports an essential legislative budget tool, the continuation review or CR. Selected programs must justify continued funding through the CR process. Although the CR process has resulted in the discontinuation or reduction of funding for some programs, it has also resulted in funding increases for programs when necessary. Even though the legislature does not have an audit division, it still investigates program performance. The Program Evaluation Division (PED) was created to assess the efficiency and effectiveness of government programs. It has shown its value in the reports generated through tracking legislative recommendations to agencies and legislation enacted as a result of these recommendations. Although the PED is not an audit agency, its high-quality program evaluations often lead directly to legislative action. Legislation can be a more powerful check on executive agencies than audit recommendations. The quantifiable cost savings associated with the evaluations performed by PED can be directly connected to appropriations decisions. The

legislature exhibits interest in the use of state contracts to deliver public programs, and it has passed legislation to reduce misuse of personal services contracts.

Challenges

The North Carolina Legislature does not have oversight authority in areas typically seen in other states. The audit function is under the authority of the executive branch in the form of an elected official, the state auditor. Although the legislature has been able to leverage a relationship with the state auditor that has allowed it to request audits of an executive branch agency in the past, this is not typical and depends on the willingness of the state auditor to facilitate the legislature. The PED became embroiled in a political battle during which the state senate failed to appoint members to the committee that sets its work plan, the Joint Legislative Program Evaluation Oversight Committee. This impasse lasted for a year, undermining the ability of the legislature to use evidence to oversee the work of state agencies. The legislature also has limited authority over the administrative rulemaking process. The Rules Review Commission (RRC) is appointed by the legislature, but it is organized under an executive agency, and the legislature has no authority over it. Partisan conflict characterizes the legislature's use of its extensive advice and consent powers.

Relevant Institutional Characteristics

North Carolina has a hybrid legislature. This designation indicates that legislators work approximately 2/3^{rds} of a full-time job legislating and receive an income that is not substantial enough for it to be their sole income. There are 120 representatives in the state house and 50 senators in the state senate. They all serve two-year terms with no limits on the number of terms they may service despite an effort from members in the legislature in 2017 to put a four-year, three-term limit on both chambers (Horsch, 2017). Legislators receive $13,951 per year, plus an additional $104 per session day and a monthly expense allowance. This low compensation is one of the characteristics that lends to the mid-level ranking for North Carolina in legislative professionalism, ranking 18th out of the 50 states (Squire, 2017). The legislative staff size has increased over the past decade. In 2015 there was a permanent staff of 370, a fairly modest number given the size of the legislature and the state, but an increase from a staff of 168 in 1996 (NCSL). Additionally, session-only staff numbered 308 in 2015, which is almost the same size as the 1996 session-only staff of 298.

Although the legislature is scheduled to meet in odd-numbered years for a regular session and for a shorter session during even years, in practice North Carolina's legislature seems to be drifting toward a full-time schedule. The 2015 session lasted three months longer than anticipated, the 2016 session had five extra sessions, the 2017 session had four special sessions, and the 2018 session has already included one special session (Osborne, 2017; NCSL, 2017).[1742] The regular session for 2019 is scheduled to last six months.[1743] This can occur because there is no constitutional or statutory requirement for the length of sessions. The dynamic of regularly

[1742] http://www.ncsl.org/research/about-state-legislatures/2017-state-legislative-session-calendar.aspx, accessed 10/10/18.
[1743] https://ballotpedia.org/North_Carolina_General_Assembly, accessed 12/17/18

extended sessions means that some legislators cannot maintain the balance between their professional or financial needs and their legislative service demands. For example, "former Rep. Charles Jeter resigned in 2016 after two terms because he was unable to legislate and run his trucking business, which supported his family financially. Rep. Carla Cunningham lost her nursing credentials because she went more than six months without practicing during the 2015-2016 session" (Osborne, 2017). These decisions change characteristics of individuals in the legislature from "regular" citizens to those who can financially afford to work so much for such a small legislative salary, such as retirees, the wealthy, business owners, and other highly paid professionals.

According to Ferguson (2015) North Carolina's governor is one of the weakest in the nation. Only the governor of Oregon is less powerful. This can be attributed to the structure of the executive branch and the governor's limited constitutional powers. Many of the executive branch officials that would be appointed by the governor in most states are elected in North Carolina. These include the State Auditor, the State Treasurer, the Superintendent of Public Instruction, the Commissioner of Agriculture, the Commissioner of Labor, and the Commissioner of Insurance. The governor and lieutenant governor run separately, and currently they hail from different political parties. North Carolina's governor was the last in the nation to be granted veto power. Voters amended the state's constitution to provide their governor with this power for the first time in 1996. This reflects the state's constitutional limits on executive power after harsh treatment by royal governors during the British colonial era.[1744] North Carolina is one of the six states in the nation in which the governor cannot use the line-item veto. Despite this, the state is required to pass a balanced budget.[1745]

In 2016, there was what the media dubbed a "legislative coup." [1746] After the Democrats took control of the governorship, the Republican-dominated general assembly passed legislation that weakened the power of the governor and reorganized the elections boards and commissions to be increasingly partisan (Graham, 2016). The outgoing Republican governor, defeated in his quest for reelection, signed these bills before leaving office. This effort to curtail executive control of the election commission could be view as a mechanism for legislative oversight of the executive, but the timing of the change and the partisan politics involved suggest that this was also a partisan power play. The state's supreme court and the voters both weighed in on the side of the governor. The Supreme Court ruled that some of the "laws violated the separation of powers clause,"[1747] and voters, who were given a chance in November of 2018 to amend the constitution to permit these changes to the governor's power, rejected both amendments. This particular instance will be discussed further in the "Oversight Through Advice and Consent" section.

The percentage of local and state government employees as a percentage of the workforce in North Carolina is equal to the national average of 11.3% (CATO, 2006). The CATO Institute does a comparison of the smallest and biggest bureaucracies for certain agencies. North Carolina is equal to or slightly under the national average for education workers (5.8%),

[1744] https://www.lohud.com/story/news/2016/01/01/jan-1-1996-nc-last-state-grant-veto-power-governor/78188720 / accessed 12-16-18
[1745] https://ballotpedia.org/North_Carolina_General_Assembly#cite_note-process-21, accessed 12-16-18
[1746] https://www.theatlantic.com/politics/archive/2016/12/north-carolinas-republicans-succeed-in-power-grab/510950/, accessed 12/17/18
[1747] https://ballotpedia.org/North_Carolina_General_Assembly, accessed 12/17/18

safety workers (1.5%), service workers (1.1%), and other workers (.8%). North Carolina is above the national average for welfare workers (2.1%).

Political Context

North Carolina has only recently seen Republican Party control of state government. Democrats were in control throughout most of the 1990s and into the 2000s. From 1993 through 2012 Democrats held the governor's office and from 1992 through 2010 they held the state senate. The Republican Party only controlled the house from 1995 through 1998 during the years 1992 through 2010. However, from 2013 onward Republicans held a trifecta until the 2017 victory of the current governor, Democrat Roy Cooper.

North Carolina ranks in the top five of the states with the least compact districts, which is a measure that indicates whether there is potential for gerrymandering. Based on a measure of district compactness, there is a high potential for gerrymandering in the state (Azavea, 2012).[1748] Consequently, state legislative elections are only moderately competitive, ranking 27th in the nation during the 2016 election cycle.[1749] Not surprisingly, without electoral competition to motivate politicians to attract independents, the political parties in the legislative chambers are fairly highly polarized. North Carolina has the 17th most polarized lower chamber and 21st most polarized upper chamber in the country (Shor and McCarty 2015).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The state auditor is the principal analytic bureaucracy tasked with engaging in oversight of North Carolina's executive branch. The state auditor is a constitutional officer who is elected by state-wide partisan ballot. The state auditor is part of the executive branch. Neither the governor nor the legislature is able to commission specific investigations of executive agencies through the Office of the State Auditor (OSA). The state auditor oversees a staff of 49 professionals, which includes the state's comptroller, numerous CPAs, legal professionals, and information technology specialists. The OSA received a state appropriation of $11.7 million and had a staff of 136 in 2015 (NASACT 2015). There are six types of audits performed by the office. In 2017, the office conducted 58 CPA Audits, seven Investigative Reports, five Information System Audits, two Performance Audits, 29 Financial Related Audits, 81 and Financial Statement Audits. The financially related audits cover county clerks of various superior courts, state agencies, universities and community colleges, licensing boards, and non-profits. These audits cover the work performed by these entities as well as their appropriate use of financial resources.

[1748] https://cdn.azavea.com/com.redistrictingthenation/pdfs/Redistricting_The_Nation_Addendum.pdf, accessed 10/10/18. North Carolina has a Polsby-Popper ratio of four, which indicates that the districts are probably gerrymandered.

[1749] https://ballotpedia.org/State_legislatures_compared_by_extent_of_electoral_competitiveness_in_2016, accessed 10/10/18.

Performance audits, which are important for legislative oversight, are rarely conducted by OSA: two in 2017, three in 2016 and two in 2015. One of the two performance audits conducted in 2017 examined the performance of the Department of Agriculture and Consumer Services with respect to inspections to determine the quality of milk—meeting Grade A standards. The other examined the performance of a managed care organization (MCO) that provides mental health, disability and substance abuse services through a contract with the North Carolina Department of Health and Human Services. The focus of that audit was whether the MCO fulfilled its statutory mission and was a "good steward of state and federal resources."[1750]

Investigative reports are more narrowly targeted than performance audits and appear to be conducted somewhat more frequently: seven completed in 2017. The 2017 investigations included examination of the behavior of, amongst others, the Wake County Sherriff's Office, the Carteret County Humane Society, and The UNC school of Arts (NC Office of the State Auditor, 2017). These investigations appeared to be in response to alleged instances of public malfeasance. This preference for audits that protect the public interest may be because the state auditor is elected. Non-audit investigative reports are generally more salient to the electorate than are the more specialized performance audits. The reports conducted by the Office of the State Auditor (OSA) are available to the public. Some reports are sent to the legislature, but it is clear from the distribution of the reports and the emphasis on public access that the North Carolina State Auditor is a publicly elected position that is accountable to the voters. The OSA even includes links to news reports that highlight the activity of the state auditor

Another analytic bureaucracy, the Program Evaluation Division (PED), is the primary legislative agency that supports oversight. The PED's mission is to determine whether government services are delivered efficiently and effectively. The budget for fiscal year 2018-2019 allocates 14 full-time employees and $1.7 million to the division. Its website lists of reports produced annually. In 2018 it produced 13 reports of which 11 appear to be assessments of agency and program performance.[1751] The PED is not an auditor, but rather non-partisan legislative support staff. "Audits are the realm of the AG. We do findings and recommendations; we find sometimes they are doing good things, and we report those things too" (interview notes, 2018). After listening to audio recordings of presentations based on these reports, it appears that these reports could be described as program evaluations.

In 2007, North Carolina was one of the few states that did not have a program assessment unit to support the work of its legislature (interview notes, 2018). To remedy this, the legislature created the PED and a legislative committee to supervise it, the Joint Legislative Program Evaluation Oversight Committee (JLPEOC), through Session Law 2007-78. The JLPEOC has co-chairs (one from each chamber) and 16 other members (eight from each chamber). The JLPEOC is responsible for establishing the work plan for the PED, approving PED reports, and to "recommend to the General Assembly any changes needed to implement a recommendation that is included in a report of the Program Evaluation Division and is endorsed by the Committee" (S.L. 2007-78). [1752] Additionally, the PED presents its reports to the JLPEOC. There are four subcommittees listed under the JLPEOC: Economic Development Subcommittee, Medicaid and Health Administration Subcommittee, Personal Services Contracts Subcommittee, and the Real Property Subcommittee, but it does not appear that these subcommittees have met since 2015.

[1750] http://www.ncauditor.net/EPSWeb/Reports/Performance/PER-2017-4445.pdf, accessed 1/23/18.
[1751] https://www.ncleg.net/PED/Reports/reports.html, accessed 12/28/18
[1752] https://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2007-2008/SL2007-78.pdf, accessed 10/10/18.

The PED website is well organized and provides links to information on meetings by the JLPEOC including agendas, minutes, handouts, and archived audio recordings. Based on listening to audio recordings of meetings of the JLPEOC available through links on the PED website,[1753] it appears that PED reports are thorough and professional evaluations of state programs. During the April 2018 meeting, which lasted nearly four hours, of the JLPEOC legislators listened to several reports at monthly meetings and ask PED staff questions. Legislators' questions do not demonstrate extensive knowledge of evaluations in general or the programs in particular. For example, one legislator wanted to know what "evidence-based measurement" meant. PED staff responded professionally and clearly to these sorts of questions. The meeting chair explained that the evaluations would be presented at the current meeting, but would not be voted on until the next meeting so that legislators would have time to gain more information and understanding of the evaluations being presented.

In 2017, the JLPEOC could not meet because the senate did not appoint anyone to serve. It is not clear why the senate did not make these appointments; but there was speculation within the legislature that it was political fallout from a PED report (interview notes, 2018). PED reports do not become public unless the JLPEOC approves them, so no reports were released until JLPEOC appointments were made. Moreover, the PED did not have a work plan. However, there were previously assigned projects to complete and projects required by a state law or budget items. On June 26, 2018, the North Carolina general assembly passed HB646, [1754] which requires that the JLPEOC chairs establish the work plan for the PED, subject to the approval of the JLPEOC (interview notes, 2018). The JLPEOC once again is operating. Legislators can request that the PED conduct an evaluation by submitting a request to the JLPEOC chairs, and PED will even help legislators write these requests. [1755] But the JLPEOC through HB646 controls the work of the PED except when the general assembly passes a bill requiring a PED report (interview notes 2018).

PED investigations determine "what state agency programs are really doing, at what cost, and to what effect, if any."[1756] Based on these findings, the JLPEOC makes recommendations to the general assembly rather than to the agency being investigated, which is the case in many other states. In North Carolina, recommendations from the PED reports are used by the JLPEOC to introduce legislation. The PED tracks the enacted and failed legislation following the conclusion of each legislative session. Between 2008 and 2016 the legislature enacted legislation on 38 of the reports generated by the PED.[1757] PED recommendations result in quantifiable cost savings, approximately $25.2 million annually.

Despite this legislative approach, there are times that the JLPEOC discusses a PED report with the agency involved and decides that the agency needs to take action. This happened in a hearing held on October 8, 2018[1758] when the JLPEOC met about a PED report, *Improvements to Inmate Healthcare Reimbursements and Internal Processes Could Save $5.6 Million Annually*. The first recommendation that PED made in that report was for the general assembly to establish a new position in the Health Services division of the Department of Public Safety (DPS) tasked with improving its use of performance measurement data and managing inmate healthcare costs.

[1753] https://www.ncleg.net/DocumentSites/committees/JLPEOC/Audio/2018/04-09-18.mp3, accessed 12/28/18
[1754] https://trackbill.com/bill/north-carolina-house-bill-646-apprenticeshipnc/1446720/, accessed 10/10/18.
[1755] https://www.ncleg.net/PED/Documents/Legislative_Assistant_Guide.pdf, accessed 12/18/18
[1756] https://www.ncleg.net/PED/AboutUs/mission.html, accessed 1/23/18.
[1757] https://www.ncleg.net/PED/LegislativeTracking/Legislation.html, accessed 10/10/18.
[1758] https://www.ncleg.net/DocumentSites/committees/JLPEOC/Minutes%20and%20Handouts/2018/10-08-18/Draft%20Minutes%20June%2011,%202018.pdf, accessed 12/19/18

A JLPEOC committee member noted that it seemed like a good manager of DPS could already have done this under general statute 143b-10. The agency agreed, but said they were waiting to meet with the JLPEOC to assess committee support before creating the position. The committee encouraged DPS to act, concluding that legislation was not needed.

A third analytic bureaucracy, the Fiscal Research Division (FRD), is a non-partisan staff agency of the general assembly that provides fiscal and policy analysis of budgetary and taxation issues and provides staff to the appropriations and finance committees in each chamber. When the legislature is not in session, the FRD is still responsible for work associated with the fiscal policy of the state, but it is also responsible for monitoring "executive branch compliance with enacted legislative initiatives."[1759] Prior to the creation of the PED, the FRD tried to do some of the evaluation work the PED handles. However, the FRD was only available to do this type of work when the general assembly was not in session. This was not enough time for the type of detailed evaluation required (interview notes, 2018). The FRD has 37 staff members and a budget for the 2017-2019 biennium of over $10 million. The publications available on the website include annual budget summaries, fiscal briefs and reports, a glossary of commonly used budget terms, continuation reviews, economic incentive programs, and workforce development offered by the state. There are various other presentations, revenue forecasts, budget legislation information, statistics and data available on the FRD website.[1760] More information about the FRD is provided in the next section, *Oversight Through the Appropriations Process*.

Oversight Through the Appropriations Process

Per the State Budget Act (Chapter 143C, Art 4), North Carolina has a biennial budget cycle. The biennial budget is enacted during the long session, which occur during any odd-numbered year and necessary adjustments occur during the short session (even-numbered years). Per the state constitution, the governor is responsible for preparing a budget for submission to the general assembly. However, the legislature has the power of the purse and is responsible for authorizing appropriations through the enactment of the State Budget Act. The distinction between the State Budget Act and the Appropriations Act is that the former establishes the procedures for preparing, enacting, and administering the state budget,[1761] whilst the latter grants the funds described in the budget.[1762]

As a result of legislative action, North Carolina does use performance measures as a part of the budget process. A major change in the budget law in 2006 required the governor to include line-item information for each program.[1763] As a result, the Office of State Budget and Management began including program descriptions and some outcome measures with the line-item detail.

The continuation review (CR) program is an oversight program created by the 2007 Appropriations Act (S.L. 2007-323, Section 6.21). The program requires state agencies to

[1759] https://www.ncleg.net/fiscalresearch/about_us.html, accessed 10/10/18.
[1760] https://www.ncleg.net/fiscalresearch/index.html, accessed 12/18/18.
[1761] https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_143C.pdf, accessed 10/10/18.
[1762] https://www.ncleg.net/fiscalresearch/budget_legislation/budget_legislation_pdfs/2007_%20Appropriations_%20Act.pdf, accessed 10/10/18; https://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S99v6.pdf, accessed 10/10/18.
[1763] https://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2005-2006/SL2006-203.pdf, accessed 10/10/18.

complete program evaluations to argue for continued funding. It originally eliminated reoccurring funding for eight programs during FY2007-2008. The agencies had to submit written reports to the appropriations committees. The reports were used by committees to "determine whether to increase, continue, reduce, or eliminate funding for the selected programs".[1764] Each CR in subsequent appropriations bills provides specific instructions on what the report should include.[1765] These reports are presented to the oversight and appropriations committees responsible for oversight of the specific program. Analysts from the FRD coordinate the CR program with the agency and the appropriation committees. The appropriations committees make recommendations for funding based off of the CR during the appropriations process. The FRD subsequently provides a report that analyzes the evaluation provided by the agency and includes information on the legislative action that followed.[1766] A summary of the results of the CR initiative since its implementation in 2007 includes the following categories on program funding following the review:[1767]

- Funding Restored and Increased – five programs
- Funding Restored at Prior-Year Level – 20 programs
- Funding Partially Restored – seven programs
- Funding Eliminated – seven programs

North Carolina organizes its chambers into specialized appropriations committees. The house and the senate have appropriations subcommittees who are responsible for areas of specialty. These subcommittees are responsible for facilitating public hearings where fiscal staff make presentations about agency budgets. Some hearings are held before joint subcommittees. State agencies may also answer questions or make presentations. Joint meetings cease when the chamber originating the bill starts to make specific budget decisions. Subcommittee decisions are compiled into one report and an appropriations act. This is then argued before the full appropriations committee. If necessary, amendments occur in the full committee. The full committee reports out the final proposed appropriations act to the chamber floor for debate.[1768]

Appropriations battles between the Democratic governor and Republican legislature occur regularly and reflect partisan priorities. Without the power to veto specific line-items in the budget, the governor can only veto the entire bill. However, Republicans have a supermajority in the legislature and can override gubernatorial vetoes. The Republican majority legislature voted to override Governor Cooper's (D) veto of the 2018 Appropriations Act, which is the adjustment of the 2017-2019 biennium budget approved in 2017 (Sherrill, 2018). The original 2017-2019 budget was also passed using an override vote.

[1764] https://www.ncleg.net/fiscalresearch/continuation_reviews/overview_continuation_reviews.html, accessed 12/27/18

[1765] For example, 2015-2016 Continuation Review Legislation: https://www.ncleg.net/Sessions/2015/Bills/House/PDF/H97v9.pdf#page=15, accessed 10/10/18.

[1766] An example of a FRD Continuation Review Report of the 2016 Mercury Pollution Prevention Account Continuation Review: https://www.ncleg.net/FiscalResearch/continuation_reviews/2015-16%20Continuation%20Reviews/FRD%20Analysis%20and%20Summary/FRD_Analysis_CR_Mercury_Pollution-FRD-2017-01.pdf, accessed 10/10/18.

[1767] Data on summary of results is available on the FRD website: https://www.ncleg.net/fiscalresearch/continuation_reviews/results_continuation_reviews.html, accessed 10/10/18.

[1768] https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Trogdon%20Budget%20Process.pdf, accessed 10/10/18.

Oversight Through Committees

In addition to many substantive committees, NC has organized multiple joint oversight committees, which meet irregularly, some yearly, some biannually, some more often (NC General Assembly, 2017). A review of committee agendas reveal meetings are often specific and contain numerous presentations on projects and agency performance. Lawmaking does not appear to occur in these committees. The purpose of the committees appears to be to facilitate testimony from agencies to both chambers concurrently. A review of 22 bills presented to the Joint Oversight Committee on Transportation and the Transportation standing committees in both chambers indicate two of the bills addressed executive agencies. One bill proposed training and increased instruction for police officers interacting with mentally disabled motorists. The second created a new "transportation credit" program through the North Carolina Department of Transportation (NC General Assembly, 2017).

North Carolina's legislature does not have committee meeting videos nor transcripts readily available on its website, however, a specific date of meeting minutes can be requested from their legislative library (interview notes, 2018). The PED provides readily accessible information on the meetings and activities of the JLPEOC. Similar information does not appear to be available for other committees according to our interview respondents. An interviewee said that audit reports go out to all members of the house, and the chairs decide what to do with them. This source did not recall an instance of an audit report being used to question an executive branch agency, but said clarification would be pursued if there was an issue. The same interviewee could not recall an instance of an auditor presenting to a committee. Although, this source said that if a committee chair asked for a presentation, it would be provided (interview notes, 2018).

PED reports and the work of the JLPEOC appear to be the primary source of legislative oversight through the committee system. The work of PED through the JLPEOC led to the passage of 9 laws during 2018.[1769] The JLPEOC meets during the interim and during the session, except during 2017 when the senate did not appoint members to the committee. The driving force for this oversight appears to be the analytic support agency even though the legislative committee manages this agency and sets its work plan. The legislature, however, deserves credit for recognizing in 2007 that it needed the information that the PED provides.

Oversight Through the Administrative Rules Process

The governor's Rules Review Commission (RRC) is an independent agency whose members are appointed by the legislature. It is organized under the Office of Administrative Hearing, which is a quasi-judicial agency. Five of the commissioners are appointed by the speaker of the house and five appointed by the senate pro-tempore. The RRC provides reports to committees in the legislature, however, there is no legislative authority over the commission.

[1769] https://www.ncleg.net/PED/Reports/documents/2018%20Legislation/2018Legislation.pdf, accessed 12/28/18

The commission has one charge, which is to review executive agency rules. The RRC is forbidden from reviewing rules using efficacy or quality criteria. The scope for review is narrow. The RRC uses four standards to review rules (G.S. 150B-21.9)[1770]:

- Authority – does the agency have delegated authority for rulemaking from the legislature
- Clarity – is the rule clear
- Necessity – is the rule necessary for the agency to fulfil its duties
- Compliance – did the agency comply with procedural requirements for rulemaking

The organization of the RRC, appointed by the legislature but housed in an executive agency, has come under scrutiny as a separation of powers issue. It has been argued that the RRC is not a hybrid agency, but a legislative agency and should not be allowed to review rules for the executive branch. This was challenged in a case that went to the North Carolina Supreme Court between the governor and legislative leadership (*McCrory v. Berger)*. [1771] The focus of the case was on the legislative authority to make appointments to executive branch agencies. However, the court also determined, in what is referred to as 'Footnote 7,' that the RRC passes constitutional muster (interview notes, 2018).

The RRC has the authority to block the filing of new rules and regulations independently. However, agencies may rewrite and resubmit a rule to the RRC to address the objectionable concerns. It is not typical for the RRC to issue rejections (interview notes, 2018). When a rule is rejected, the commission is required to write a letter to the agency indicating the exact reason for the objection. If an agency does receive a rejection, it is typical for them to submit a rewrite. In the last five years, there have only been two times that an agency decided not to rewrite a rule (interview notes, 2018).

The RRC holds public meetings where rules are considered. Although the public can attend, there is no statutory requirement for the commission to allow the public to participate. The RRC does have rules in place for individuals to follow if they would like to speak at a scheduled meeting. If someone would like to speak, who has not followed the process, it is typical for the RRC to still allow him or her to speak. "The RRC loves when the public comes" (interview notes, 2018). At times, the public input has been the driver of the final decision on a rule (interview notes, 2018). In June 2018, the commission was reviewing a set of rules for the Division of Health and Human Services Division of Medical Assistance, which manages the State Medicaid program. A staff attorney previously reviewed the rules and recommended adopting them. Someone from the public attended the meeting and indicated that there was a problem with 12 of the rules. The RRC subsequently objected to eight of the rules. [1772]

The Office of Administrative Hearings produces reports on administrative rules reviewed in the present fiscal year. During the 2017-2018 fiscal year, 863 permanent administrative rules were reviewed, either as new rules or via a mandatory reauthorization process. Of the 863 reviews, a sizable minority 382 were rule changes, which resulted in 102 being adopted. The remaining 481 rules were existing rules considered for re-adoption by the RRC: 267 of which

[1770] https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_150B/GS_150B-21.9.pdf, accessed 10/10/18.
[1771] https://appellate.nccourts.org/opinions/?c=1&pdf=33969, accessed 10/10/18.
[1772] https://www.ncoah.com/rules/rrc/Minutes%20June%202018%20-%20Signed.pdf, accessed 10/10/18.

were repealed, 142 were amended, and 72 were readopted. Only 12 rules required additional legislative approval.

When the RRC blocks a rule from being implemented because it is not within the statutory authority of the agency, the rule is referred to the Joint Administrative Procedure Oversight Committee. That committee considers what statutory changes they want to make, if any.

In addition to their regular role of oversight through lawmaking, administrative rules are subject to legislative review if any 10 people file written objections to the rule. The signatures are not verified and there is no check to see if the persons are real or reside in the state. The receipt of 10 letters is communicated to the legislature as the whole or to the oversight committee. The legislature has to act. The letters are submitted to the legislature as a report. The receipt of the letters makes a rule eligible for legislative review; it does not mean the legislature will review it. Usually, an individual or organization will use a lobbyist to find a legislator to sponsor the rule(s) to get killed. A kill bill must be introduced. However, it is very rare for a kill bill to be introduced (interview notes, 2018).

Oversight Through Advice and Consent

The 2016 "legislative coup" previously discussed entailed an extensive conflict between the current governor (even before he obtained governorship) and the legislature. Much of the conflict involved gubernatorial appointments to the State Board of Elections, which the legislature tried to merge with the Ethics Enforcement Commission. From 2016 to 2018, Governor Roy Cooper issued four lawsuits against the legislature– all of which challenged the various provisions of bills that limited the governor's appointment powers. The courts on some counts judged these legislative actions to be an unconstitutional violation of the separation of powers clause of the constitution. The legislature, in response, attempted to amend the state's constitution through ballot initiatives, which voters rejected in 2018.

Despite the ongoing political conflict between the legislature and the governor, the legislature in 2018 acted on some - although still a minority - of the governor's appointments. For instance, after a year of waiting the legislature voted on three appointments to the State Board of Education: two were voted down and one, a reappointment, was confirmed. The governor's nominees for the special superior court and for the North Carolina Industrial Commission were rejected. A nominee to the Industrial Commission was confirmed (Fain, 2018). This appears to be unusual because, as an interviewee told us, "more often than not" gubernatorial appointees are confirmed (interview notes, 2018).

North Carolina does not keep archived videos of legislative meetings, which makes it difficult to gauge why the legislature chose to reject these appointments. On the note of the rejected superior court and Industrial Commission appointees, a legislator remarked that, since the governor's administration did not "consult legislators before naming his appointees…[it] 'bothered a number of people'" (Fain, 2018).

The legislature is also being sued over a law that grants some of the State Board of Education's authority to Superintendent Mark Johnson (R) (Bonner, 2018). It is apparent that the legislature is currently using its lawmaking authority as well as its advice and consent powers in an attempt to weaken the power of the governor and the executive branch more generally.

Although these actions may be viewed as a form of oversight, their motivation and timing suggest that they are partisan actions.

North Carolina's governor can issue executive orders to accomplish a wide range of purposes, including emergencies, executive branch reorganization, and policy goals. The only restriction on the governor's authority to issue these orders is that he or she must submit copies of these orders to the leaders of each legislative chamber. As an example, in October of 2018, Gov. Cooper issued executive order 80, which sets a target of a 40 percent reduction in the state's greenhouse gas emissions by 2025.

The power to reorganize state government is shared by both the legislative and executive branches. The General Assembly establishes the functions, powers and duties of administrative departments and agencies, but the governor can change the allocation of those functions, powers and duties to improve administrative efficiency. If any gubernatorial change affects existing laws, then the governor issues an executive order making the change and submits the order to the general assembly on or before the sixth day the legislative session. This executive order has the force of law at the end of the legislative session unless it is rejected by either chamber or modified by a joint resolution of both chambers (Article III, Section 5(10) of the State Constitution). Gov. Cooper's announcement that he planned to expand Medicaid through executive action triggered legal action by the legislature, which was later dropped when the governor did not file a plan to implement such an expansion.[1773]

Oversight Through Monitoring of State Contracts

The Secretary of Administration and the State Chief Information Office are responsible for purchasing oversight.[1774] However, there are mechanisms in place that stipulate legislative review of contracts that meet certain criteria. The State Procurement Officer is required by statute to report all contract awards greater than $25,000 and the number of contracts that are anticipated to be performed outside of the United States to the Joint Legislative Committee on Governmental Operations ((G.S. 143-52.1(e); G.S. 143-59.4(b)). [1775] For contracts greater than $25,000, the report must include "the amount of the award, the award recipient, the using agency, and a short description of the nature of the award" (G.S. 143-52.1(e)).

Outside of these reporting requirements, the legislature has no oversight authority over contracts in the state. However, the legislature has used other means to facilitate oversight over state contracts. In 2015, the work plan of the Program Evaluation Division (PED) required an examination of the use of personal services contracts[1776] by state agencies and the University of North Carolina institutions. Because of the evaluation, the PED recommended the State eliminate the use of Personal Services Contracts in favor of using existing mechanisms and recommended to the general assembly that it pass legislation necessary to prohibit this form of

[1773] https://www.advisory.com/daily-briefing/resources/primers/medicaidmap, accessed 12/27/18
[1774] https://files.nc.gov/ncdoa/pandc/Documents/Contract-Administration-and-Monitoring-Guide/Procurement_Manual_5_8_2013_interactive.pdf, accessed 10/10/18.
[1775] https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_143/Article_3.pdf, accessed 10/10/18.
[1776] Personal services contracts are contracts for services with an individual on a temporary or occasional basis and, in most cases, are exempt from procurement rules.

purchasing.[1777] The outcome was enacted legislation that mandates that personal services contracts for executive branch agencies be subject to the same procurement rules in place for services, that renewal of information technology contracts require review, and that agencies utilize temporary employees through the Temporary Solutions Program administered through the Office of State Human Resources (S.L. 2015-241, Section 26.2). [1778]

A 2015-2016 audit of the Department of Health and Human Services revealed that one third of contracts during 2011-2014 were awarded as no-bid contracts. These contracts have a total value of $2.4 billion. The audit was completed by the State Auditor, as the PED has no audit authority. However, the audit was initiated by a request from the Joint Legislative Program Evaluation Oversight Committee (Craver, 2016).

These actions indicate legislative interest in overseeing the effective and efficient use of state contracts to deliver government services. Recently passed legislation provides the legislature with more prerogatives in this area than is true in most states. But this is still an area that is primarily under the jurisdiction of the executive branch, in this case the state auditor.

Oversight Through Automatic Mechanisms

Sunset laws put in place in North Carolina in 1977 were repealed in 1981 and the subsequent Legislative Committee on Agency Review ended in 1983 (Baugus and Bose 2015). However, a regulatory reform passed in 2013 did add a sunset provision with a periodic review (S.L. 2013-413, 150B-21.3A(c)).[1779] The statute indicates that each agency must conduct a review of existing rules at least once every 10 years and provide a report to the RCC. Any rules for which a scheduled review has not been conducted, will expire on the date set in the schedule. This change was enacted through legislation; however, it is under the auspices of the RCC, which is structured under the executive branch.

Methods and Limitations

Out of the 10 people that we contacted, we interviewed 3 people about oversight in North Carolina. There are no archived recordings available for committee hearings in either legislative chamber, so it is difficult to be confident of our assessment of the quality of the oversight.

[1777] https://www.ncleg.net/PED/Reports/documents/PSC/Personal_Services_Contracts_Final.pdf, accessed 10/10/18.
[1778] https://www.ncleg.net/PED/Reports/2017/PSC_Follow.html, accessed 10/10/18.
[1779] https://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf, accessed 10/10/18.

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Legislative Oversight in North Dakota

Capacity and Usage Assessment

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

Summary Assessment

Legislative oversight in North Dakota is hampered by a short legislative session and few institutional resources to support oversight. Yet legislators in the state make good use of the tools they have and seek to expand their resources. The legislature has eagerly engaged in efforts to protect its limited budgetary powers from executive branch encroachment. It has created new audit divisions within the Office of the State Auditor (OSA), and it works collaboratively with that executive branch agency to improve state agency and executive branch performance. The powerful Administrative Rules Committee (ARC) engages in rules review and occasionally rejects rules. This is impressive for a state with a citizen legislature that meets for very short sessions.

Major Strengths

North Dakota has a limited but growing capacity to produce performance audits. These audits emphasize efficiency, and examples of audits transforming government are readily available. The Legislative Audit and Fiscal Review Committee (LAFRC) is an active committee that collaborates with the OSA. Committee minutes indicate that the legislature uses OSA reports to monitor state agency performance. North Dakota's separate University System Performance Audit Division provides tailored focus on oversight of the state's institutions of higher education. Finally, the legislature pays attention to planned agency reorganization by the executive branch and insists that it be informed and consulted.

Challenges

The limited 80-day sessions constrain the legislature's ability to oversee the executive branch. Institutionally, power substantially tilts to the governor, in particular his power to call or not call emergency sessions and his strategic use of veto. The legislature has very few

opportunities to engage in Advice and Consent. Capacity for performance auditing of anything other than the University System is limited with the OSA producing only an average of one performance audit per year. The pace of investigations, however, may be increasing. Unlike other states that have audit or investigative agencies firmly ensconced in the legislative branch, North Dakota's Legislative Assembly is dependent on its informal relationship with the semi-independent Office of State Auditor, whose statutory connection to the Assembly is weak. Depending on the political affiliation of legislative leaders and the state auditor, this informal alliance could be decoupled. In budget battles, the legislature is institutionally at a disadvantage with the governor, owing to an inability to unilaterally call an emergency session.

Relevant Institutional Characteristics

North Dakota is a state that pairs one of the more institutionally powerful governors with one of the least professional legislatures. The National Conference of State Legislatures (2017) classifies North Dakota's Legislatures in the "Gold" group defined as the most citizen legislature (part-time, low pay, small staff). This means that the job requires less than half that of a full-time job and the compensation is low enough to require additional employment. North Dakota is one of only four states that fit into NCSL's "Gold" category, which applies to states with the least professional legislatures. The base salary is $177 per session day and monthly lodging expenses of no more than $1,682 per month.[1780] There are 80 legislative days in a session and legislative sessions are held every odd year (NCSL 2010). So every other year, North Dakota's legislators can earn slightly more than $14,000 if the session lasts the maximum number of days.

As of 2018, North Dakota's legislature was comprised of a Senate with 47 members and a House of Representatives with 94 members.[1781] North Dakota is unique compared to other states in that the State Constitution allows for the legislature's membership to expand or contract after a census. Senatorial districts can range in number between 40-54 districts and the House of Representatives can range in number between 80-108 members.[1782] For example, in 1999 there were 49 senators and 98 representatives.[1783] Unlike many other states, senators and representatives both serve 4 year terms without limits on re-eligibility.[1784] Finally, North Dakota has multi-member legislative districts. Each senatorial district is represented by 1 senator and 2 representatives.[1785] North Dakota staggers the election of all senators and representatives. In 2014 two representatives and one senator from all odd-numbered districts were up for re-election and in 2016 the corresponding legislators from even-numbered districts were up for election.[1786]

The legislature has 122 staff members, 37 of which are permanent (NCLS 2015). There are no limits on the number of terms, consecutive or otherwise, a legislator may hold. North

[1780] https://ballotpedia.org/Comparison_of_state_legislative_salaries, accessed 7/15/18.
[1781] https://ballotpedia.org/North_Dakota_Legislative_Assembly, accessed 12/1/18.
[1782] https://www.legis.nd.gov/assembly, accessed 12/1/18.
[1783] https://www.legis.nd.gov/assembly/56-1999, accessed 12/1/18.
[1784] https://www.legis.nd.gov/assembly/65-2017, accessed 12/1/18.
[1785] https://ballotpedia.org/North_Dakota_Legislative_Assembly, accessed 12/1/18.
[1786] https://www.legis.nd.gov/assembly/65-2017, accessed 12/1/18.

Dakota's legislative session is defined by the state's constitution. The Squire ranking, which compares the state legislatures to the US Congress on a wide range of variables, provides a rank of 47th "most" professional legislature (Squire 2017).

North Dakota grants an above average amount of institutional power to its governors, according to Ferguson (2015), ranking as the 5th most powerful nationally. Notably, tenure potential and budget power received the highest possible score while party control was a step just below the highest. The governor has the line-item veto. The legislature needs a two-thirds vote to override a gubernatorial veto. In addition to the usual elected executive branch positions of Secretary of State and Attorney General, the voters in North Dakota elect many executive branch officials: Superintendent of Public Instruction, Commission of Insurance, State Auditor, Commissioner of Agriculture, State Tax Commissioner, and the Public Service Commission.[1787]

Political Context

In the past 50 years, North Dakota has had either Republican control of both its House and Senate or split control—majority Republican in one chamber and Democratic control in the other—but never Democratic control (NCSL 2017). While split control was somewhat common in the 80s and early 90s, since 1995, North Dakota has had a Republican trifecta.[1788] Currently, the house and the senate are rated the 38th and 39th most polarized chambers in the country based on the ideological difference between the parties in each chamber (Shor and McCarty 2015). This is attributable to the fairly conservative ideological positions of Democratic caucus members in these chambers (among the five least liberal Democratic caucuses in the country), although the Republicans in both chambers are only moderately conservative (just a bit more conservative than the median state caucus).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

North Dakota has a separately elected State Auditor that is nominally independent of the legislature. The Office of the State Auditor (OSA) statutorily provides services to the legislature, although it is an independent unit in the executive branch.[1789] There are specific laws on the books that allow the legislature to direct the state auditor to carry out certain functions, for example NDCC 54-10-01 provides that the legislature determine necessary performance audits by the state auditor. In addition, there is a selection of studies and assignments from the Legislative Audit and Fiscal Review Committee (LAFRC) that directly affect the state auditor. A corresponding law (54-10-01) approves hiring by the state auditor of a consultant to assist with

[1787] https://ballotpedia.org/Governor_of_North_Dakota, accessed 12/29/18.
[1788] https://ballotpedia.org/Governor_of_North_Dakota, accessed 12/29/18.
[1789] https://www.nd.gov/auditor/about-us, accessed 7/11/18.

performance audits; determine the frequency of audits of state agencies. Additional legislation determines when the state auditor is to perform audits of political subdivisions (54-10-13) and orders the state auditor to audit the accounts of any political subdivisions (54-10-15).[1790] It would seem that while formally the state auditor is independent, in practice the legislature actually has a great deal of statutory authority to direct the state auditor's work. The OSA is a fairly well funded agency with a 2017-19 appropriation of $12.9 million, an annual budget of $6.45 million.[1791] The website for the state auditor's office does not provide a staff list, and its directory has a single, general contact. The NASACT report (2015), *Auditing in the States*, for 2015 shows there are 51 positions in the North Dakota Office of the State Auditor (OSA).

There are four divisions within the OSA: Division of State Audit, Division of North Dakota University System Performance Audit, Division of Local Government Audit, and Division of Royalty Audit, which audits federal royalty payments for fossil fuel leases. The first two of these divisions are of interest to us here.[1792]

The OSA works closely with the Legislative Audit and Fiscal Review Committee (LAFRC). According to practitioners, either the legislature or the OSA can initiate an audit, and they are each roughly equally responsible for initiating the audits produced (interview notes 7/11/18). Survey data collected by NASACT suggests the Governor also can initiate audits, but this was not verified by practitioners (NASACT *Auditing in the States 2015;* interview notes 7/11/18).[1793] Once an audit is complete, the State Auditor releases reports to the LAFRC for study, review, and possible public hearings. Not all audits receive a hearing.[1794] LAFRC decides whether to hold a hearing or not. The biennial report produced by the OSA suggests that when LAFRC does hold a hearing, either OSA staff or the private CPA contracted by the OSA to create the audit report gives the presentation (page 9).[1795] The report goes on to say that most hearings focus on the findings and recommendations included in audit reports. Practitioners report that all performance audits receive hearings, but other audits and reports, e.g. financial audits, only receive a hearing when issues like non-compliance are detected. Limited time and resources are cited as the reason the committee prioritizes some reports over others (interview notes 7/11/18). All reports are sent to legislators and staff for review, including those that are not given a hearing.

The OSA's work products are documented in its biennial report.[1796] The 2017-19 report focuses on general operations and changed little from Biennieum Report 2015-17.[1797] The OSA website provides a complete list of all performance audits produced since 2004, which stands at 35 total: 19[1798] on the University System and 16[1799] on other state agencies. The count does not include follow-up reports. The OSA also publishes follow-up reports that seek to checkup on the

[1790] http://www.legis.nd.gov/assembly/64-2015/committees/interim/legislative-audit-and-fiscal-review-committee, accessed 7/15/18.
[1791] https://www.legis.nd.gov/files/fiscal/2017-19/docs/117.pdf, accessed 12/1/18.
[1792] https://www.nd.gov/auditor/about-us, accessed 12/29/18.
[1793] https://www.legis.nd.gov/cencode/t54c10.pdf, accessed 6/26/18.
[1794] http://www.legis.nd.gov/assembly/64-2015/interim/17-5156-02000-meeting-agenda.pdf, accessed 7/15/18.
[1795] https://www.nd.gov/auditor/sites/www/files/documents/Reports/process_17.pdf, accessed 6/26/18.
[1796] https://www.nd.gov/auditor/sites/www/files/documents/Reports/process_17.pdf, accessed 6/26/18.
[1797] https://www.nd.gov/auditor/sites/www/files/documents/Reports/process_15.pdf, accessed 6/26/18.
[1798] https://www.nd.gov/auditor/performance-audits-university-system, accessed 6/26/18.
[1799] https://www.nd.gov/auditor/performance-audits-state-agencies, accessed 6/26/18.

status of recommendations in previous performance audits. These reports indicate this purpose in the title, and it appears that this is a tool to encourage agency compliance. In the following discussion we describe OSA audits of state agencies and then audits conducted by the University System Performance Audit Division within OSA.

The OSA produces only a small number of performance audits of state agencies—an average of about one per year-- but four performance audits were completed in 2018, three of which focused on veterans programs. For example, in 2014 and 2015 OSA produced one audit each year. In 2012, 2013, 2016 and 2017 it produced no new performance audits of state agencies. In some of those years it did follow up on previous reports, however. In 2016 two follow-ups were performed, and in 2013 one follow-up was performed. A knowledgeable source stated that the lack of performance audits or follow ups in 2017 was likely the result of three factors: a new State Auditor took over in 2016 when the previous long-serving State Auditor chose retirement rather than running for another term; substantial staff turnover in 2016; and the size and complexity of the 2018 performance audits of veterans home and veterans affairs, audits that were requested by the legislature.[1800] Another source commented on the transition, stating that the new auditor is working on implementing his vision for the OSA, which includes more performance audits that are narrowly focused, more targeted, and less dense than previous audits with greater utilization of graphics in the reports.[1801] The surge in performance audits in 2018 appears to be consistent with this plan; three of the four audits focused on specific facets of veterans affairs, and these might have, under the previous auditor, been folded in to one larger audit. Sources describe relations between the legislature and OSA as typically good, but there is no way to guarantee that the legislature's and the state auditor's visions for the OSA align perfectly.[1802] Clearly, the relationship between the elected state auditor and elected legislators could alter these dynamics given that it is an informal alliance reinforced by statutory law.

Despite the relatively small number of performance audits produced compared to other states, several examples can be easily found demonstrating that the reports are used. The first such example is a 2018 audit of travel logged by the Governor charged to taxpayers. After a routine OSA audit detected the current Governor was logging thousands of miles more in travel than his predecessor, a closer audit of his travel was conducted.[1803] Knowledgeable observers report that the OSA initiated both the initial review of the Governor's travel and the follow up.[1804] The audit revealed questionable use of state air travel by the governor. The audit was conducted after the Governor was publicly criticized for accepting Super Bowl tickets and other events from Xcel Energy. Amid this criticism, the Governor paid back Xcel Energy nearly $40,000 to cover the events.[1805]

The value of State Auditor's practice of following up on performance audits is illustrated by its review of the Department of Trust Lands and Energy Infrastructure and Impact Office and

[1800] Interview notes, 7/11/18.
[1801] Interview notes, 7/11/18.
[1802] Interview notes, 7/11/18.
[1803] https://www.grandforksherald.com/news/government-and-politics/4432371-after-logging-nearly-50000-miles-first-year-state-auditors, accessed 6/29/18.
[1804] Interview notes, 7/11/18.
[1805] https://www.westfargopioneer.com/news/government-and-politics/4465489-nd-state-auditor-governors-office-stop-using-state-planes, accessed 7/9/18.

Unclaimed Property Division. The department was not complying with recommendations from a previous audit.[1806] The department agreed to voluntarily address approximately half of the recommendations. The Legislative Audit and Fiscal Review Committee held public hearings in connection with the audit, and the legislators took an active role in the meeting questioning agency staff. We discuss the role of the committee in more detail in the section on *Oversight Through Committees*.

The mission of the OSA itself appears to evolve through the audit process. Increasingly the OSA is seen as a means for rooting out impropriety in state government. This is illustrated by the role played by OSA in responding to media reports about the governor's misuse of state funds for personal travel. As part of its evolution, the OSA and the legislature added a fourth division. In 2015, the legislature created the North Dakota University System Performance Audit Division within the OSA tasked with conducting performance audits of the ND University System and its institutions. The division was created in response to audit reports about state universities. A 2012 audit report of Dickinson State University revealed that 500 international students were granted degrees that they did not earn.[1807] A hearing by the legislative audit and review committee precipitated resignations of three university officials. In the wake of this focusing event, another audit of the University System questioned the basis for millions of dollars granted to out-of-state students in the form of tuition waivers.[1808]

In response to these audits, we were told that legislators pushed for increased capacity to detect problems and provide greater controls. According to practitioners, the legislature engaged in a lengthy dialogue with the OSA about what exactly to do.[1809] The legislature knew it did not want to increase spending for the University System Internal Audit function, which it felt was not producing appreciable results. Initially the legislature wanted a parallel internal audit to the one that already existed in the University System, but through dialogue with the OSA settled on a performance audit division that could tailor reports to what was needed and could do things an Internal Audit Office could not. This division of OSA accounts for more than half of all OSA performance audits (19 of 35). In 2017, although no performance audits of state agencies were conducted, the University System Performance Audit Division produced 7 performance audits of the University System.[1810]

In addition to the OSA, North Dakota has a comprehensive legislative service agency, the Legislative Council governed by the Joint Legislative Management Committee, typically referred to as Legislative Management.[1811] It provides legislative services such as studies, legal advice, and fiscal support services.[1812] It has 20 staff, only two of which have a title that denotes an audit function. The Legislative Council does not produce performance audits or audits

[1806] https://bismarcktribune.com/news/local/audit-update-shows-department-of-trust-lands-making-progress/article_4a38bf23-7a80-59bb-9b0a-9d28fdc2f93a.html, accessed 12/30/18.
[1807] http://bismarcktribune.com/news/state-and-regional/dickinson-state-university-audit-results-in-three-resignations/article_cb42be9a-56a0-11e1-ac8b-0019bb2963f4.html, accessed 7/15/18.
[1808] http://www.grandforksherald.com/news/education/3737565-north-dakota-tuition-waiver-audit-shows-millions-waived-out-state-students, accessed 7/15/18.
[1809] Interview notes, 7/11/18.
[1810] https://www.nd.gov/auditor/performance-audits-university-system, accessed 7/15/18.
[1811] https://ballotpedia.org/North_Dakota_Legislative_Council, accessed 7/15/18.
[1812] http://www.legis.nd.gov/legislative-council/legislative-council-staff, accessed 7/15/18.

generally.[1813] Studies and reports produced by the Legislative Council deal with budget analysis, figure setting, revenue forecasts, and policy analysis (Legislative Management Report 2017 pg. 69). For example, the Legislative Council produced the Valley City State University Heating Plant Report determining that one location was more cost-effective than another.[1814]

Oversight Through the Appropriations Process

There is a House Appropriations Committee and a Senate Appropriations Committee. The House Committee is broken up into three units: Education and Environment Division; Government Operations Division; and the Human Resources Division.[1815] The Appropriations Committees meet every day of the week when in session, and legislators assigned to these committees do not serve on any other standing committees.[1816] Committee meeting minutes for certain standing committees, including appropriations, are difficult to track down. We looked at the 65th Assembly's "Committee Hearings," the page is blank other than the standard legislature's header, which is found on all the pages.[1817] North Dakota is one of several states that has neither live nor archived audio or visual documentation of committee hearings.[1818] A search of online news articles does not mention major oversight efforts on behalf of the Senate Appropriations or House Appropriations Committees. Practitioners gave us tips for getting at meeting minutes but they required knowledge of the bill number to investigate, which is often a difficult starting place for research.[1819] Our efforts to use this approach did not yield examples of legislative oversight.[1820]

What is apparent is that there are major contests of power between the legislature and the governor over the budget and vetoes of key provisions. One showdown occurred over a bill that would ensure regular bidding on the public employee health insurance contract. The governor used his line-item veto on a bill that would have required the insurance contract be re-bid every

[1813] http://www.legis.nd.gov/legislative-council, accessed 7/15/18.
[1814] http://www.legis.nd.gov/files/resource/64-2015/legislative-management-final-reports/2017finalreport.pdf, accessed 7/15/18.
[1815] https://www.legis.nd.gov/files/resource/65-2017/miscellaneous/2017-ndla-house-standing-committees.pdf, accessed 6/29/18.
[1816] https://www.legis.nd.gov/research-center/library/legislative-branch-function-and-process, accessed 6/29/18.
[1817] https://www.legis.nd.gov/assembly/65-2017/committee-hearings/c-hearing.html, accessed 7/11/18.
[1818] http://www.ncsl.org/research/telecommunications-and-information-technology/legislative-webcasts-and-broadcasts.aspx, accessed 7/15 /18.
[1819] Interview notes 7/11/18: A practitioner explained that in order to find minutes for these committees one would have to search for a specific bill and the minutes would be embedded in the bill history (interview notes 7/11/18). This practitioner explained that one needs to follow these steps to find them on the legislature's website: select "research center" from the legis.nd.gov home page, then "legislative bill histories" then select the bill (ibid). This approach is the one we followed and was only helpful to the extent that we knew what bill we were looking for. We could find audio visual links sorted by legislator, but not one of the videos worked.
[1820] This is an example of our efforts to use this strategy. Legislators, primarily from the Industry, Business, and Labor Committee, proposed eliminating the state's blue law that prevents stores from opening before noon on Sundays.[1820] Tracing the bill shows it was routed through several committees before making it out of the House,[1820] only to fail on a floor vote in the Senate.[1820] Using the bill history approach outlined by practitioners[1820] There was no indication of legislators engaging in oversight, i.e. calling in state officials to answer questions about the current blue law.[1820]

two years, stating "it is an unproven hypothesis that a two-year, non-renewal contract period will produce lower rates from potential providers."[1821] Legislative leaders debated attempting a veto override.

The Governor vetoed parts of nine bills just before the end of session. Legislative Management publicly discussed whether to override at least some of the vetoes.[1822] The regular session had only two days remaining in which to whip the votes for an override. A statutory change allows for Legislative Management to reconvene a session, but the limit for the session is still 80 calendar days.[1823] Chamber leaders, who are members of Legislative Management, considered the vetoes in light of the challenges of reconvening the legislature. One challenge in getting the votes was that the chair of Legislative Management was unavailable because he was traveling abroad. In 2017, the legislature adjourned on the 77th day, the governor issued vetoes, and Legislative Management debated whether or not to reconvene for the 78th, 79th, and 80th day. The decision not to reconvene was at least in part due to the lack of sufficient time to deliberate—the 78th day would be required to discuss reconvening the full legislature and the remaining two days was thought to be too little time to address the vetoes. Only the Governor can call the legislature in for a special session lasting beyond the 80-day limit.[1824]

The 2017 showdown between the legislature and the governor focused on one specific appropriation.

> [Republican Senate Majority Leader Rich] Wardner said the only potential veto override that "has some wheels" is a section of the budget bill for the Department of University and School Lands that sets aside $16.1 million for townships in non-oil producing counties… [Burgum wrote in his veto letter] "Without demonstrated evidence of differentiated need or want, this exactly equal, across-the-board appropriation is both arbitrary and an inefficient use of our scarce financial resources."[1825]

The legislature ultimately did not reconvene for the final three days of the session and allowed the vetoes to stand unchallenged. Despite the outcome, the incident demonstrates North Dakota legislature seeks to check the governor on appropriations, though with limited effectiveness. Practitioners insist that the leverage still lies with the governor. They explain that since the legislature can't call an emergency session, using the remaining two days to override a veto was vulnerable to another veto and without any legislative days left in the session and no way for the legislature to unilaterally call another session, the legislature would be stuck with the veto. Additionally, the governor had been using vetoes to cross out parts of legislation, altering their

[1821] http://bismarcktribune.com/news/local/govt-and-politics/burgum-vetoes-key-provisions-of-pers-budget-bill/article_141503d5-992b-55aa-ad5d-778f4ba1a447.html, accessed 7/15/18.
[1822] https://bismarcktribune.com/news/state-and-regional/north-dakota-legislators-still-mulling-whether-to-address-burgum-vetoes/article_47222bf9-a619-54f5-bb96-16ba1b555ad9.html, accessed 6/29/18.
[1823] https://www.legis.nd.gov/research-center/library/legislative-branch-function-and-process, accessed 6/29/18.
[1824] http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx, accessed 6/29/18.
[1825] https://bismarcktribune.com/news/state-and-regional/north-dakota-legislators-still-mulling-whether-to-address-burgum-vetoes/article_47222bf9-a619-54f5-bb96-16ba1b555ad9.html, accessed 6/29/18.

intent, so it's conceivable the legislature could be worse off doing a veto override than if they simply accepted the governor's initial veto.[1826]

Given the manner in which the Governor is using line-item vetoes, the legislature decided to challenge one of the vetoes in court.[1827] They claimed the governor used his veto to alter legislative intent and keep the appropriation, i.e. if the governor vetoes the conditions or restrictions on funds, then he must also veto the funds. They argued that allowing the Governor to keep appropriations without the legislatively mandated restrictions undermines the branch's power of the purse. The Attorney General, a separately elected official, has joined the legislature in claiming the executive has violated separation of powers. The decision was made by Legislative Management is controversial, according to practitioners. The Governor has sued the legislature on the grounds that the legislature cannot delegate its authority to a smaller body, e.g. Legislative Management.[1828] The Supreme Court will have to hear the governor's suit before addressing the legislature's suit. Practitioners are unsure how either lawsuit—the legislature's or the governor's— will be decided but feel that the consequences could dramatically change separation of powers in the state.[1829]

Special sessions are not uncommon in North Dakota, but they are typically used by the governor to get something he wants. Legislators were called into a special session in 2003 to address increases to corrections spending sought by the governor, a Republican, who was feuding with members of his own party over the appropriations.[1830] Another Republican governor called a special session in 2016 to pass a combination of across-the-board cuts and transfers. The first was from the budget stabilization fund and the other from profits in the state-owned bank. He had crafted these with his caucus in order to balance the budget.[1831] The cuts and transfers came months after a 10 percent cut to most government operations to offset declining revenues from cratering commodity prices.[1832]

In addition to the appropriations committees and the budget process, an important interim committee is the Interim Budget Section, comprised of 42 legislators— 25 from the Assembly and 17 from the Senate— of which 33 Republican and 9 Democrat (2018).[1833] The Budget Section meets quarterly both during session and in the interim. According to practitioners the budget section has many oversight duties both in statute and articulating legislative requests (interview notes 7/11/18). The section serves a wide variety of functions related to oversight through appropriations, including but not limited to handling transfers, receiving numerous

[1826] Interview notes, 2018.
[1827] https://www.usnews.com/news/best-states/north-dakota/articles/2017-06-21/the-latest-panel-signals-legal-challenge-to-burgum-vetoes, accessed 6/29/18.
[1828] https://bismarcktribune.com/news/local/crime-and-courts/legislature-v-burgum-rests-in-high-court-s-hands/article_0850924e-2ff5-5edd-aad6-5675b575a927.html, accessed 7/11/18; interview notes 7/11/18.
[1829] Interview notes, 7/11/18.
[1830] https://bismarcktribune.com/news/local/special-session-ends/article_addd57ce-3623-5333-8a35-b52a95bfdc04.html, accessed 6/29/18.
[1831] https://www.inforum.com/news/4087841-nd-legislature-plugs-310-million-budget-gap-looks-ahead-next-session, accessed 6/29/18.
[1832] https://bismarcktribune.com/news/local/govt-and-politics/north-dakota-budgets-to-be-reduced-by-percent/article_be1fd2ea-55b8-56b9-bcc3-0918d681b381.html, accessed 6/29/18.
[1833] https://www.legis.nd.gov/assembly/65-2017/committees/interim/budget-section, accessed 7/11/18.

reports from a variety of sources, reviewing budget data, and authorizing certain spending amounts for certain departments.[1834]

The Budget Section met seven times between December 2016 and September 2018. During the September 13th, 2018 meeting members of this joint committee met from 10 a.m. to 2 p.m. They listened to a presentation from the Office of Management and Budget on the biennium general fund, state economic indicators, a revised revenue forecast, oil tax revenue distributions, state agency budget requests, irregularities in the state's fiscal practices, loans to state agencies provided by the Bank of North Dakota, state agency applications for federal grants, employee bonuses, and deficiency appropriations (requests by agencies for money to cover budget shortfalls). Legislators did not ask any questions during or after these presentations. The next agenda item, Highway Patrol Purchase of Unmanned Aircraft Systems did elicit a livelier discussion with five legislators asking questions of the Colonel from the Highway Patrol making the presentation. The minutes, unfortunately, only provide the Colonel's answer to the questions, not the questions themselves. It appears that the questions primarily requested additional information rather than challenging the testimony. The motion to permit the purchase failed.

Several other presentations on specific programs and expenditures followed, all without questions from legislators. These presentations appear to merely keep the Budget Section apprised of state agency actions. Only two other presentations elicited questions from legislators. During the Game and Fish Department Land Acquisitions and Mitigation Program presentation a legislator appears to have asked about categories of mitigation credits related to wetlands restoration and to wetlands creation (based on the response from agency staff). The Department of Transportation presentation of license fees also generated a question about the cost of license plates.

It appears from these minutes that the level of oversight exercised by the Budget Section is modest. There is willingness to reject some requests and to ask some questions about expenditures that legislators do not support. But the four-hour meeting is notable for the limited number of legislator questions noted in the minutes—fewer than 10 total.

Oversight Through Committees

The 65th Legislative Assembly (2017-18) had 11 House standing committees,[1835] 11 Senate standing committees,[1836] and 27 interim committees.[1837] There are also 42 statutory committees, such as the "State Hospital Governing Body" and the "Multistate Highway Transportation Agreement Cooperating Committee."[1838] There are also 6 procedural committees in each chamber.[1839] Based on Legislative Management's report, it appears that interim

[1834] https://www.legis.nd.gov/assembly/65-2017/committees/interim/budget-section, accessed 7/11/18.
[1835] https://www.legis.nd.gov/assembly/65-2017/committees/house/standing, accessed 7/11/18.
[1836] https://www.legis.nd.gov/assembly/65-2017/committees/senate/standing, accessed 7/11/18.
[1837] https://www.legis.nd.gov/assembly/65-2017/committees/interim, accessed 7/11/18.
[1838] https://www.legis.nd.gov/assembly/65-2017/regular/north-dakota-statutory-committees-contain-legislative-members, accessed 7/11/18.
[1839] https://www.legis.nd.gov/assembly/65-2017/committees/house/procedural, accessed 7/11/18.

committees are instrumental to the work of North Dakota's Legislature. Interim committees make both policy and appropriations recommendations. As we described earlier, Legislative Management is a joint committee consisting of eight senators and nine representatives, including the majority and minority leaders of both chambers plus the speaker of the house. The partisan composition of this committee reflects the number of seats each party controls in each chamber, but the minority party is guaranteed at least two seats on Legislative Management. Legislative Management can create interim committees in addition to the statutory interim committees such as the LAFRC and the Administrative Rules Committee. Practitioners noted that this committee creates all the various committees and study groups and that these committees and groups report back to Legislative Management. The Legislative Management report is an exceptionally comprehensive 376-page summary of the 2017-18 activities of the legislature.[1840]

The Legislative Audit and Fiscal Review Committee (LAFRC)[1841] is described by practitioners as the primary committee responsible for oversight in ND (interview notes 7/11/18). It is an interim committee that meets quarterly, [1842] including when the legislature is out of session.[1843] It consists of 14 members of which 4 are from the Senate and 10 from the House. In 2018 there were 12 Republicans and 2 Democrats serving on LAFRC. As noted in the analytic bureaucracy section, this committee works closely reviewing and commissioning audits produced by the OSA. The minutes indicate that most audits are approved by the committee without a presentation from the OSA. We are told by experts that this is to focus on the audits that have uncovered issues and conserve time and resources.[1844]

While there are no audio or video recording of LAFRC hearings, the Legislative Assembly's website does provide minutes of hearings. A survey of the minutes show that presentations from the OSA to LAFRC are either follow up in nature or break new ground. It hears presentations about state agency audits and about university system audits.

The University System – Purchasing Card Program performance audit was a follow up audit. It was triggered by poor compliance with recommendations from a prior audit. Out of the 11 recommendations only 5 were fully implemented, 3 were partially implemented, and 3 were not implemented.[1845] As discussed in the Analytic Bureaucracy section, past audits of the University System were a catalyst for adding a new division to OSA. Although the legislature has demonstrated a longer-term interest in improving university performance, creating a new division within OSA, it is unclear what consequences the LAFRC can use to "encourage" the universities to comply. Practitioners state that sometimes informal conversations occur with subject matter jurisdiction committees, in this case the Higher Education Committee, but in their experience these committees do not conduct oversight hearings on an audit or audit follow-up

[1840] https://www.legis.nd.gov/files/resource/65-2017/legislative-management-final-reports/2019finalreport.pdf, accessed 12/30/18.
[1841] https://www.legis.nd.gov/assembly/65-2017/committees/interim/legislative-audit-and-fiscal-review-committee, accessed 7/11/18.
[1842] https://www.legis.nd.gov/assembly/65-2017/committees/interim/legislative-audit-and-fiscal-review-committee, accessed 6/29/18.
[1843] https://www.legis.nd.gov/assembly/63-2013/committees/interim/legislative-audit-and-fiscal-review-committee, accessed 6/29/18.
[1844] Interview notes, 7/11/18.
[1845] https://www.legis.nd.gov/assembly/65-2017/interim/19-5018-03000-meeting-minutes.pdf, accessed 6/29/18.

hearings.[1846] Practitioners indicated that new audits of key activities of the University System will be made public, likely in November/December 2018.[1847]

Other presentations from the University System audit division included a Space Utilization Study Performance Audit,[1848] an audit of a private contractor's report of space utilization on campuses for the State Board of Higher Education.[1849] The audit found the contractor's report was incomplete, included inconsistent information, and other problems. Legislators discussed possible explanations for the deficiencies, questioning officials from the university system. Their primary concern appeared from this discussion to be "right-sizing" campuses.[1850] This audit, however, indicates some willingness for the LAFRC to investigate contractor services, which we examine in the section on *Monitoring State Contracts*.

LAFRC members appear to have more impact on behavior the executive branch when relying on OSA's audits of state agencies. At a hearing on the OSA's audit of the governor's travel that we described earlier, LAFRC members appeared to ask pointed questions of both the OSA and Governor's office regarding gaps in how flights are approved and the procedures surrounding the staff accompanying the governor on these flights.[1851] It appears that in 2019 the legislature plans to amend what one legislator called the "honesty system" to create something that improves accountability.[1852] This suggests that members of LAFRC are utilizing the audit information provided by the OSA and that they might pass legislation to improve oversight of the governor's usage of state resources.

A hearing before the LAFRC on 2016 follow up audits of the Department of Trust Lands documented serious mismanagement, including state employees claiming meals for reimbursement that had already been paid, accepting gifts of liquor from investment firms, advising the approval of grants that didn't meet requirements, and assigning mineral tracts to the wrong trust. During the 2016 hearing on these audits before the LAFRC, there were fiery exchanges between audit staff and agency staff.[1853] Some legislators expressed outrage at the findings and the responses given by the agency head, while others tempered outrage with understanding, citing the recent oil boom that increased demands on a Department that did not have the resources to match. The Land Commissioner involved in the hearing was replaced the following year. The new agency head attended a follow-up hearing in 2017 before LAFRC and provided a raft of solutions to meet recommendations in a much less intense proceeding than the previous year. [1854]

LAFRC activity also includes deliberation on the scope and methods a particular audit would use. For example, the March 6th meeting sought an audit of the Oil and Gas Division to

[1846] Interview notes, 7/11/18.
[1847] Interview notes, 7/11/18.
[1848] https://www.legis.nd.gov/files/committees/65-2017/19_5006_03000appendixc.pdf, accessed 6/29/18.
[1849] https://www.legis.nd.gov/files/committees/65-2017/19_5006_03000appendixb.pdf, accessed 6/29/18.
[1850] https://www.legis.nd.gov/assembly/65-2017/interim/19-5006-03000-meeting-minutes.pdf, accessed 6/29/18.
[1851] https://www.legis.nd.gov/assembly/65-2017/interim/19-5151-03000-meeting-minutes.pdf, accessed 11/30/18
[1852] https://www.sfgate.com/news/article/Audit-on-Gov-Burgum-air-travel-might-spark-13041411.php, accessed 7/9/18.
[1853] http://www.inforum.com/news/4015283-heated-words-exchanged-over-nds-trust-lands-department-audits, accessed 7/9/18.
[1854] http://bismarcktribune.com/news/state-and-regional/new-nd-land-commissioner-says-department-making-progress-after-critical/article_473136aa-7c14-5c62-be7f-46b3ff34b5b6.html, accessed 7/9/18.

determine the source of a discrepancy in data found on certain reports.[1855] Ultimately discussion between legislators resulted in the proposal being rescinded in favor of an information request. However, it must be noted that not all audit activity by the OSA receives this sort of scrutiny by LAFRC.

North Dakota also appears to use interim study committees to oversee the work of state agencies.[1856] One of these interim committees is The Education Funding Committee. It appears to meet both during legislative sessions and during the interim to consider school funding issues. It met seven times between July 2017 and October 2018. During its January 25th, 2018 meeting it convened at 10 a.m. and adjourned at 3:23 after listening to a presentation by Legislative Council staff on the Elementary and Secondary Education State Aid and Funding Formula Study. Other presenters included staff from the Department of Public Instruction of Information and the State Tax Commissioner, who reviewed limits on school district mill levies and on school district property tax increases. The committee also listened to presentations from the North Dakota Council of Educational Leaders and representatives of regional education associations. Committee minutes are thorough, but sadly do not record the questions asked by legislators instead giving the presenters' responses to a question by legislator X.[1857] It is therefore difficult to assess the quality of the questions legislators asked. We can attest that legislators asked questions, that many different legislators asked questions, and that the responses imply that the question requested new information or clarification of options that might be useful to solve funding problems. Legislators appeared knowledgeable, grasping funding formulas, property tax caps, and other concepts associated with school finance. In addition to these presentations, the committee listened to two other reports: one on school district employee compensation and one on the "use of teacher loan forgiveness funds received under 2017 Senate Bill no 2037.[1858] Its report, included in the Report of the North Dakota Legislative Management, is detailed and extensive. It appears that oversight is occurring through this interim study committee, but again we note that it is difficult to be confident of this.

Oversight Through the Administrative Rules Process

In North Dakota, the legislature, the attorney general and the governor share authority to review administrative rules (Berry 2017). Although the legislature can veto proposed rules, as can the attorney general, only the attorney general can void existing rules (Tharp 2001). The Governor must approve emergency rules before they can become effective.

The Joint Administrative Rules Committee (ARC) reviews all proposed rules. The Committee can object to rules (chapter 28-32) for specific reasons set out by statute, but if the committee takes no action, the rule is automatically approved. The ARC meets quarterly on

[1855] https://www.legis.nd.gov/assembly/65-2017/interim/19-5006-03000-meeting-minutes.pdf, accessed 6/29/18.
[1856] https://www.legis.nd.gov/files/resource/65-2017/legislative-management-final-reports/2019finalreport.pdf, accessed 12/29/18.
[1857] https://www.legis.nd.gov/assembly/65-2017/interim/19-5095-03000-meeting-minutes.pdf, accessed 12/30/18.
[1858] https://www.legis.nd.gov/assembly/65-2017/interim/19-5095-02000-meeting-agenda.pdf, accessed 12/20/18.

an ongoing basis—whether the legislature is in session or not.[1859] During 2017-2018 the ARC "reviewed 3,736 rules sections and 4,047 pages of rules changed" based on information in supplements prepared by Legislative Council staff.[1860] Each year a final report shows all the rules that were "voided."[1861] It appears that the vast majority of the rules and changes considered are allowed to take effect. But sometimes the ARC exerts its power to block rules. An example is a March 2018 rejection of a Board of Medicine rule about telemedicine, which was rejected based on violating legislative intent, conflicts with other state laws, and ARC's judgment that the rule was arbitrary and capricious. Practitioners state that voiding rules is uncommon.[1862]

Based on the 2017-2018 report, the ARC also repealed two sets of obsolete rules, and six sets of rules were listed in the category, *carried over or amended by committee approval*. This is part of the power ARC has to delay the implementation of a rule for one additional committee meeting. Given that the ARC only meets four times per year, this delays implementation of a rule for at least three months. Typically, the agency uses this time to modify the rule (Schwartz 2010). Thus, the legislature is exerting influence over state agencies by holding rules over for the next meeting. This compensates for the legislature's lack of authority to return rules to an agency for revisions.

Given the volume of rules and rule changes the ARC reviews, it appears that North Dakota's legislature exercises only modest oversight in this area, although its powers are formidable. Moreover, the process of rule review in the state does not include systematic or high-quality analysis of the effects of the rules. Therefore, Schwartz (2010) asserts that the review process in North Dakota does not improve regulations or maximize net benefits, but rather is based on vague assessments, such as "arbitrary and capricious."

Oversight Through Advice and Consent

In general, the legislature does not have much capacity for advice and consent regarding appointments nor does it have the capacity to review executive orders. The lone exception is agency reorganization, which has been the battle ground historically for the legislature to place some limits on executive power.

There are only two positions that the governor appoints directly that require senate approval (Book of the States, 2014). We found no recent examples of the legislature seriously challenging a gubernatorial appointment.

Although North Dakota's governor can issue executive orders in several specialized areas (e.g., reducing state expenditures during budget short falls and designating wildlife or other public areas), he or she cannot use executive orders to reorganize state agencies, to create study commissions or similar entities, to respond to federal requirements or to conduct state personnel

[1859] Interview notes, 7/11/18.
[1860] https://www.legis.nd.gov/files/resource/65-2017/legislative-management-final-reports/2019finalreport.pdf, accessed 12/29/18.
[1861] https://www.legis.nd.gov/files/resource/64-2015/legislative-management-final-reports/2017finalreport.pdf, accessed 7/15/18.
[1862] Interview notes, 7/11/18.

administration (Book of the States, 2014 Table 4.5). The legislature has no power to review gubernatorial orders short of passing legislation to invalidate an order. A survey of the governor's executive orders show 22 in 2017 and the actions range from declaring drought conditions to suspending the distance limit on farm license vehicles transporting livestock, hay, and water.[1863] The volume of executive orders has increased in the last decade. For example, in 2011 there were 46 executive orders compared to 32 total from 1963 to 2010 combined.[1864]

A recent attempt at reorganization demonstrates the legislature has some capacity to push back against gubernatorial efforts to reorganize state agencies. The interim information technology committee pushed back on a reorganization plan spearheaded by the state's Chief Information Officer,[1865] a Governor Burgum appointee.[1866] The interim committee sent a public letter to the Chief Information Officer and the Governor's Office requesting that the reorganization efforts be halted until the information technology committee could be fully briefed.[1867] After meeting with the legislature, IT Department planning for consolidation continued, but with the Information Technology Committee informed of the plans. [1868] The IT Department will present its consolidation plan to the legislature in 2019.[1869] These events suggest that the executive branch occasionally tries to move forward on agency reorganization without input from the legislature, but the legislature is successful in asserting its prerogatives when it wants to do so.

Oversight Through Monitoring of State Contracts

The Office of State Auditor occasionally audits state contracts. One example is the Space Utilization Study Performance Audit[1870] discussed in the standing committee section. It reviewed a study commissioned from a private contractor[1871] and found the contractors prepared a deficient report. No recommendations were made regarding the procedures in place for contracting; the committee only discussed the flaws of the report.

Practitioners told us about two other efforts to better monitor contracts: one the result of an OSA audit, the other the result of Legislative Management creating a committee.[1872] The former is an audit of the purchasing card used by the University System which resulted in efficiencies. The latter is an effort by the legislature to better control for Information Technology costs, including and especially those incurred through contracting with vendors. It would appear that legislature is willing and interested in monitoring state contracts. Its association with the

[1863] https://www.governor.nd.gov/media-center/executive-orders, accessed 7/15/18.
[1864] https://www.governor.nd.gov/media-center/executive-orders/executive-order-archive, accessed 7/15/18.
[1865] http://www.govtech.com/pcio/articles/North-Dakotas-IT-Unification-Effort-Is-No-Easy-Task.html, accessed 7/15/18.
[1866] https://statescoop.com/lawmakers-pause-it-consolidation-in-north-dakota, accessed 7/15/18.
[1867] http://bismarcktribune.com/news/state-and-regional/north-dakota-lawmakers-ask-state-it-head-to-delay-reorganization/article_0beb0b34-17a0-5668-a73c-4065d9661779.html, accessed 7/15/18.
[1868] https://statescoop.com/north-dakota-takes-another-look-at-it-consolidation-cloud-migration/, accessed 12/30/18.
[1869] http://news.prairiepublic.org/post/itd-working-consolidation-plans, accessed 12/30/18.
[1870] https://www.legis.nd.gov/files/committees/65-2017/19_5006_03000appendixc.pdf, accessed 6/29/18.
[1871] https://www.legis.nd.gov/files/committees/65-2017/19_5006_03000appendixb.pdf, accessed 6/29/18.
[1872] Interview notes, 7/11/18.

state auditor gives it more opportunities for this than many state legislatures have. Yet, this does not seem to be an area of systematic investigation. Additionally, given the small number of performance audits the OSA conducts, it seems unlikely that the OSA has the budget and staff resources to help the legislature to vigorously pursue oversight of state contracts.

Oversight Through Automatic Mechanisms

North Dakota has neither sunrise nor sunset review.

Methods and Limitations

North Dakota's legislature does not provide recordings of any committee hearings—not even live recordings. This makes it difficult to assess the quality of the questions legislators ask during hearings. As we noted earlier, the strategy practitioners suggested of following the bill history did not surface examples of oversight. Therefore, we had to rely heavily on insights provided by interviewing respondents. Of the six individuals in North Dakota that we contacted for interviews, five responded.

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Legislative Oversight in Ohio

Capacity and Usage Assessment

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

Summary Assessment

The evidence compiled in this report suggests that Ohio has an extensive set of analytic bureaucracies that can aid legislators with executive branch oversight. These support agencies and the legislature are not tightly interconnected. For example, there is no mechanism for integrating audit reports into appropriations hearings, and no reports on agency compliance with audit findings. The Legislative Service Commission (LSC) does not conduct performance audits and the Ohio Auditor of State (OAS) conducts a fairly small number of performance audits given the size of its budget and staff resources. The strength of the independently elected auditor appears to diminish the motivation to create a separate legislative audit capacity. On the other hand, there is a relatively effective mechanism of administrative rules review, as well as an extremely active review of rules, state agencies, boards, and commissions. The governor's power to issue executive orders that make policy without a vote from the legislature, however, undermines the state's checks and balances between the executive and legislative branches.

Major Strengths

The Ohio legislature has many resources available to help assist legislators with oversight, including the Legislative Service Commission and a separately elected Auditor of State. Fiscal analysis of legislation and regulation is comprehensive, even though performance review is not. The vigor with which sunset review of boards, commissions, and rules is pursued is a major strength. The rule review process, at least informally, provides Ohio's legislators with an opportunity to influence state agency implementation of programs and statutes.

Challenges

Ohio is a term-limited state, with high turnover, which reduces the opportunity for legislators to learn the more complex parts of their job, such as monitoring state agencies. The

members' limited institutional knowledge is revealed in questions some legislators ask LSC staff and state agency staff during committee hearings. Audits appear to be rarely used during the budget process or in the appropriations process. Furthermore, state agencies appear to rarely provide testimony in other committee hearings. The Ohio Senate does not appear diligent in its examination of gubernatorial appointments. Furthermore, the governor's power to issue executive orders and to reorganize government without input from the legislature tilts the balance of power toward the executive branch.

Relevant Institutional Characteristics

Ohio's legislature ranks as the 6th most professional in the nation (Squire, 2017). This means that being a legislator in Ohio is the equivalent of a full-time job, with ample compensation (approximately $61,000/year), and a generous number of supporting staff members (roughly 425 staff during session), including personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies such as the Legislative Services Commission (NCSL, 2009; NCSL, 2017).

The Ohio legislature's unlimited session length essentially allows legislators to convene year-round for lawmaking purposes (NCSL, 2010). Special (sometimes known as extraordinary) sessions may be called by the governor or the legislature. For the legislature to call a special session, a joint proclamation by the presiding officers of the General Assembly must be made (NCSL, 2009). However, given the Ohio legislature's unlimited session length, special sessions occur very rarely. Since 2005, the Ohio legislature has not convened for a single special session (LegiScan, 2017).

Ohio's governor's office is tied with Maryland for the third most powerful in the country, (Ferguson, 2015). Only Alaska and Kentucky have more powerful governors. Ohio is unusual in that it has both a powerful executive and a powerful legislative branch. In many states, a strong governor is paired with a weak legislature, or vice versa. Ferguson (2015) reports that the major source of gubernatorial power in Ohio is control over the budget process.

Despite the power of the governor, the Ohio legislature "is a powerful actor in state politics and policymaking and is able to hold its own against the executive" (Haider-Markel, 2009). However, Ohio is also among the approximately 15 states that currently have term limits for legislators (NCSL, 2015). Given the relative short tenure permitted under Ohio's term limits law (eight years in each chamber), turnover in the legislature is high. Research has indicated that such turnover makes it harder for legislators to exercise effective oversight over the executive powers of the governor (Kousser, 2005; Sarbaugh-Thompson et al, 2010).

Political Context

Over the last 50 years, Democrats controlled both chambers of the Ohio legislature only in the late 1970s and early 1980s. From roughly 1984 until 1994, neither party controlled both legislative chambers. Since 1994, however, Republicans held majorities in both legislative chambers, except between 2008 to 2010 when legislative control was once again split (NCSL, 2017). Recent evidence suggests that the Ohio House of Representatives is not especially polarized along party lines, ranking 20th most polarized in the country (Shor and McCarty, 2011).

On the other hand, Ohio's Senate is the 10th most polarized upper chamber based on differences between median roll call votes for each party in each chamber (Shor and McCarty, 2015).

Like the legislature, the Ohio governorship has predominantly been held by the Republican Party. Beginning in 1992, Republicans have continuously controlled the executive branch, with the exception of one four-year term from 2007 to 2010. Additionally, the Republican Party had a trifecta from 1994 to 2007 and again from 2011 until the present (2018).[1873] In Ohio, the Democratic Party has not had majority control of both chambers of the legislature and the governorship since 1978, except for less than one year in the early 1980s (NGA, 2017).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

A key contributor to the legislative oversight conducted by the Ohio legislature is the Legislative Service Commission (LSC).[1874] The responsibilities of the LSC are outlined in Chapter 103, Ohio Revised Stats., with its primary powers and duties discussed in s. 103.13, Ohio Revised Stats. In brief, the LSC must "conduct research, make investigations, and secure information on any subject and make reports thereon to the General Assembly." Furthermore, the LSC must, "ascertain facts and make reports concerning the state budget, the revenues and expenditures of the state, and the organization and functions of the state, its departments, subdivisions, and agencies."[1875] These duties correspond to the two divisions within the LSC: budget and fiscal analysis and research and drafting services. The LSC appears to be very active on Twitter *(@lscohio),* with anywhere from five to 50 tweets every week regarding any materials they have developed.

The LSC is headed by a director appointed by a 14-member governing authority from the general assembly consisting of individuals from both parties of both chambers. Members include both the house speaker and senate president. The partisan composition of this commission reflects the number of Ohio General Assembly seats held by each of the two major political parties. This means that from 2015 to 2017 there were four Democrats and 10 Republicans. The director of the LSC hires additional professionals and support staff, including 17 budget analysts and 6 economists, among the 30 LSC staff members.[1876] Members of the LSC staff all the standing committees, which includes the finance committees.

The LSC division staffs appear to collaborate to produce budget and fiscal analysis and legislative research and drafting services. A nonpartisan research staffer will develop a bill summary, and a nonpartisan fiscal staffer will develop a fiscal note for bills that go to committee hearings; they do not cover bills that are introduced but not heard by committees (interview, 2018). There are also statutory reporting requirements utilized by the Ohio General Assembly "which may be instituted to monitor an agency's expenditures of state and federal funds." Some boards and commissions are even created with the standard provision that they must "prepare

[1873] https://ballotpedia.org/Party_control_of_Ohio_state_government, accessed 8/11/18.
[1874] https://www.lsc.ohio.gov/pages/general/aboutus.aspx?active=idA, accessed 8/15/18.
[1875] https://www.legislature.ohio.gov/laws/ohio-codes, accessed 7/19/18.
[1876] https://www.lsc.ohio.gov/documents/budget/documents/budgetserviceguide.pdf, accessed 10/12/18.

and submit an annual spending report to the General Assembly." Both of these are mentioned in Chapter 7 of the Guidebook for Ohio Legislators (2014).

The LSC is also actively involved in administrative rule review processes. Agencies cannot adopt rules for at least 65 days after notifying the LSC and sending it, and the secretary of state, a rule summary and fiscal analysis.

The second important component of the analytic bureaucracy is the Ohio Auditor of State (AS). The AS has ample resources, with $28,200,000 in state appropriations and a staff of 770 (NASACT, 2015). According to s. 117, Ohio Revised Stats., the AS is a term-limited elected official who can serve up to two four-year terms. The AS is responsible for auditing all public offices, as well as auditing the specific funds or accounts of private institutions, associations, boards, and corporations into which public money from a public office has been deposited. The AS can require any of these entities to submit an annual report using whatever format it desires.[1877]

The Ohio AS conducts various types of audits, including financial audits, performance audits, and special audits for fighting fraud.[1878] During fiscal year 2016, the Ohio AS has developed 204 basic audits, 1,826 financial audits, 16 performance audits of local governments and school districts, four audits of state agencies, and zero special audits. According to s. 117, the Ohio AS "shall audit each public office at least once every two fiscal years." Furthermore, ORC s. 117.46 "provides that the AS shall conduct performance audits of at least four state agencies each budget biennium."[1879] For 2016-17 the agencies audited were the Bureau of Workers' Compensation, the Department of Agriculture, and the Department of Health. The OAS is required by law (ORC 117.46) to audit at least four state agencies every two years.

The target of these audits may be made on the initiative of the AS or by request from the governor or legislature, and some are mandated by law. For example, a performance audit of the Ohio Department of Transportation (ODOT) conducted during fiscal year 2016 indicates that the AS selected the ODOT for audit in consultation with the governor and the speaker and minority leader of the House of Representatives, and the president and minority leader of the Senate (Yost, 2016). The AS publishes the results of its audits, as well as other activities, on its website.[1880] Like the LSC, the AS is active on Twitter *(@OhioAuditor),* soliciting tips on government malfeasance and advertising results of its activities.

Oversight Through the Appropriations Process

Legislative oversight during the appropriations process is largely conducted by the House and Senate Finance Committees, and their respective standing subcommittees. During this process, there appears to be regular communication between the House and Senate Finance Committees, their respective subcommittees, and possibly other committees as well. The General Assembly's role in the budget process begins after the governor presents the executive budget between January and the middle of March.[1881] The LSC is responsible for drafting legislation for the governor and for the House and Senate Finance Committees, turning the budget into bills that

[1877] https://ohioauditor.gov/about.html, accessed 7/19/18.
[1878] https://ohioauditor.gov/ accessed 7/19/18.
[1879] https://ohioauditor.gov/publications/2017cafr%20FINAL.pdf, accessed 8/11/18.
[1880] https://ohioauditor.gov/publications.html, accessed 7/19/18.
[1881] http://guides.osu.edu/c.php?g=833016&p=5947899, accessed 7/17/18.

are then introduced in the House.[1882] Next, the House will hold subcommittee hearings on bills, and if the subcommittee recommends changes, these changes will appear as substitute bills. These substitute bills may be amended by the full committee and are sent to the chamber floor for further consideration.[1883] LSC not only drafts these bills for the committees but serves as committee staff during the hearings.

When passed by the House, the bills are then forwarded to the Senate to be reviewed in a similar fashion.[1884] As a part of this budget process, the House and Senate Finance subcommittees and non-finance committees conduct hearings to examine annual agency revenue and spending, and relay that information to the House and Senate Finance Committees. Usually, there are discrepancies between the House and Senate final bills, in which case a conference committee is established to reconcile differences between the bills. The conference committee can also hold hearings,[1885] and will forward a report to both chambers. The bill will become law once reviewed by the appropriate executive branch agencies and signed by the governor.[1886]

During 2017, the House Finance Committee held 24 hearings and the Senate Finance Committee held 17 hearings. The Ohio legislature's website provides information pertaining to these House and Senate Finance Committee's hearings. This includes important documents, testimony, and meeting minutes dating back more than 20 years.[1887] Several agency administrators gave lengthy testimony at these hearings. For example, the Director of the Public Safety agency and the Superintendent of Education both testified at these budget hearings, as did the Director of the Office of Management and Budget. Other agency administrators testified as well, such as the Director of the Department of Transportation and the Director of the Turnpike and Infrastructure Committee.

The LSC Director was among those testifying at the House Finance Committee. The LSC provides the Office of Budget and Management with a briefing document pertaining to items under review during each session.[1888] The LSC is tasked with creating multiple budget-related reports to be used by the general assembly, including a budget in brief, a budget in detail (including fiscal year 2017 actual expenditures), a comparison document, fee changes, and a final analysis.[1889]The House Finance Committee's website lists the budget in brief and the budget in detail as documents for the meeting held on February 9, 2017, which was one of the several budget hearings.[1890] In an earlier meeting, held on February 1, 2017, an LSC forecast book—also available on the committee's website—was presented to the committee by the Director of the LSC. The testimony was followed up with various questions, one of which was, "Is there a means by which to measure—when we pass a tax change—whether or not we are able to accomplish what we are trying to accomplish? For instance, rather than just being aware that money is being put back into the marketplace, is there an example of that having a positive outcome?" The director explained that this information is not a part of the forecast, and that the forecast is based on aggregate measures of items that would indicate increased wealth.

[1882] http://guides.osu.edu/c.php?g=833016&p=5947899, accessed 7/17/18.
[1883] http://guides.osu.edu/c.php?g=833016&p=5947899, accessed 7/17/18.
[1884] http://guides.osu.edu/c.php?g=833016&p=5947899, accessed 7/17/18.
[1885] http://guides.osu.edu/c.php?g=833016&p=5947899, accessed 7/17/18.
[1886] http://guides.osu.edu/c.php?g=833016&p=5947899, accessed 7/17/18.
[1887] http://www.ohiochannel.org/?0, accessed 7/17/18.
[1888] https://ecb.ohio.gov/Public/MeetingsAndAgendas.aspx, accessed 7/19/18.
[1889]https://www.lsc.ohio.gov/pages/budget/current/CurrentGA.aspx?Budget=MainOperating&ID=MainOperating&Version=contentFI, accessed 7/17/18.
[1890] http://www.ohiohouse.gov/committee/finance, accessed 7/17/18.

Furthermore, the director explained that the LSC does not have the history and the resources to account for that information in their forecast.[1891] This suggests that the legislature would like to have more information to assess program performance than LSC can provide. Although executive branch staff members testify at House Finance Committee hearings, the questions asked by legislators tend to relate to the specifics of a how a bill operates versus more inquisitive questions regarding a bill's effectiveness.

This is typical for legislators in a state with term limits. Due to the high turnover, institutional knowledge among legislators tends to be lower. But it is not as effective in holding officials accountable for agency performance. Several examples of the questions follow.

In one instance, from the February 2, 2017, House Finance Committee meeting, the director of the Ohio Department of Public Safety (DPS) was questioned for roughly an hour. The director explained that collaborative efforts, including intelligence operations and the Ohio State Hub, have saved lives from bomb threats to suicide attempts to human trafficking. One particular question asked by a committee member was, ". . . [are these resources] available to . . . all of the other law enforcement throughout the state?" The director confirmed that they are available due to the need of such services. During a meeting held on June 26, 2018, committee members questioned the Administrator of the Division of Power and Water. One of the committee members asked the administrator, "You state that H.B. No. 602 interferes with municipal home rule . . . [H.B. No. 602] makes state funding appropriated by the general assembly contingent upon certain things . . . Do you believe that home rule, under the Ohio constitution, prohibits the legislature from controlling how it spends state funding if it wants to appropriate it with a clause that would say, that cities can't discriminate against other Ohioans that pay into the tax funds that fund your system through the Water Development Authority?" The administrator demurred, saying it was a legal question beyond his authority. These questions ask about how government works rather than how effective it is.

On the other hand, some legislators asked questions that probe agency performance. For example, a legislator asked, "Why do you charge outside residents a higher rate simply for being outside residents as opposed to using it on a basis of usage or any of the factors you described?" The administrator said it is due to the various risks of providing water to the outside community, and the rates are bonds that support the facilities; if there was a fault on the outside community it would fall on them.[1892] This is an example of a question that moves a bit closer to an inquiry into the performance and effectiveness of the program.

In addition to the House and Senate Finance Committees, the Controlling Board—which is part of the Office of Budget and Management (OBM)—has significant influence on the budget. The Controlling Board consists of seven members: two members each from the House and the Senate (one from each party), the chairs of the House and Senate Finance Committees, and an employee, usually the director or a deputy director from the Office of Budget and Management, which is part of the executive branch.[1893] The Controlling Board's authority specifically includes legislative oversight of the executive in the areas of operating and capital budget preparation, purchasing, and other areas.[1894] The Controlling Board typically meets twice per month and reviews requests related to the release of funding, waivers to competitive selection, or the transfer of funds from one entity to another. Review of published agendas and

[1891] https://www.ohiochannel.org/video/ohio-house-finance-committee-2-1-2017?9, accessed 7/17/18.
[1892] http://www.ohiochannel.org/video/ohio-house-finance-committee-6-26-2018?129, accessed 7/17/18.
[1893] https://ecb.ohio.gov/Public/About.aspx, accessed 7/19/18.
[1894] https://ecb.ohio.gov/Public/Authority.aspx, accessed 7/19/18.

minutes suggests that most requests are approved without discussion, and those that are discussed are typically approved without objection.[1895]

Knowledgeable sources say that the legislature does use the Auditor of State's audits to inform their funding decisions (interview, 2018). When the OAS is aware of fiscal stress, they will notify the legislators who represent the relevant district or area and inform the legislators what the office is doing to resolve the issue. However, members of the OAS do not typically go to committee hearings during budget deliberations to testify on their audits. Questions related to the budget may be answered by an audit, but typically the Ohio legislature does not request budget information from the OAS. The Office of Budget and Management (part of the executive branch) typically assists the legislature in the budget process (interview, 2018). And, as described on the LSC webpage, its staff assists legislators by preparing fiscal notes, budget footnotes, and a catalog of budget line items and by serving as staff during budget hearings.[1896]

Oversight Through Committees

Standing committees in the Ohio legislature appear to meet regularly, most having held between five to 15 meetings during the fiscal year 2017.[1897] LSC provides information to standing committees in the Ohio legislature. Specifically, the LSC may disseminate their reports to various committees and may work in conjunction with committees. Moreover, LSC staff attends any standing committee hearings, not just finance committee hearings. Furthermore, the LSC produces a fiscal note and local impact statement and a bill summary when a bill goes to a hearing and updates it as changes to the bill are made during the legislative process.It is standard to have a bill summary prepared by the first hearing and a fiscal note prepared by the second hearing (Interview, 2018). The bill summary and fiscal note are available during committee hearings, and legislators do refer to LSC reports during these hearings depending on the question or point at hand (Interview, 2018). Analyses will not be updated unless a bill makes it to floor and is then changed on the floor. Legislators can request additional versions, and the LSC may create a comparison of versions if legislators are considering a substitute bill (Interview, 2018). The LSC staff will answer questions regarding amendments during a hearing or contact the legislature later in response to any additional questions (Interview, 2018).

It does not appear, however, that state agencies frequently provide testimony to non-finance standing committees or subcommittees. The minutes for the House Health Policy Committee for 2017-2018 do not list any testimony from state agency officials, despite testimony from numerous advocacy groups and other witnesses. The Senate Energy and Natural Resources Committee held 16 hearings between September 2017 and August 2018. The State Department of Natural Resources testified at only one of these hearings. Again, numerous advocacy groups, cities, commissions, and others, testified at most of these hearings. During the 20 meetings of the Senate Education Committee, the Ohio Department of Education and the Superintendent of Education testified at two separate hearings. Numerous local school districts, education associations, charter school associations, and other interested parties testified at almost all these hearings.

[1895] https://ecb.ohio.gov/Public/MeetingsAndAgendas.aspx, accessed 7/19/18.
[1896] https://www.lsc.ohio.gov/, accessed 10/12/18.
[1897] https://www.legislature.ohio.gov/committees/committee-directory, accessed 8/11/18.

On the other hand, joint committees that include the word "oversight" in the committee's name do appear to regularly include testimony from the specific agency under their jurisdiction. For example, the Joint Medicaid Oversight Committee regularly took testimony from the Ohio Department of Medicaid at the twelve meetings it held from September 2017 through August 2018. Minutes of the House Finance Subcommittee on State Government and Agency Review document agency testimony on a range of substantive issues including manufactured homes (a.k.a. trailer parks or mobile homes) and net profits on municipal income tax collection. The March 14, 2017, meeting of this committee includes a document describing the rebuttal by the Department of Taxation to comments from other "interested parties" presented to the committee. It refers to audit reports, but these are financial rather than performance audits.[1898] There are no audio or video recordings of hearings for this committee, so it is not possible to assess the quality of the questions asked by legislators on this committee. But there is evidence that the agency and the committee are interacting regularly.[1899]

Legislators also consult their own staff about specific policy questions. During a hearing held on June 5, 2018, by the Senate Health, Human Services, and Medicaid Committee, a member of the LSC assisted the committee in explaining amendments to S.B. No. 295. Near the end of the hearing, the LSC staff member relayed the history, implications, and other relevant characteristics of the provision to the committee members.[1900]

Compared to the limited use of OAS audits during the budget process, standing committees make greater use of audits. The auditor's staff occasionally reports findings to the legislature in a press conference, and these findings "will inform their legislative decisions" (interview, 2018). Occasionally, legislators also ask the OAS to answer particular questions (interview, 2018). For instance, the OAS was asked to speak to the Joint Medicaid Oversight Committee on the practice of pharmacy benefit managers (PBMs) (OPA, 2018).

Although audit findings are brought up during standing committee hearings, it is rare for this information to be used to question witnesses (interview, 2018). During the previously mentioned June 5, 2018, meeting, however, findings by the OAS were mentioned by a committee member during questions and answers with a witness. The member stated that they agreed to sponsor S.B. 218 at the request of the Auditor of State, a bill intended to decrease Medicaid fraud by requiring certain providers to "maintain a surety bond and to complete training" (DDC, 2018). The OAS reported that, "84% of Medicaid fraud in the state is coming from transportation companies . . . so if you have any other suggestions . . . as to how we can address this serious issue of fraud in this field, please share that with me." As the question was specific to surety bonds and the fear of running out family-owned businesses, the opponent responded that they shared those same concerns due to the way the bill was currently written.[1901] The OAS was repeatedly mentioned by witnesses and in questioning of the witnesses, but it is important to note that the discussion topic was of the creation of an auditing system for Medicaid. Interestingly, this bill was promoted on the OAS website (OAS, 2018) and some of the testimony was shared on their Twitter page.[1902]

[1898] http://www.ohiohouse.gov/committee/finance-subcommittee-on-state-government-and-agency-review, accessed 8/14/18.
[1899] http://www.jmoc.state.oh.us/meetings, accessed 8/11/18.
[1900] http://www.ohiochannel.org/video/ohio-senate-health-human-services-and-medicaid-committee-6-5-2018?122, accessed 7/17/18.
[1901] http://www.ohiochannel.org/video/ohio-senate-health-human-services-and-medicaid-committee-6-5-2018?122, accessed 7/17/18.
[1902] https://twitter.com/OhioAuditor/status/996473338829602819, accessed 7/17/18.

Overall, it appears that joint committees with oversight specifically in the committee name do more oversight of state agency and program performance than do regular standing committees. Both the OAS and the LSC appear to assist these committees, but only the OAS conducts performance audits. And, both of these staffs appear to work with legislators to craft legislation to improve agency performance. But, both the OAS and the LSC are more heavily focused on fiscal accountability and performance than they are on service delivery performance. As we noted earlier, OAS only performs about three or four performance audits per year, and the LSC does not conduct performance audits. Therefore, evidence-based oversight of agency service delivery performance is constrained by this lack of information. However, fiscal accountability and oversight are strongly supported by these staff agencies.

Oversight Through the Administrative Rules Process

The Ohio legislature possesses a Joint Committee on Agency Rule Review (JCARR), which provides it with an opportunity to oversee executive branch agency rule making. The JCARR is a statutory committee that receives its authority from s. 106.02, Ohio Stats. Under this statute JCARR's powers are limited to providing advice to the entire legislature. JCARR consists of 10 members, five of which come from the Senate and five from the House. Membership must include representatives from both majority and minority parties.[1903] In 2018, with Republicans in control of both chambers, there were two Democrats and three Republicans from the House and two Democrats and three Republicans from the Senate. The committee has four dedicated staff members to assist it with its work.

The rule review process is initiated when an agency submits a proposed rule to the LSC, which produces a fiscal analysis of the rule. The proposed rule is simultaneously sent to the secretary of state and published in the *Ohio Register*. Although JCARR does not have the power to invalidate rules, it can recommend that the entire legislature reject an administrative rule. There are, however, only four reasons that JCARR can recommend invalidating a rule: (a) it exceeds statutory authority, (b) it conflicts with an existing rule, (c) it conflicts with legislative intent, and (d) the agency failed to provide complete and accurate analysis of the impact of the rule or failed to provide other information about the rule (Schwartz, 2010). In order for a rule to be rejected, a resolution to that effect must pass in both chambers of the General Assembly.[1904] If a rule is rejected, the agency cannot reintroduce that rule again, even in revised form, until the next two-year legislative term. JCARR can work with an agency to make changes in the information submitted about a rule or to revise a rule prior to a vote by the chambers to invalidate the rule (Schwartz 2010). JCARR is empowered to determine what information must be included in the analysis of the proposed rule.

After a rule is adopted, the Legislative Services Commission's Administrative Rules Unit has 30 days to review it. This review is designed to identify any errors in the previous review conducted prior to the adoption of the rule. Also, if it has time, the LSC Administrative Rules Unit can review any proposed rules, but this LSC action is not mandated by statute as is the case for adopted rules. Given that legislative inaction means that a rule is adopted, this requirement is

[1903] https://www.legislature.ohio.gov/publications/rules-of-the-house, accessed 4/25/18.
[1904] http://www.jcarr.state.oh.us/frequently-asked-questions, accessed 7/19/18.

an insurance "policy" that prevents rules from slipping through the cracks when the legislature is especially busy with its other duties.

Additionally, JCARR participates in a five-year review of every existing rule (Council of State Governments, 2016). This participation consists of insuring that agencies comply with the following four requirements for continuing a rule: the rule reflects original intent, the rule provides local flexibility, the rule avoids unnecessary paperwork, and the rule prevents duplication of rules or conflicts with other rules (Schwartz, 2010). If the agency wishes to retain the rule, it notifies JCARR and provides a summary and analysis of its justification of the rule. JCARR provides the public with four weeks' notice of these reviews. Rules affecting small businesses, people more than 60 years old, and environmental rules all have additional analyses that are required prior to their adoption.

Typically, there is informal communication between the agency proposing the rule and JCARR to iron out problems with the rule prior to formal action by JCARR (Schwartz 2010). Although most rules are not controversial, those that are elicit strong interest groups and partisan participation in JCARR hearings. The JCARR minutes for its March 6, 2017, meeting indicate that some of these controversial rule changes do receive careful consideration, which includes public testimony and responses from the agency proposing the rules, as well as probing questions from the legislators on the committee. The rule under consideration changed the reimbursement fees for pharmacies. The crux of the questions from committee members involved whether the state agency could set fees rather than one fee. The state agency wanted to aid low volume pharmacies by providing a tiered fee structure—fees rather than one fee. As the minutes state, "the Department is willing to continue conversations in regard to what rates are in statute and what rates are not in statute." [1905] This supports the reported willingness of state agencies to work with JCARR informally to resolve problems with rules (Schwartz, 2010) as well as demonstrating influence by JCARR over agency rule making.

JCARR's meeting dates and minutes are available on its website.[1906] JCARR was scheduled to meet 20 times during 2017, but only met 14 times. Examination of the meeting minutes and testimony documents does not indicate that legislators are especially knowledgeable about executive branch agencies and the proposed new and amended rules that they are proposing. For the most part, legislators posed relatively generic questions in their review of proposed new and amended rules.[1907] Schwartz (2010) describes Ohio's rule review process as inconsistent due to turnover on the committee—a result of term-limits and high turnover in Ohio's legislature. Moreover, he claims that Ohio's rule review processes focus on costs rather than balancing the costs and benefits of proposed and existing rules.

Oversight Through Advice and Consent

Senate Action on Gubernatorial Appointments

The powers of the Ohio Senate to confirm gubernatorial nominees are defined in Rules 101 and 102 of the Rules of the Ohio Senate.[1908] These appointments are referred to the

[1905] http://www.jcarr.state.oh.us/assets/gen/march-6-2017-jcarr-meeting-minutes-584, accessed 8/14/18.
[1906] http://www.jcarr.state.oh.us/meetings/132nd-general-assembly, accessed 7/19/18.
[1907] http://www.jcarr.state.oh.us/assets/gen/january-31-2017-jcarr-meeting-minutes-581, accessed 8/12/18.
[1908] https://www.legislature.ohio.gov/publications/rules-of-the-senate, accessed 7/19/18.

Committee on Rules and Reference, which then refers them to the appropriate standing committee. When the governor makes an appointment, the nominee immediately starts working in the position, despite the need for the consent of the Senate. A nominee is confirmed by a simple majority vote of the senators. Nominees are not routinely brought in for questioning by Senate committees, although they are free to do this (Interview, 2018).

From 2010 through 2018, no appointees were rejected (interview, 2018). The following are typical examples of the confirmation process. On July 10, 2018, the Senate held a meeting lasting roughly an hour, to confirm several gubernatorial appointments. The Senate confirmed all the appointments without any objections.[1909] In a meeting of the Senate Health, Human Services, and Medicaid Committee, held on April 10, 2018, the Director of Health was confirmed without the appointee being present.[1910]

In 2010, however, the Senate rejected 78 of the governor's appointees, including the entire bipartisan casino commission. This is the largest number of appointees rejected since 1990—the previous record being 13 (Guillen, 2010). This use of advice and consent by a Republican Senate occurred during the lame duck tenure of a Democratic governor. It seems likely that the motivation was partisan—to preserve the opportunity for an incoming Republican governor to fill these positions—rather than to assess the qualifications of the nominees. [1911]

Gubernatorial Executive Orders and Government Reorganization

Ohio's governor has statutory authority to issue executive orders in the case of emergencies. Additionally, according to the Council of State Governments (2015) Table 4.5, Ohio's governor has implied powers to issue executive orders in administrative areas, such as personnel administration and government reorganization. The approval of the legislature is not necessary for these executive orders, including those reorganizing the government.

Ohio's Gov. John Kasich has passed numerous executive orders—32 of them in 2011, his first year in office. Although he has passed fewer executive orders per year since, Gov. Kasich continues to use executive orders to establish and alter state policies and procedures. Examples from the 19 executive orders he issued in 2012 include authorizing the "Expenditure of TANF Funds for Certain Initiatives of the Governor's Office of Faith-Based and Community Initiatives" and prohibiting "Drilling for Oil and Gas From and Under the Bed of Lake Erie."[1912] These clearly are issues that might generate some intense debate in the legislature, but by using executive orders, the governor side-stepped legislative involvement for the duration of his administration. Interestingly, Gov. Kasich used executive order 2015-14K to suspend the usual rule-making procedures to adopt 27 rules that affect the Ohio Department of Agriculture's ability to regulate soil and water conservation due to government reorganization moving a program from the Ohio Department of Natural Resources to the Department of Agriculture.[1913] So, in effect, government reorganization (without any input from the legislature) led to an executive order (which does not require legislative approval) that circumvented legislative oversight of the rule-making process. We conclude that Ohio's governors can and do make robust use of their

[1909] http://www.ohiochannel.org/video/ohio-senate-7-10-2018, accessed 7/17/18.
[1910] http://www.ohiochannel.org/video/ohio-senate-health-human-services-and-medicaid-committee-4-10-2018, accessed 7/17/18.
[1911] http://www.ohiochannel.org/video/senate-session-december-21-2010-part-2, accessed 7/17/18.
[1912] http://governor.ohio.gov/Media-Room/Executive-Orders#9124-2012, accessed 8/14/18.
[1913] http://governor.ohio.gov/Portals/0/pdf/executiveOrders/Executive%20Order%202015-14K.pdf, accessed 8/14/18.

executive order authority to take action that might be more challenging to undertake if the legislature were involved.

Oversight Through Monitoring of State Contracts

Oversight of state contracts is handled by the Office of the Inspector General (OIG), a state agency that was created initially by a gubernatorial executive order in 1988 and permanently established in the legislature in 1990. The OIG, described as an independent fact finder, is charged with investigating allegations of wrongdoing in state agencies or by state officials.[1914] The inspector general is appointed by the governor and has a staff of 17 professionals.

Even though this is an executive branch unit, it appears that the OIG works collaboratively with the legislature to improve the state's contracting process. One recent case involved the lack of oversight over state spending on information-technology consultants and contract workers. Following the results of that investigation, the legislature passed legislation that requires all IT contracts to be competitively bid and also approved by the Controlling Board, described in the section on Ohio's analytic bureaucracies (Borchardt, 2017; Ludlow, 2017). Furthermore, agencies that wish to obtain a waiver of the competitive bid requirement must produce a written justification for review by the Controlling Board (Meyer, 2017). Although the Controlling Board is part of the Office of Management and Budget in the executive branch, six of its seven members are legislators. Therefore, Ohio's legislature has some leverage that it can use to oversee the state contracting processes and procedures.

Oversight Through Automatic Mechanisms

Ohio requires its legislature to review all statutory agencies on a preset schedule (Baugus and Bose, 2015). According to s. 101.83-101.87, the Sunset Review Committee "shall schedule for review each agency in existence on the first day of January in the year of the first regular session of the General Assembly." In evaluating the usefulness, performance, and effectiveness of agency, "the sunset review committee shall hold hearings to receive the testimony of the public and of the chief executive officer of each agency scheduled for review."[1915] Furthermore, each agency is required to submit a report containing specific information outlined in s. 101.86, Ohio Stats., and each agency has "the burden of demonstrating to the committee a public need for its continued existence." The statute goes on to list 12 different criteria that the Sunset Review Committee will consider in determining whether an agency has demonstrated that need.

Ohio reviews significantly more boards, committees, and laws than any other state. Between 2005 and 2010, Ohio conducted 274 reviews, eliminating 79 boards or laws. To provide a basis for comparison Texas was the next highest on the list. It conducted 79 reviews between 2006 and 2013 and declined to renew 14 boards or laws (Baugus and Bose, 2015). The Sunset Review Committee's members include three representatives, three senators, and three members

[1914] http://www.watchdog.ohio.gov/AboutUs/AboutTheOffice.aspx, accessed 7/19/18.
[1915] http://sunset.legislature.ohio.gov/, accessed 8/15/18.

chosen by the governor. Given that two thirds of this committee consists of legislators, it seems reasonable to classify it as a mechanism of legislative oversight of the executive branch even though it is not entirely comprised of legislators.

Methods and Limitations

Ohio maintains archival recordings of committee hearings and has meeting minutes and other material readily accessible on its website. We interviewed six individuals who were knowledgeable about the legislature.

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Legislative Oversight in Oklahoma

Capacity and Usage Assessment

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

Summary Assessment

Oklahoma has an analytical bureaucracy—a state auditor and inspector--that functions largely independently from the legislature. The legislature can call upon the auditor and inspector and use the reports produced by that office but does so on a limited basis. There has been an effort recently by the legislature to create a parallel auditing agency, run by a citizen committee, but this has only just been formed and how it will function remains unclear. The legislature does have the power to review rules, but it rarely uses its advice and consent powers. Sunset is rare.

Major Strengths

The legislature does use the auditor and inspector's work to oversee some state agencies. The Appropriations Committee, motivated by the need to find money to balance the budget, actively inquires about agency spending.

Challenges

Oklahoma lacks many resources needed for effective legislative oversight. Chief among these is an adequately funded and staffed analytic bureaucracy that could work closely with Oklahoma's part-time legislators to help them assess agency performance. The legislature was described as tangential to agency auditing in media stories about a budget scandal in the Department of Health. Oversight by standing committees is limited, and the sunset review process, in particular, is quite underutilized.

The 2017 budget battle demonstrates how gubernatorial veto powers, combined with the authority to call the legislature into special session, can result in significant victories for the executive branch in the appropriations process. With few advice and consent powers, and no apparent ability to oversee state contracts and limited institutional resources and prerogatives, the Oklahoma legislature does not have many strong levers with which to exercise checks on the executive branch.

Relevant Institutional Characteristics

The National Conference of State Legislators classifies Oklahoma's legislature as a hybrid legislature, indicating that legislators dedicate a substantial amount of time to their duties, although somewhat less than full-time.[1916] Squire (2017) ranks Oklahoma's legislature as 22nd out of 50 in terms of professionalization. Legislators' annual salaries are $38,400, plus a $156 per diem for days in session.[1917] The legislature has 299 total staff, 224 of whom are permanent employees.[1918] Senators have year-round personal staff, while House members have shared year-round staff (Haider-Markel, 2009). As a result of the imposition of term-limits in 1990, legislators are limited to 12 total lifetime years of service, whether in the House, Senate, or both, combined.[1919] The lieutenant governor is technically the leader of the Senate, but in practice it is the president pro tempore "who appoints committee chairs, and (with the assistance of the minority leader) committee members" (Haider-Markel, 2009). Oklahoma's legislature is less polarized than the majority of states. Shor & McCarty (2015) rank Oklahoma's House of Representatives as the 30th most polarized in the country, and its Senate as the 37th most polarized.

In Oklahoma, the governor's powers are somewhat constrained. The governor is constitutionally limited to eight years of lifetime service, and Ferguson ranks Oklahoma's governor near the bottom of the national list in terms of authority, at 46 out of 50. The governor shares budgetary responsibility with the legislature and has line-item veto powers solely on appropriations-related legislation (Beyle, 2008). The legislature may override such a veto by two-thirds majority vote in each chamber. However, if the governor neither signs nor vetoes the budget or any other legislation, it is treated as a "pocket veto," and it cannot be overridden by the legislature.[1920] Pocket vetoes, however, do not appear to be common. In 2018, despite more than 100 pieces of legislation presented to the governor in the final week before lawmakers adjourned,[1921] state media reported that Gov. Mary Fallin only used this prerogative on one bill—legislation that would have allowed anyone over 21 to openly carry guns.

Although Haider-Markel (2009) argues that Oklahoma's governors are endowed with "a fairly substantial base of formal powers," he also notes that the governor's "institutional powers. . . are much less impressive." The existence of an independently elected lieutenant governor, attorney general, treasurer, auditor, and several other executive positions, as well as serious constraints on powers of appointment to "major policy-making posts in state government" all serve to check the governor's authority.

Twelve percent of Oklahoma's workforce is employed by state and local governments, tied with Arkansas at 12th out of the 50 states (Edwards, 2006). Seven percent of that workforce is in the education sector, with safety (1.6%), welfare (1.7%), services (1.3%), and other (0.8%) making up substantially less.

[1916] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 5/10/18.
[1917] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx , accessed 5/10/18.
[1918] http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf , accessed 5/10/18.
[1919] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 5/10/18.
[1920] https://okpolicy.org/pocket-veto/, accessed 5/11/18.
[1921] http://newsok.com/article/5593813/last-bills-of-2018-session-awaiting-governors-action, accessed 5/11/18.

Political Context

Both chambers of the Oklahoma legislature are controlled by the Republican Party, as is the governorship. There are currently 75 Republicans and 26 Democrats in the House. The Senate consists of 40 Republicans and eight Democrats. Republicans have held majorities in the House of Representatives since 2004, and in the Senate since 2008, breaking decades-long dominance by the Democratic Party. Republicans had never controlled the Senate prior to 2008, and had only held the House for a brief period from 1921 through 1922 (Haider-Markel, 2009). The current governor of Oklahoma, Mary Fallin, took office in 2011. Fallin is a Republican, and since the 1960s, the governor's party affiliation has alternated regularly between Republican and Democrat.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Oklahoma's analytic bureaucracy is the Office of the State Auditor and Inspector, an executive branch agency established in the state Constitution. According to the agency's website, the state auditor and inspector "is responsible for auditing the financial accounts of all government agencies within Oklahoma."[1922] This includes state, county, and municipal entities. The Office of the State Auditor and Inspector contains a number of subdivisions, each with their own purview, including such domains as horse racing, minerals management, counties, emergency services, district attorneys, pensions, information technology, and the Statewide Single Audit and Comprehensive Annual Finance Report. As stated in the agency's 2011 Annual Report, in addition to fiscal audits the auditor and inspector's office also conducts performance audits and "special investigative audits," which are "unique in that they go beyond a typical financial audit to examine allegations of fraud, abuse, or misuse of public funds."[1923] Performance and special audits are conducted by their own divisions within the Office of the State Auditor and Inspector. The auditing agency itself must undergo an annual audit by an external accounting firm.[1924]

Oklahoma Statute 74-212 requires that the state auditor and inspector conduct semiannual audits of the State Treasurer and County Treasurers, and annual audits of "of all state officers whose duty it is to collect, disburse or manage funds of the state." It is also required to conduct ongoing examinations of certain state agencies, including the Department of Corrections. Additionally, a governor, district attorney, or county commissioner may order a financial audit of any current or former state official. According to the latest published annual report, the state auditor and inspector performed 372 audits during the 2016 fiscal year, 287 of which were audits of county governments.[1925] Since 2003, the state auditor and inspector has completed just 35 performance audits of state agencies. In some cases, agencies were audited multiple times: the

[1922] https://www.sai.ok.gov/about_the_agency/, accessed 5/10/18.
[1923] http://digitalprairie.ok.gov/cdm/ref/collection/stgovpub/id/311, accessed 10/24/18.
[1924] https://www.sai.ok.gov/Search%20Reports/database/2016AnnualReportFinal.pdf, accessed 5/10/18.
[1925] https://www.sai.ok.gov/Search%20Reports/database/2016AnnualReportFinal.pdf , accessed 5/10/18.

Oklahoma Board of Nursing, for example, was audited in 2005-2006, 2007-2009, 2009-2013, and 2013-2015. A review of the audit reports indicates that auditors were largely satisfied with the Board's performance in areas like fiscal accountability, while IT-related issues were satisfactorily addressed prior to subsequent audits.

In most cases, the president pro tempore and the speaker of the House are able, along with the governor, to request audits of agencies and school districts. (One exception is counties, audits for which can only be requested by the governor or county commissioners).[1926] The auditor must submit the results of such audits, as well as an annual report, to the governor, the president pro tempore of the Senate, the speaker of the House of Representatives, appropriations and budget chairs of the House of Representatives and the Senate, and the minority leader of the Senate and of the House of Representatives (OS §74-213.2).

Oklahoma lawmakers also recently created a controversial new Agency Performance and Accountability Commission (APAC). The governor, the president pro tempore of the Senate, and the Speaker of the House each appoint three of the nine members of the commission, many of whom come from the business community; among others, the commission's appointees included an audit manager from First Fidelity Bank, the head of an oil and gas firm, the managing director of an "owner advisory, corporate development and private equity group, and the manager of the Oklahoma Cotton Cooperative Association.[1927] The commission will hire private firms to "uncover waste, fraud and unnecessary spending that goes beyond agencies' legislative or constitutional directives." Critics, however, allege that these audits will politicize audits and give "a group of businessmen undue influence over how the state spends taxpayer dollars." They also argue that the audits will be "expensive and are likely to reveal little beyond agencies' need for more money to carry out their core missions." Another point of concern is that the commission will have independent authority that will circumvent the legislature to direct agencies to implement recommendations. Oklahoma's state auditor and inspector also criticized the commission, pointing out that the agency will not have to meet the same standards of independence or accountability as the Office of the State Auditor and Inspector, instead focusing on cost-cutting, privatizing services, or consolidating agencies. According to the auditor and inspector, "It is improper . . . to require the auditor to assume that costs need to be cut." APAC Commissioners at the January 25 and March 5 meetings in 2018 discussed the potential and feasibility of getting private donations to fund its work, perhaps consistent with the concerns of the state auditor and inspector that the APAC will be expensive.

During its meeting on January 25, 2018, the APAC commissioners discussed bundling agencies into groups in order to meet a statutory timeline of auditing 20 agencies over five years. The proposed timeline involved contacting outside audit agencies—consultants—and finalizing Requests for Proposals (RFP). They also discussed the problem of accepting bids without knowing how much money they would receive to carry out their mission. Ultimately, the governor appropriated $2 million to cover the cost of these private audits.[1928] Staff recommended auditing the Tax Commission first because of the potential for improved performance of that agency to provide revenue.[1929] Additionally, the APAC discussed existing agency audits, some of which appear, according to commissioners' comments, to have been conducted independently rather than through the Office of the State Auditor and Inspector. But no one at the meeting

[1926] https://www.sai.ok.gov/frequently_asked_questions/, accessed 5/10/18.
[1927] http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/hB/HB2311%20ENR.PDF, accessed 5/11/18.
[1928] http://kgou.org/post/hand-picked-group-begin-wielding-powers-over-state-agencies, accessed 05/11/18.
[1929] https://www.okhouse.gov/Video/Default.aspx, accessed 6/17/18.

seemed to have a list of audits already conducted either by the state auditor and inspector or independently by the state agencies. Staff present at these meetings spent substantial time explaining and educating the commissioners about the requirements for open meetings and describing what public organizations can and cannot do.

In addition, the senate and house have fiscal divisions that analyze revenue, conduct research and assess program performance, among other duties.

Oversight Through the Appropriations Process

In Oklahoma, state agencies are required to submit their budget requests to both the legislature and the Office of Management and Enterprise Services. The governor then prepares an executive budget. Next, the Equalization Board, which is staffed by the governor, lieutenant governor, attorney general, state treasurer, and state auditor and inspector, certify the actual funding available for appropriation, which cannot exceed 95% of projected revenues, with the remaining 5% held in reserve to ensure a balanced budget. Once this process is complete, the General Conference Committee on Appropriations (GCCA) allocates available funds to the budget, subject to the recommendations of its various subcommittees.[1930] Once the budget passes with a majority vote from both chambers, it is sent to the governor. During a legislative session, the governor has five working days to sign or veto the budget, either in whole or in part. After the end of the legislative session, the Governor has 15 days in which to sign or veto it. If Oklahoma's governor uses the line-item budget veto, a two-thirds majority is needed for an override.

The 2017 appropriations process highlighted tensions in Oklahoma's budget process. Negotiations came down to the last day of the legislative session, as lawmakers attempted to find ways to fill a $878 million shortfall. They settled on several revenue measures, including a tax on vehicle sales, a registration fee for hybrid and electric cars, and, most controversially, a cigarette fee that would have provided $215 million in revenue. However, Oklahoma's Supreme Court invalidated the cigarette fee on the grounds that "the fee was a revenue-raising measure that violated the state Constitution, because it was passed in the last week of the 2017 legislative session, did not pass with a three-quarters majority vote from lawmakers or a vote of the people, and originated in the Senate, not the House of Representatives."[1931] Faced with a sudden $215 million deficit, the governor called the legislature back into a special session on September 25, 2017.[1932]

As soon as the special session began, Republicans on the House Joint Committee on Appropriations and Budget (JCAB) advanced a bill to reinstate the failed cigarette tax,[1933] which House Democrats decried as "insanity."[1934] As the special session continued, legislators came no closer to closing the $215 million shortfall with revenue-increasing measures that would have required a three-quarters vote by the legislature. Instead, deep cuts were proposed to education and health care.[1935] The resulting budget, which "cut funding to dozens of state agencies and

[1930] http://www.oksenate.gov/committees/appropriations/approp_process.htm, accessed 5/11/18.
[1931] http://kgou.org/post/gov-fallin-says-special-session-only-option-fix-state-budget, accessed 5/11/18.
[1932] http://kgou.org/post/it-s-official-fallin-issues-order-special-session, accessed 5/11/18.
[1933] https://nondoc.com/2017/09/25/mccall-cigarette-tax-first-priority/, accessed 5/11/18.
[1934] https://nondoc.com/2017/09/26/insanity-passes-jcab-again/, accessed 5/11/18.
[1935] http://kgou.org/post/capitol-insider-bipartisan-budget-deal-likely-dead,accessed 5/15/18.

took money from agency revolving funds, or savings accounts," did not make it past the Governor's desk: 165 out of 170 sections of the budget were vetoed.[1936] A second special session was called in December in response to the governor's veto.[1937] This special session continued into April 2018, running concurrently with the legislature's regular session until April 19, when the governor finally signed a new budget that contained a variety of tax hikes, including pay raises for teachers, who had threatened to walk out if their demands were not met.[1938] In the end, many of the appropriations included in the final budget reflected the governor's spending priorities, including the teacher pay rise, funding for mental health, and criminal justice reform.[1939]

As a prelude to the negotiations between the legislature and the governor, the Appropriations and Budget Subcommittees listened to presentations from the agencies under their jurisdiction.[1940] The archived recordings cover two meetings lasting multiple hours during which various agencies and commissions made roughly 30 minute presentations and answered 15 or 20 minutes of questions from committee members. Questions from the Education Subcommittee indicate that there was a search for any slack resources. For example, during the hearing on January 23, 2018, the Subcommittee on Education vigorously probed the administrative costs of the Commission of the Land Office, which manages the state's education trust fund. The subcommittee chair asked the director of this commission to step up with some resources to help with teacher pay. The director, during his presentation, and in response to these queries, argued that the Constitution mandated that oil and land lease revenues be deposited in the trust fund and that only the profits from the fund were available for the state to spend. Further questioning from the committee asked why there were charges in the administration of the trust fund for maintaining the land being leased. The commissioner argued that not maintaining the land as a resource would in undermine the future value of the land and would depress its revenue generating capacity.

Oversight Through Committees

According to the House Rules of the Oklahoma House of Representatives, standing committees and subcommittees are authorized to conduct oversight of state agencies within their jurisdiction. This includes the inspection of agency documents, inviting public officials and employees to give testimony, and with the permission of the speaker, issue subpoenas.[1941] Although the Senate Rules do not explicitly mention oversight or subpoena powers, committees are empowered to "issue process, compel attendance of witnesses, and to administer oaths to any person appearing before the committee."

Audio of Senate Committee hearings is not posted online, though live proceedings can be streamed. However, audio of some House Committee hearings is available. These proceedings

[1936] http://kgou.org/post/fallin-vetoes-most-budget-bill-promises-new-special-session, accessed 5/15/18.
[1937] https://okpolicy.org/frequently-asked-questions-oklahomas-special-session/ , accessed 5/15/18.
[1938] http://www.tulsaworld.com/homepagelatest/fallin-signs-historic-tax-bill-to-fund-teacher-pay-raises/article_ffe245e7-95de-5efe-b4f4-ba9a158f5d81.html, accessed 5/15/18.
[1939] http://kfor.com/2018/04/30/gov-fallin-signs-multi-billion-budget-into-law/ accessed 5/21/18.
[1940] https://www.okhouse.gov/Video/Default.aspx, accessed 6/16/18.
[1941] https://www.okhouse.gov/Documents/Rules/56/House%20Rules%20-%2056th%20Oklahoma%20Legislature%20(2017-2018).pdf , accessed 05/15/18.

suggest that standing committees do not take an active role in oversight, but that special investigation committees take a substantial role in fire alarm oversight. In 2017 and 2018, a Special Investigations Committee conducted several lengthy hearings into a case of potential fraud based in the Oklahoma Health Department[1942]—a situation identified by the state auditor and inspector.[1943] Commentators[1944] pointed out that the state auditor and inspector has to be "invited" to conduct a performance audit on an agency and that it had been years since the Health Department had been audited. Moreover, some observers blamed antiquated budgeting systems and lax rules about shifting funds between federal and state pots of money in order to cover agency shortages. Previous financial audits identified problems, but the agency did not implement recommended accounting.[1945] Upon learning about the financial problems, the legislature responded in 2017 by cutting the Health Department's budget by 15%, which presented additional problems for an agency that was already described as insolvent.[1946] Testimony in these hearings described agency officials as repeatedly saying that they had to find more cash, a theme that recurs repeatedly throughout a wide range of documents describing many government activities in cash-strapped Oklahoma.

Oklahoma makes extensive use of interim studies when in recess. In the latest interim the Oklahoma Senate approved 43 interim studies of which 3 were eventually cancelled.[1947] These studies covered a wide range of subjects from medical marijuana, which met 12 times during the interim, to veteran suicide rates, to regulation of vaping. While the Senate does not appear to have video or audio recordings of these hearings, all the presentations made during the hearings are available online. Most importantly, Senator Pro Tem Greg Treat commissioned an interim study exploring the creation of a legislative accountability or budget office, similar to dedicated legislative analytic bureaucracies seen in other states.[1948] In a video podcast describing the potential office, Senator Treat explained that this type of office has been discussed for nearly 20 years and that the legislature is wholly dependent on state agencies for gathering and presenting budget information. The legislature has no resource to independently verify the information presented or the ability to determine the effectiveness of the previous appropriation.[1949] The interim study heard testimony from similar legislative agencies from New Mexico, Colorado, and Indiana when considering the structure and form of this potential office. Sen. Treat suggested that there is a great deal of momentum for the creation of this office in both the Senate and House and predicted a lot of action on the introduced bill early in the new session.[1950]

The House approved 57 interim studies for 2018, in which 24 were combined with other studies of similar scope and subject and 2 were cancelled. This resulted in 31 total studies, which covered a wide range of subjects like per pupil expenditures, health insurance affordability, underperforming schools and turnaround models used in other states, just to name a

[1942] https://nondoc.com/2017/12/17/memo-problems-oklahoma-state-department-of-health/, accessed 6/17/18.
[1943] http://kosu.org/post/oklahoma-state-auditor-testifies-health-department-hearing, accessed 6/17/18.
[1944] http://oklahomawatch.org/2017/12/10/where-were-the-watchdogs-in-the-health-department-crisis/, accessed 6/17/18.
[1945] https://kfor.com/2018/01/01/state-health-department-releases-report-amid-financial-mismanagement-investigation/, accessed 6/17/18.
[1946] https://www.okhouse.gov/Video/Default.aspx, accessed 6/17/18.
[1947] http://www.oksenate.gov/publications/senate_studies/interim_studies.aspx, accessed 1/8/19
[1948] http://www.oksenate.gov/publications/senate_studies/interim_studies.aspx, report 18-45; 10/25/18, accessed 1/8/19
[1949] http://www.oksenate.gov/ProTem.html, podcast 11/11/18, accessed 1/8/19
[1950] http://www.oksenate.gov/ProTem.html, podcast 11/11/18, accessed 1/8/19

few.[1951] The House does have available audio and some video archived for all floor sessions, committee hearings, and interim studies.[1952] While it is not entirely clear if all of these interim studies are acted upon in the new session, it is apparent that the Oklahoma legislature makes extensive use of interim studies to conduct oversight hearings and look to improve certain government functions. As noted by Senator Treat in his videocast, while the Oklahoma legislature is considered part-time, the sheer number of interim studies being conducted from the end of session in early May through December, not to mention special sessions which Oklahoma had two in 2018, in practice makes the legislature a full-time profession.[1953]

Oversight Through the Administrative Rules Process

When an agency wishes to promulgate a new rule, it must submit it to the governor, who has the power to approve or deny it within 45 days. If the rule is approved by the governor, it is then subject to review by the House and the Senate, which "may each establish a rule review committee or designate standing committees of each such house to review administrative rules."[1954] The legislature then has 30 days to review the rule. According to 75 O.S. 308, "[b]y the adoption of a joint resolution, the legislature may disapprove any rule, waive the thirty-legislative-day review period and approve any rule which has been submitted for review, or otherwise approve any rule." A joint legislative resolution disapproving of a rule does not require approval by the governor, "and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the governor of such rule."[1955] If a joint resolution approving the rule is passed, it then goes to the Governor for either signature or veto. If the governor then vetoes the rule, the legislature may override such veto with a two-thirds majority in each chamber. Even then, in cases of an omnibus joint resolution, the governor may still enact the rule by a "Governor's Declaration," effectively overriding the override of a veto of a disapproval of an agency rule. If no joint resolution is passed to either approve or disapprove of a proposed rule, it also may be enacted by Governor's Declaration.[1956]

Rejection of rules does not appear to be very common. Most recently, in May 2018, the legislature rejected a new rule proposed by the Oklahoma Ethics Commission, whose five members are appointed by the governor, the leaders of the legislature, the attorney general, and the chief justice of the State Supreme Court. The rule would have restricted the ability of elected state officials to engage in lobbying activities for two years after leaving office. According to the legislature, the Commission overstepped its authority.[1957] The governor concurred with the legislature's rejection of the rule, stating that "the commission does not have the authority to write rules that prohibit employment opportunities of Oklahoma's private citizens, which include state employees and lawmakers when they no longer are employed by the state."[1958]

[1951] https://www.okhouse.gov/Committees/ShowInterimStudies.aspx, accessed 1/8/19
[1952] https://www.okhouse.gov/Video/Default.aspx, accessed 1/8/19
[1953] http://www.oksenate.gov/ProTem.html, podcast 11/11/18, accessed 1/8/19
[1954] https://administrativelaw.uslegal.com/administrative-procedure-acts/oklahoma/, accessed 5/16/18.
[1955] https://ok.gov/wcc/documents/Administrative%20Procedures%20Act.pdf, accessed 05/16/18.
[1956] https://www.sos.ok.gov/forms/oar/procss_per.pdf, accessed 05/16/18.
[1957] https://www.apnews.com/67c60e907c544473a4696a0e132232f0, accessed 05/16/18.
[1958] https://newsok.com/article/5593698/oklahoma-legislators-reject-ethical-rules-restricting-when-they-can-become-lobbyists, accessed 05/16/18.

Another example of the legislature attempting to block the adoption of new rules occurred in 2014, when the school board adopted a set of standards that were based on the "Next Generation Science Standards,"[1959] which "put a greater emphasis on controversial topics like global warming and evolution."[1960] These topics proved controversial for many in Oklahoma, with one legislator contending that "as far as standards are concerned, they need to be written, administered and taught in a way to teach students critically."[1961] A House committee reviewing the rule rejected it, but the measure was amended in the Senate and the House did not take it up again before adjourning. This left the matter to the governor, who approved the rule adopting the new standards.

A similar process to rule adoption occurs when changes to existing rules are proposed by agencies. Legislative leaders may also "establish a rule review committee or designate standing committees of each such house to review administrative rules" (75 O.S. 307.1). An April 11, 2018, audio recording of the House Administrative Rules Committee consists of assigning submitted rules to members of the committee to read and consider independently. Committee members were instructed to bring any items of concern to the attention of the chair within two weeks. That would allow staff to put rules acceptance and rejection into the Omnibus Bill. The meeting was brief—only six minutes—and included no discussion of the substance of any rules.

This committee also handles sunset reviews of existing agencies. During committee meetings, members mention taking testimony on the value of these agencies. But audio of committee meetings are all extremely short, some less than 10 minutes, and none longer than 30 minutes, so it is not clear how extensively sunset provisions or administrative rules are scrutinized.

Oversight Through Advice and Consent

According to the Oklahoma Legislative Manual, the legislature "is a very active participant in the appointment of persons to service on the many boards and commissions in Oklahoma state government . . . Almost without exception, the Senate traditionally exercises control over the confirmation process."[1962] Moreover, "the directors of many of the largest, most powerful state agencies are hired and fired by agency boards and commissions rather than by the governor. And while the governor does make appointments to these boards and commissions, the commissioners' terms of office are usually staggered over several years" (Warner, 1998). Cabinet members are appointed by the governor, subject to confirmation by the Senate, pending the results of hearings held by the pertinent committees. However, cabinet secretaries in Oklahoma have no executive power, only advisory power, and in most cases serve as "little more than gubernatorial staff members with responsibilities in a substantive area" (Warner, 1998).

While rejection of nominees is not common, it does happen occasionally. For example, in 2012, the Senate rejected an appointee to the state election board. The nominee would have been

[1959] https://newsok.com/article/3946962/oklahoma-board-of-education-adopts-new-science-standards, accessed 05/16/18.
[1960] https://www.usnews.com/news/articles/2014/06/20/how-the-climate-change-debate-is-influencing-whats-taught-in-schools, accessed 05/16/18.
[1961] http://www.koco.com/article/ok-legislators-reject-new-science-standard-over-climate-change/4298365, accessed 05/16/18.
[1962] https://www.okhouse.gov/Documents/LegislativeManual.pdf, accessed 05/17/18.

the first openly gay official in Oklahoma, "raising questions as to whether the nominee was discriminated against because of his sexual orientation."[1963] The chair of the Senate Rules Committee argued, however, that since the appointee had previous experience as an elected official in Oklahoma, it was "inappropriate" for him to serve on the election board.

According to Oklahoma Statutes 74-3302 through 3305, the legislature has sole authority to create state agencies while in session. However, the governor may create agencies by executive order while the legislature is out of session. Such agencies must be approved by the legislature during the next session in order to continue operation. Executive orders may be used to create and reorganize councils and boards. One example is the Joint Commission on Public Health, which was created by Executive Order 2017-36, which also appointed the commission's chairman. Another example is the Governor's Unmanned Aerial System Council, which was created by Executive Order 2011-19. The council consisted between 10 and 15 members, appointed by the governor, and operated under the Oklahoma Department of Commerce.[1964] An amendment to that order, filed December 22, 2017, reconstituted the council as the Governor's Aerospace and Autonomous Systems Council, provided a clearer definition of its duties, expanded its size to between 15 and 20 members, and placed it under the joint purview of the Department of Commerce and the Secretary of Science and Technology.[1965]

The constitution grants Oklahoma's governor the power to issue executive orders in areas other than government reorganization. The legislature does not appear to have any formal power to check the use of executive orders other than to pass legislation overturning the order.

Oversight Through Monitoring of State Contracts

The Office of Management and Enterprise Services monitors and conducts audits of state contracts.[1966] The legislature does not have any oversight powers in this domain.

Oversight Through Automatic Mechanisms

According to Baugus and Bose, Oklahoma has both selective and discretionary sunset processes. This means that the legislature is enabled to choose which agencies and regulatory boards are reviewed. In 2017, HB 1999, was introduced in the House Administrative Rules Committee that proposed to make the administrative rules of all state agencies subject to sunset provision every four years. That bill died in the Administrative Rules Conference Committee.[1967] As suggested by the example of the State Board of Examiners for Long-term Care Administrators described above, agency and board sunsetting is not very common in Oklahoma. In 2012, there were 75 such entities up for sunset review, and almost all of them were

[1963] http://www.enidnews.com/news/local_news/blocked-openly-gay-fallin-appointee-turned-down-by-senate-committee/article_f40730ff-d73e-59ce-b6d4-01f36208cd40.html, accessed 05/17/18.
[1964] https://www.sos.ok.gov/documents/executive/781.pdf, accessed 05/17/18.
[1965] https://www.sos.ok.gov/documents/executive/1793.pdf, accessed 5/17/18.
[1966] https://www.ok.gov/DCS/Central_Purchasing/, accessed 5/21/18.
[1967] http://www.oklegislature.gov/BillInfo.aspx?Bill=HB1999, accessed 05/18/18.

reauthorized. As a reporter for the *Tulsa World* wrote, "In practice, the sun rarely sets on a state board."[1968]

One example occurred during a meeting of the Administrative Rules Committee on February 28, 2018, when the Oklahoma State Board of Examiners for Long-term Care Administrators came up for sunset renewal.[1969] One legislator questioned the need for the agency, pointing out that the Board governed the smallest agency in the state, with 9 Board members regulating the activities of three full-time employees: "Why would we renew it? Why can't it be merged with a more robust agency that could better meet the needs of this population?" The chair of the committee replied that the legislator who raised the question was welcome to try to pass legislation to abolish the board. When queried whether he would therefore be open to allowing the board to cease functioning, the chair replied that, while he had let other agencies sunset in the past, "only three agencies" had even come up for sunset in 2018.[1970] He then called a vote. The motion to renew the State Board of Examiners for Long-term Care Administrators passed by a vote of 6-2 and the Committee moved on to other business.

Methods and Limitations

Oklahoma's legislature does not provide archival recordings of committee hearings. Despite contacting 12 professionals in or knowledgeable about Oklahoma's legislature, we were not able to interview anyone.

[1968] http://www.tulsaworld.com/news/government/most-state-agencies-survive-oklahoma-sunset-laws/article_7d515ed5-75fb-52db-87fd-aec02d56c883.html, accessed 05/18/18.
[1969] http://sg001-harmony.sliq.net/00283/Harmony/en/View/Calendar/20180228/99, accessed 05/15/18.
[1970] https://newsok.com/article/5595817/tom-coburn-more-oversight-not-more-taxes-needed-in-state-government, accessed 6/17/18.

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Legislative Oversight in Oregon

Capacity and Usage Assessment

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

Summary Assessment

Oregon possesses some useful tools for conducting legislative oversight, but the process involves more collaboration across branches of government than is typical in other states. By all accounts and measures the Secretary of State Audit Division is reasonably active and has in recent years begun conducting performance audits. The legislature appears to take a reasonably active posture in response to Audit Division reports. The senate devotes some attention to gubernatorial appointees.

Major Strengths

We found some evidence of a collaborative approach between the governor, secretary of state, and the legislature when adopting or implementing audit recommendations. Whether this is a byproduct of Democratic trifecta control or an element of Oregonian political culture, the result is a less confrontational approach to oversight than we see in many other states. But oversight of agency performance is still taken seriously as a responsibility of the legislature as well as other government actors. The legislature is heavily involved in designing the audit reports, making requests and asking questions about the scope and methods used in the audit investigation.

Challenges

The location of the central auditing agency in an executive branch office may hinder a more proactive, police-patrol type of oversight on the part of the legislature. Recently, there has been some discussion on whether the legislature should relocate the audit division from the Secretary of State office into a legislative agency (interview notes, 10/26/18). We found evidence that oversight through the appropriations process tends to be reactive rather than proactive. Oversight through the budget appears to be the weakest link with limited use of audit reports. Legislative involvement in administrative rules review is very limited, although the

Secretary of State and the Office of the Legislative Counsel work with agencies to improve proposed rules when there are problems.

Relevant Institutional Characteristics

The National Conference of State Legislatures (2017) characterizes Oregon's legislature as a "hybrid"—neither fully professionalized nor "[p]art-time, low pay, small staff." Consistent with this, Squire (2017) ranks it as the 23rd most professional legislature in the nation. Oregon's legislature consists of 60 house members and 30 senators. Districts are nested so that two house districts comprise each senate district. Oregon has a two-year budget cycle, with budget recommendations made in even-numbered years and budget adoption occurring in odd-numbered years. To accommodate this cycle and the part-time hybrid nature of the legislature, a 2010 amendment to the state Constitution limits regular sessions in odd-numbered years to 160 days and in even-numbered years to 35 days.[1971] Oregon's legislators receive an annual salary of $24,216 plus a $144 per diem.[1972] This means that in odd-numbered years legislators receive a maximum of $47,256, but in even-numbered years they only receive a maximum of $29,256, unless there is a special session or they serve on an interim committee. For reference, the median household income in the state of Oregon is $53,217, according to the U.S. Census Bureau.[1973] To support the part-time legislators, in 2015 there were 454 staff members, 301 of whom were permanent staff (NCSL, 2017). At one time, Oregon's legislature was term-limited, but the Oregon Supreme Court ruled the practice unconstitutional. Therefore, legislators can serve for as many terms as they win reelection.

Both the governor and legislature can call for a special session of Oregon's legislature. The governor has the power to convene the house and senate, according to Chapter 5 Section 12 of the Oregon Constitution, for "extraordinary" occasions; when the two houses convene the governor must state the purpose for which they were convened.[1974] For the legislature to call a special session there must be a written request from majority of the members of each house; at this time the presiding officers can call the special session.[1975] Given the short length of regular sessions, it is not surprising the special sessions occur regularly, most of which are called by the legislature. From 2013 to 2018, there were eight special sessions called by the legislature.[1976] In contrast, the session called by Gov. Kate Brown in 2018 was the first special session called by a governor since the 2013 special session called by former-Gov. Kitzhaber.

According to the Council of State Governments (2015) Governors' Institutional Powers Index (GIPI), the office of Oregon governor is the least powerful among the 50 states. Oregon's governor does not appoint as many agency heads as many governors do and also lacks the ability to reorganize state government through executive orders. The Oregon governor does, however, have a line-item veto for budget items and can veto legislation.[1977] Both these types of vetoes can be overridden by two-thirds majority from both the house and senate. The governor's salary is

[1971] https://olis.leg.state.or.us/liz/2010S1/Downloads/MeasureDocument/SJR41/Enrolled, accessed 6/11/18.
[1972] https://ballotpedia.org/Oregon_state_government_salary, accessed 10/23/18
[1973] https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml, accessed 6/26/18.
[1974] http://bluebook.state.or.us/state/constitution/const2016.pdf, accessed 6/27/18.
[1975] http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx, accessed 6/27/18.
[1976] https://www.oregonlegislature.gov/Lists/LegislatorsChronological/Grouped-by-Session.aspx, accessed 10/20/18.
[1977] http://bluebook.state.or.us/state/constitution/const2016.pdf, accessed 6/27/18.

relatively low, $93,600 in 2018, compared to a median nationally of nearly $130,000.[1978] Oregon's governor can serve two consecutive four-year terms during any 12 year period, and Oregon has no lieutenant governor.

Oregon does not have a large state and local government bureaucracy compared to other states. Only 10.5% of its citizens work for state or local government compared to a national average of 11.3%. A much smaller than average proportion of its citizens work in education, 5.3% compared to the national average of 6.1% (Edwards, 2006). This accounts for most of the difference between Oregon and the national average for state and local government employment.

Political Context

Oregon's governorship and both chambers of its legislature are currently (2018) controlled by the Democratic Party. Oregon's House of Representatives has been held by the Democrats since 2007, with the exception of 2011-12, in which the house was split evenly, 30 to 30, between the two parties. The senate has been controlled by the Democrats since 2005. The governorship has been held by the Democrats since 1987.[1979] After the 2016 elections, Oregon was one of the few Democratic trifectas in the country.

According to Shor and McCarty (2015), the state's house Democrats are quite liberal (ranked 6th most liberal in the country) but that chamber's Republicans are not extremely conservative (ranked only 37th most conservative in the country). On the other hand, in the upper chamber Oregon Senate Republicans are only moderately conservative (ranked 26th most conservative), while the chamber's Democrats in 17th, are only moderately liberal (Shor and McCarty, 2015). Consistent with this, the lower chamber is the 14th most polarized in the country while the upper chamber is only the 20th most polarized upper chamber. This could reflect the system the state uses to draw state legislative districts. As noted above, Oregon's state legislative districts are nested so that two house districts comprise each senate district. This could make it harder to gerrymander state senate districts. If, as is often the case, legislators move from the house to the senate, the more moderate of the two house members could be winning the state senate elections by appealing to independents and moderates. This is consistent with the evidence that the upper chamber is somewhat less polarized than the lower chamber.

Oregon is a geographically divided state, which contributes to its political polarization. The Cascade Mountain Range acts almost like a border between the liberal and conservative sides of the state. The majority of the state's population lives on the western side of the Cascades, many from Multnomah County, which includes the city of Portland, and to the south, the city of Eugene. Portland is the state's largest city, and its residents often vote based on urban issues. Those living to the east of the Cascade Mountains have traditionally made their living farming and in timber production, and vote based on those issues. These differing environments contribute to the state's polarization.

[1978] https://ballotpedia.org/Oregon_state_government_salary, accessed 10/24/18.
[1979] https://ballotpedia.org/Governor_of_Oregon#Elections, accessed 5/24/2018.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are three analytic bureaucracies that support the legislature's efforts to oversee the executive branch. First, the Office of the Legislative Counsel participates in administrative rule review. Second, the Legislative Fiscal Office helps in the appropriations process. Third, the Secretary of State's office has an audit division that provides support to the legislature.

Oregon has a non-partisan Office of Legislative Counsel (OLC) that consists of a staff of 15, mostly lawyers and editors, who provide legal advice, research and draft laws, and review administrative rules for the Oregon Legislative Assembly. The Legislative Counsel staff testifies at committee hearings and publishes legislation and other the materials needed by the legislature during sessions. The Legislative Counsel Committee (LCC) oversees the OLC. We return to the role played by the OLC and LCC in the section on Oversight Through Administrative Rule Review.

In Oregon, the Legislative Fiscal Office (LFO) serves as the state's analytic bureaucracy for the Oregon legislature. The LFO was established by statute in 1959, and it conducts research for various joint committees with the majority of its activities pertaining to the preparation and analysis of the budget. Specific duties for the LFO include analyzing the governor's proposed budget and assisting the legislature, including the Joint Interim Committee on Ways & Means, in preparing the legislature's balanced budget.[1980]

The overall mission of the LFO is to provide facts and recommendations as it relates to state expenditures and fiscal implications for the state and its agencies. Direct requests for such information can be made by the House Revenue Committee, Senate Revenue Committee, Legislative Revenue Officer, other standing and interim committees and members of the legislature.[1981] While the LFO conducts assorted reports and reviews, it does not conduct audits.

Audits of state agencies are provided through the Division of Audits in the Secretary of State's office. This division is part of a multi-agency oversight system that merges legislative and executive branch units of government to improve state services. The legislative and executive branch actors involved in agency audits are: the elected Secretary of State, the gubernatorial appointee who directs the Department of Administrative Services, and the legislators serving on the Joint Legislative Audit Committee (JLAC), an interim legislative committee. The Oregon Secretary of State's office conducts performance audits of state agencies through its audit division. The JLAC makes recommendations to state agencies to resolve problems identified in these audits. This is described in detail below. The Department of Administrative Services (DAS) reports on its webpage that it is responsible for implementing decisions made by both the governor and the legislature. [1982] In this capacity, the legislators on JLAC rely on DAS to ensure that state agencies comply with the committee's audit recommendations. Therefore, legislative oversight in Oregon involves collaboration by these subunits of the legislature, executive branch, and independently elected state officers. We explain this in detail below.

[1980] https://www.oregonlegislature.gov/lfo/Documents/LFOAgencyOverview.pdf, accessed 6/13/18.
[1981] https://www.oregonlegislature.gov/lfo/Documents/LFOAgencyOverview.pdf, accessed 6/13/18.
[1982] https://www.oregon.gov/das/Pages/index.aspx. accessed 10/23/18.

Oregon has an elected Secretary of State who oversees several divisions, such as the elections division, corporate services division, and, importantly, the audit division. The director of the audit division is appointed by the Secretary of State and is the chief auditor of public accounts. Although most of the audits conducted are financial audits, the chief auditor has "pushed performance audits to new levels" in order to "increase the efficiency of state and local government while generating savings."[1983]

In 2015, the Secretary of State's Audit Division (SOSAD) had a staff of 63 professionals (NASACT, 2015). In 2016 it produced 37 state audit reports, including seven performance audits of state agencies, 14 financial audits, three IT audits, three information reports, as well as a hotline report, the state's single audit, and other miscellaneous reports.[1984] Although decisions about which agencies to audit are made by the chief auditor (NASACT, 2015), the Joint Legislative Audit Committee (JLAC) has input into these decisions because the legislature can and does pass legislation mandating that the SOSAD performs audits. The SOSAD does not audit local governments, but it can audit any state government entity including the judicial and the legislative units. About 20% of the state agency audits are contracted out to private CPA firms, but the Audit Division selects these firms.

The JLAC hears audit reports and receives updates on audits from the Secretary of State's Office. Its membership consists of three senators and three representatives whose party affiliation is in proportion to the seats controlled in each chamber. Currently, there are four Democrats and two Republicans on the committee. These legislators include the co-chairs of the Joint Committee on Ways and Means. This committee works in conjunction with the director of the SOSAD to prioritize audit requests from a variety of sources including individual legislators, legislative committees, the LFO, and subunits within the SOS including the SOSAD. When SOSAD releases audits, they are presented to the JLAC, whose members recommend changes to the auditee or remediation based on the audit and then follow up within a year to see whether the agency has complied with these JLAC recommendations.[1985] The JLAC relies on DAS to ensure that the auditees comply with its requests.

The JLAC, which is further described under the "Oversight Through Standing Committees" section, provides this oversight by holding periodic hearings during both the regular and interim sessions. In these hearings the legislators that make up the JLAC listen to audit presentations (most of which are program based, as opposed to budget based) from SOSAD staff. In addition to overseeing the work of the state agencies, the JLAC monitors the work of the SOSAD. After listening to the audit presentations, JLAC members followed up with various questions related to the audit's methodology and purpose directed toward the audit staff. Additionally, these legislators ask agency representatives about substantive audit findings.

For example, in a March 2018 hearing about an audit of the Office of Emergency Management (OEM), legislators questioned the SOSAD staff on the methodology of the audit and how the staff is connecting with other departments, elected officials and organizations to ensure there is follow through on the actions needed to improve Oregon's preparation and response to catastrophic disasters. Through this dialogue it was evident the legislators tried to hold the SOSAD staff accountable not only for the facts in the audit but also for ensuring action items based on the audit are carried out. In another example, Senate Bills 9 of 2015 required that the SOSAD conduct an audit of all state agencies' responsiveness to public records requests.

[1983] https://sos.oregon.gov/Pages/divisions.aspx, accessed 10/20/18.
[1984] http://sos.oregon.gov/audits/Pages/stateaudits.aspx, accessed 6/13/18.
[1985] https://apps.leg.state.or.us/liz/2015I1/Downloads/CommitteeMeetingDocument/80394, accessed 10/21/18.

This piece of legislation is quite specific in its description of the scope and methods to be used in conducting the audit.[1986] This dual role of making recommendations to the auditee and monitoring a division of a separately elected officer (SOSAD) appears to arise out of the independence of the audit unit and the practice of passing legislation to require that another unit of government conduct an audit. The JLAC hearing on the substance of this audit is discussed in greater detail in the section on Oversight Through Committees, below.

The number of times JLAC meets is influenced by the work completed by the SOSAD. The activity of the JLAC changes over time, with more audits completed in some years than others. The materials provided to committee members for the meetings include a review of the audit presented. Staff members of the LFO write these reviews. During 2017-18, the JLAC met five times, all during the interim session. Legislators are paid at their per diem rate for these extra days of service. During the 2015-16 interim, the JLAC committee met five times. Also during that time the JLAC reviewed several audits conducted by SOSAD and heard testimony regarding the audit process and how the DAS followed up on the audits.[1987]

Oversight Through the Appropriations Process

The state of Oregon operates on a two-year budget cycle. The appropriations process begins with agencies creating their proposed budgets early in even-numbered years and then sending them to the State's Chief Financial Officer. From there, the governor and the CFO review these budget requests and comparing those to the governor's goals, priorities, and the state's policies. Then, the governor submits his or her recommended budget to the Oregon state legislature. It is at this point, at the beginning of an odd-numbered session year, that legislative committees begin to review the recommended budget. Public hearings for each agency are held to ensure feedback is received before each committee's recommendation is drafted. Each committee drafts a budget bill, and all those are combined to create the Legislatively Adopted Budget.[1988] It is the Joint Interim Committee on Ways & Means, along with its six subcommittees that are responsible for preparing the Legislatively Adopted Budget.

During this process, each agency has its own bill related to the budget it is requesting. That bill will receive a budget hearing and work session, both of which provide opportunities for the public to testify. In these public hearings the agency director makes the budget presentation, and then, depending on the size of the agency, a program administrator may provide additional presentations or answer questions related to specific programs. In total, there are more than 150 different state agencies and commissions in the State of Oregon, meaning public hearings are extensive, with each agency presenting its proposed budget before a legislative committee at least once. Interest in the agency and the associated proposed budget varies.

Legislators on the JLAC had received an audit presentation on the Office of Emergency Management. One concern raised in the audit was a lack of funding. Thus, we were especially interested in the budget hearings for the OEM. The Joint Committee on Ways and Means Subcommittee on Public Safety did not display a great deal of oversight during the

[1986] https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureAnalysisDocument/30950, accessed 10/25/18.
[1987] https://www.oregonlegislature.gov/lfo/General%20Audit%20Documents/JLAC%20Background.pdf, accessed 5/28/18.
[1988] https://www.oregonlegislature.gov/lfo/Documents/2011-4%20Oregon's%20Budget%20Process.pdf, accessed 6/12/18.

subcommittee's hearing on the Oregon Military Department, which includes the OEM.[1989] During the hearing, very little time was spent by legislators discussing or questioning the Military Department's appropriations request. Despite the head of the Military Department, Col. Jenifer Pardy, stating that the lack of adequate civilian staff has resulted in a backlog of over 1900 maintenance orders for preventive maintenance operations, no questions were asked of the colonel. In fact, the chair of the subcommittee repeatedly asked her to conclude her presentation. Specific to the OEM, the office director spoke for approximately five to seven minutes and mentioned the need for full funding, but no funding levels were mentioned or discussed. Considering that less than a year after this hearing, an audit report was issued by SOSAD highlighting that a lack of funding has greatly impacted OEM's preparedness levels, little mention was made of OEM's funding requests. Overall, there were very few questions asked, and none with any substance, suggesting two possibilities related to oversight through the appropriations process. First, the budget request hearings are mere formalities and the real questioning of these requests in conducted informally behind the scenes by legislators and staff. Second is the possibility that the appropriations process is not being used to aggressively conduct preventive or police patrol type oversight. Nothing in this hearing suggests proactive oversight of key agencies like OEM.

The Committee on Ways & Means also schedules committee hearings in communities around the state, specifically to receive public testimony on the state budget, knowing there will be interest from a wide range of citizens and interest groups. It is not uncommon to receive up to 75 individuals providing testimony from both the public and lobbyists at these meetings, according to a staff member of the LFO. It is the LFO's practice to provide a day and time for public testimony on each agency budget. This is not required by statute or by rule.[1990]

Oversight Through Committees

In the state of Oregon there are various house and senate standing committees and joint committees that meet during the interim. As noted earlier, the Joint Committee on Legislative Audits (JLAC) hears audit reports. Between 2017 and 2018 there were four different meetings of this committee. In a September 2017 meeting of the Joint Committee Hearing on Legislative Audits, the audit director of the Secretary of State reported there had been no audits of the legislature or the governor's office in 20 years. Also during this committee hearing, legislators questioned staff from the Secretary of State about their auditing process, its impact, and whether audits from the department were based more on philosophy or fact.

Later, during a May 2018 Joint Interim Committee hearing on Legislative Audits received a review on the Office of Emergency Management, titled, "The State Must Do More to Prepare Oregon for a Catastrophic Disaster" from the Secretary of State's audit team. During this JLAC hearing, legislators questioned Secretary of State staff members about how they defined an emergency and who they included among stakeholders. Later, they directed questions at the department staff about who was responsible for an inadequate resilience management plan and who were the responsible parties for regional emergency management planning. Office of Emergency Management staff was also questioned extensively during that audit hearing about

[1989] http://oregon.granicus.com/MediaPlayer.php?clip_id=5df20bd8-c9a9-48df-8881-686367b37b4c&meta_id=6aead8a2-ee5d-4c52-82c5-383dc00d6c47, accessed 10/24/18.
[1990] LFO staff email, received 6/12/18.

the appropriation of resources, how funds are leveraged and spent, and what the real priorities of the department were and will be.[1991] That audit found that the OEM was seriously underfunded and poorly prepared to deal with potential disasters. To provide context, the OEM misspent federal homeland security money and faced $3 million in penalties, which it is currently appealing.[1992] It appears that these funds were spent for facilities and other department needs—not used for extravagant or personal expenses. This could further indicate a department that is underfunded and spending federal money on necessary items to maintain its capacity and infrastructure.

Despite the audit report that OEM is underfunded, it is not clear that the governor or the legislature plan to increase its budget. The 2017-19 Legislatively Adopted Budget indicates that OEM received $268 million. [1993] It remains to the seen whether that amount increases in the next biennial budget.

Further inspection of the funds appropriated from the OEM revealed that the Public Safety Subcommittee of the interim Joint Ways and Means Committee approved a federal grant application for National Earthquake Hazard Reduction at its September 9, 2017 meeting. The required 50% state matching dollars would be provided by the Department of Administrative Services through a resiliency building fund, and the state's financial office sent a staff member who testified that they recommended approval. The OEM would manage the grant. The grant submission was unanimously approved. The committee members asked no questions.[1994] This would probably provide more money for OEM, but the lack of committee questions indicate that there is little knowledge among legislators on the Public Safety Subcommittee with respect to the larger questions swirling around the OEM.

A search of the Summary of Legislation 2018[1995] prepared by the Legislative Policy and Research Office for the 79th Legislative Assembly finds only one instance in which the word *audit* appeared in the description of actions taken by all session and interim committees of both legislative chambers during 2018, even though there are seven performance audits listed on the Secretary of State webpage.[1996] This sole reference to *audit* mentioned audit of the OEM. The Senate Interim Committee on Veterans and Emergency Preparedness attempted to pass legislation to require that OEM report quarterly to the legislature on its progress in addressing the deficiencies identified in the audit report—lack of an adequate preparedness plan and misuse of federal funds. The bill was not enacted. Additionally, the committee proposed a bill to require that the OEM include marine and rail operators in its emergency planning process, especially to address oil train spill prevention. None of the emergency preparedness bills introduced in the 2018 Legislative Assembly were enacted (pp. 62-65).

In contrast to the appropriations hearing of the Public Affairs Subcommittee, the Senate Interim Committee on Veterans and Emergency Preparedness asked specific questions about

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[1991] http://oregon.granicus.com/MediaPlayer.php?clip_id=24915, accessed 10/17/18.
[1992] https://www.oregonlive.com/politics/index.ssf/2018/01/oregon_disaster_prep_agency_fa.html, accessed 10/21/18.
[1993] http://oregon.granicus.com/MediaPlayer.php?clip_id=24915, accessed 10/17/18.
[1994] http://oregon.granicus.com/MediaPlayer.php?clip_id=24175, accessed 10/22/18.
[1995] https://www.oregonlegislature.gov/lpro/summleg/2018%20Summary%20of%20Legislation%20Combined%204-24-18.pdf, accessed 10/25/18.
[1996] https://www.oregonlegislature.gov/lpro/summleg/2018%20Summary%20of%20Legislation%20Combined%204-24-18.pdf, accessed 10/25/18.

catastrophic planning and emergency preparedness. At its January meeting,[1997] the committee received an update on state rail and barge catastrophic planning. The Department of Transportation, OEM, and the Office of the State Fire Marshall presented information to committee members. This was, as listed in the agenda, an informational session with these agencies. There were several questions from legislators. These queries focused on clarifying information. The chair, however, asked very specific hypothetical questions about how rapidly the emergency response system would work under various scenarios. The official from the Department of Transportation said that much of that would depend on how well the private partners (i.e. rail companies) were able to respond, but that his estimate was days if not weeks. The chair also asked the fire marshal after his presentation how he saw the fire marshal's office integrated into the response: what specific actions would you have to do with the integration of rail and barge services? Another committee member asked how the fire marshal would interact with OEM on nuclear energy if something catastrophic happened in the state. He deferred to OEM, who explained that the Department of Energy is in charge of nuclear materials. And again, the bottom line was that the public sector would have to depend on the various private actors who would be transporting materials at the time of a disaster because public agencies would not necessarily know what was on various trucks moving through the state. The presenter repeatedly mentioned "self-help." The chair asked, with respect to the self-help category, have we reached out to the private sector partners with heavy rail or barge capability to ask what they can do, would you like to participate in our planning/training exercises? The OEM gave a very lengthy response that boiled down to yes, but we could do more. The chair challenged the presenters by saying the he and other committee members and staff had attended events with the potential private partners (the maritime folks and the rail folks) and asked them if they'd ever been invited to an emergency planning or training event and that their answer was no across the board. The chair instructs the OEM to send invitations to its next quarterly planning event to the private sector partners. The chair offers to go invite private partners too. This hearing clearly demonstrated well-informed, solution-driven assertive oversight.

The Senate Interim Committee on Veterans and Emergency Preparedness followed up on the audit report again at its May 22 meeting based on a question that a committee member asked as the end of the previous meeting on this audit. The legislator's question focused on whether the Military Department, which houses OEM and the executive branch were communicating with each other. The Military Department pointed out that a 2013 audit produced 13 findings and that 11 had been resolved through OEM actions taken. OEM reported that unannounced emergency drills would begin in the near future, and that a three-state subduction zone practice drill is being planned in collaboration with the states of Washington and Idaho. The chair commented at the end of the presentation that the military department and OEM ask every budget cycle for more funds and that the legislature in every recent budget cycle has cut them, and then the state asks them to be ready for the unexpected tomorrow morning. He said that he did not think it was any surprise to anyone that there are problems. Although the chair defended OEM, he said that it is helpful to have the Secretary of State's office audit help set priorities for scarce resources. The chair complains that media covers the negatives and not the positives despite that fact that OEM has made progress regardless of the cuts to their funding.

Next, the chair asked the Deputy Director of the Military Department about awards made by the department using grants that the legislature provided for quick connect ports

[1997] http://oregon.granicus.com/MediaPlayer.php?clip_id=08362030-1d3e-417d-b311-f94696c9a3e0&meta_id=72d82e4c-707c-4e4e-b58c-3ea5faa312dd, accessed 10/15/18.

for generators. These quick connect generators can be used if there is no power. In an emergency these generators could be used to pump fuel for the National Guard or first responders, the deputy reported. They were able to award grants to 24 fuel facilities who applied for money to help connect the generators. The chair supplied that fact that there were 71 applications. He asked how many were valid applications. The response was all of them. The chair then asked whether that means that there were 47 eligible but unfunded applicants. The response was that that was true. The chair told the other committee members that he would be reaching out to the co-chair of Ways and Means for emergency funds. The chair stated, with emphasis, "as you know the single largest choke point we have is fuel for emergency responders" (minute 1:47).[1998] The chair was clearly very knowledgeable about the problems faced by OEM. He was the only committee member who asked questions, but those questions were designed to enhance OEM's access to funding and to improve state preparedness.

Oregon's standing and interim committees conduct oversight, but the quality of that oversight appears to depend on the knowledge of individual legislators. The chair of the Senate Interim Committee on Veterans and Emergency Preparedness mentioned that he had co-chaired this committee previously in 2005, so he has depth of knowledge on the topic. That he explicitly instructed the OEM to invite private partners to the next quarterly planning event demonstrates a capacity for vigorous oversight. On the other hand, in the subsequent committee hearing, it is clear that the chair is quite supportive of the mission of OEM and is using any leverage he has to secure more resources for actions they take, such as awarding grants for generators to pump fuel in an emergency. Therefore, we conclude that when legislators chose to perform oversight, they appear to have the institutional resources to do so. But, it does not appear that very many committees spend very much time addressing issues raised in audit reports.

Oversight Through the Administrative Rules Process

In Oregon, when an agency adopts a rule it sends it to the Secretary of State, who within ten days sends the rule to the Office of the Legislative Counsel (OLC). As described earlier, the OLC is a non-partisan agency that drafts bills and provides legal services to the Oregon Legislative Assembly, but it is also a central player in Oregon's administrative rule review process.

The OLC has the discretion to review any rule that an agency submits, but it must review a rule if a legislator asks it to do so. If an affected person asks the OLC to review a rule, it can use its discretion about whether to conduct a review. The OLC has the power to issue a "negative determination" only if the rule violates the constitution or is inconsistent with legislative scope or intent.[1999] After the OLC issues a negative determination, the agency has an opportunity to resolve the concerns. If its concerns are not resolved, the OLC formalizes the negative determination and transmits the rule to an interim committee that the OLC decides will be responsible for the rule. That interim committee must schedule a meeting with the agency to review the rule. At this meeting, a Legislative Counsel attorney typically presents the rationale for the OLC determination and the agency presents its position. [2000] If the interim committee decides that the OLC determination is correct, then the agency can appeal the decision to the

[1998] http://oregon.granicus.com/MediaPlayer.php?clip_id=24907, accessed 10/25/18.
[1999] https://www.oregonlaws.org/ors/183.720, accessed 10/24/18.
[2000] https://www.oregonlegislature.gov/lc/Pages/ARRs.aspx, accessed 10/24/18.

Oregon Court of Appeals, which could decide that the rule is constitutional and consistent with statutory scope and intent.

The OLC does not review rules to assess their reasonableness, and there is no assessment of the economic impacts or the costs and benefits of having a rule (Schwartz 2010). He describes the level of involvement of the legislature in the review of new administrative rules in Oregon as minimal. According to LFO staff, it is extremely rare that an interim committee is required to get involved in the review of an agency rule process.[2001] The Legislative Counsel webpage lists only one negative rule determination that was not resolved, and it dates from May 25, 2010.

The legislature is not involved at all in the review of existing rules. State agencies are required to review their own rules every five years to assess whether the rule has had the intended effect, whether the rule is still needed, and whether the anticipated fiscal effects were accurate. The public can petition the agency to repeal a rule or to amend it, but the legislature is not part of this process.

Oversight Through Advice and Consent

High-level executive branch officials (e.g. secretary of state, attorney general, et. al.) are elected by popular vote in the state of Oregon. But Oregon's governor appoints people to lead many state agencies and to hold other top executive branch positions. Almost all of these require senate confirmation.[2002] In total, there are 20 appointments made by the governor that require senate approval and eight direct appointments by the governor that do not require senate approval.[2003] According to a staff member of the LFO, there have been no recent senate rejections of appointed officials at the state level.[2004] Despite this, the senate appears to perform its advice and consent duties regularly even though the volume of nominees precludes in-depth assessment of each individual. The governor is responsible for the appointments and complies a list for the senate, which is reviewed by members informally, usually for 21 days, prior to any hearings (interview notes, 10/26/18). This allows the governor and senators to work out any controversial candidates well in advance of hearings or floor votes (interview notes, 10/26/18).

The committee responsible for screening nominees prior to a vote of the full senate is the Senate Interim Committee on Rules and Executive Appointments. For the 2017-18 Legislative Session this committee has met five times. Of those meetings, four primarily focused on appointments to various state boards, ranging from the Oregon Liquor Control Commission to the Oregon Board of Psychology. As demonstrated in the May 22, 2018, Senate Interim Committee on Rules and Executive Appointments public hearing, the legislators questioned potential appointees on their experience and philosophy related to the board/commission on which they would serve.[2005] The recording log for this hearing includes 2.5 single-spaced pages of names of nominees and the commissions, boards or similar entities to which they had been nominated. The remainder of the recording log consists of three more single-spaces pages of names of nominees that the committee moved to approve en bloc, sending them to the senate floor for a confirmation vote. It is clear, given the number of nominees that even with a three-

[2001] LFO staff email, received7/19/18.
[2002] http://www.oregon.gov/das/Policies/50-060-01.attachment.pdf, accessed 5/24/18.
[2003] https://www.nga.org/cms/management/powers-and-authority, accessed 6/26/18.
[2004] LFO staff email, received 6/12/18.
[2005] http://oregon.granicus.com/MediaPlayer.php?clip_id=24900, accessed 10/24/18.

hour hearing, there was little time spent investigating individual nominees. Nominees introduced themselves, stated why they wanted to serve, and "questions" from legislators appear to be comments about how wonderful the nominee is. Some nominees phoned in their statement to the committee hearing. In other words, this confirmation process appears to be pro forma.

While the confirmation process is largely pro forma, conflicts can and do arise when there are perceptions by senators that boards or commissions are becoming unbalanced, either by geographical representation of the board or through a lack of industry representation (interview notes, 10/26/18). Unlike other states, many of Oregon's boards and commissions are required by statue to have representation from each of Oregon's major geographical regions and be economically diverse in their membership. Approximately 40 boards have geographical requirements in their organizing statutes (interview notes, 10/26/18). In the case of the Liquor Control Commission, each congressional district must be represented on the board. Most recently, there were objections to three new members the governor had appointed to the State Board of Forestry. Concerns were raised that despite all three members being competent to serve, their addition altered the delicate balance between regions and left the logging industry underrepresented on the board (interview notes, 10/26/18). These concerns were voiced by several senators on the floor prior to confirming the nominees and were reflected in a much closer confirmation vote, 17 to 13 on a straight party vote, than normally experienced for gubernatorial appointments.[2006]

The governor cannot affect agency reorganization or create a new agency by executive order (Council of State Governments, 2017, Table 4-5). Rather, agency reorganization inherently exists in the hands of the legislature due to its budget authority. However, as part of the budget process, there is an agreement between the LFO and CFO that proposed internal agency reorganizations will be reviewed by both agencies. If there is a disagreement, the agency up for discussion, or the executive branch itself, can introduce a bill through the budget process requesting reorganization. The legislature can decide whether to pass the bill or not. The legislature can reorganize agencies or create them through the budget or additional legislation. These are then subject to gubernatorial approval.[2007]

The governor has neither constitutional nor statutory authority to enact executive orders. Rather, such authority is only implied. During 2018, Gov. Brown issued 26 executive orders. All but four of these dealt with wildfires, droughts, algae blooms, and other public emergencies. These sorts of executive orders typify the conditions under which speed and a streamlined process are valued over checks and balances. The governor of Oregon can also use executive orders to make policy, albeit infrequently.

One of Gov. Brown's four non-emergency related executive orders, No. 18-05, rescinded a previous order from 2016 that triggered legislative action and an audit of state agencies' response to public records requests. This order is part of a multi-year policy making effort that combined gubernatorial actions (executive orders), legislative action (bills passed), independent executive branch actors (the attorney general and the secretary of state), and the Department of Administrative Services. The timeline in the executive order clarifies the collaboration between branches of government that occurred through the vehicle of a SOSAD audit. This audit, which was mentioned earlier in the section on Oversight Through Analytic Bureaucracies, was initiated through Senate Bill 9 of 2015. The audit reported on state agencies' responses to public records

[2006] http://oregon.granicus.com/MediaPlayer.php?clip_id=0e6adb51-bb57-475d-b8f9-2cfbc5b6584e&meta_id=0c4c409c-dbc3-4da8-8577-25d76f39d4b8, accessed 10/28/18.
[2007] LFO staff email, received 6/12/18.

requests. As a result of an audit finding that showed that although state agencies handled routine requests well, they struggled to fulfill complex public records requests, Gov. Brown issued a prior executive order, No. 16-06, which ordered the Oregon Department of Administrative Services (DAS) to implement the audit recommendations. This demonstrates the process described in the section on Oversight Through Analytic Bureaucracies in which we described the multi-agency involvement in Oregon's audit process. The executive branch, through DAS, follows up on agencies to ensure compliance with audit recommendations. To carry out the audit findings, the legislature passed a series of four bills that created a public records advocate on the state archives staff, created a committee to review exemptions to public records availability, and set deadlines for providing records requested. The bills passed in 2017 in response to the audit constitute, in the governor's words, "the most significant public records reform since the public records law passed in 1973."[2008] The media confirmed her assessment.[2009]

As the timeline in Executive Order 18-05 demonstrates, the audit process involves a multi-branch coordinated effort that, in this case, culminated with gubernatorial action. Although this is an example of policy making through executive orders, it is not a unilateral process that occurred under the radar, as we found in some states, especially Ohio. The legislature was closely involved at all steps in this reform effort. While the lack of oversight opportunities for the legislature is not problematic currently with a Democratic trifecta in Oregon, it is plausible that the absence of legislative oversight of executive orders could become a problem under divided government.

Oversight Through Monitoring of State Contracts

The executive branch, or the governor's office, administers contracts through the Department of Administrative Service. According to Administrative rule 137-45-010, no legislative oversight is required for governing contracts. The attorney general's office provides additional oversight within the executive branch by reviewing contracts that require "legal sufficiency approval."[2010]

Oversight Through Automatic Mechanisms

Automatic oversight mechanisms are used on a discretionary basis in Oregon, according to the Council of State Governments (2016, Table 3-27), particularly as it relates to sunset legislation. The state has what Baugus and Bose (2015) describe as discretionary sunset provisions. This means that the state can choose which agencies and statutes to review or which bills will include a sunset clause. In the Summary of Legislation 2018, a search for the word "sunset" revealed only about five instances in which the word was included in legislation out of

[2008] https://www.oregon.gov/gov/Documents/executive_orders/eo_18-05.pdf, accessed 10/25/18
[2009] https://www.oregonlive.com/politics/index.ssf/2017/07/oregon_adopts_public_records_r.html, accessed 10/25/18.
[2010] https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=8W-cvMO7LP2AaBPPfVcUj5F4oI90By2EUEqTvmIFBGmCs6n2vm72!-924259904?selectedDivision=296, accessed 6/26/18

the hundreds of bills described in this 165-page report.[2011] Therefore, although the legislature could include sunset provisions in legislation, it appears that they do so very rarely. The legislature in 2018 introduced a bill to establish a sunset review task force, but the bill died in committee. An audit conducted when Gov. Brown was the secretary of state recommended more oversight of boards and commissions. It is, therefore, possible that Oregon will create a more systematic review of government entities at some point in the future. But at this point, it is among the states that rarely use sunset review.

Methods and Limitations

Oregon's legislature provides archival recordings of its committee hearings that are easy to access for its webpage. We contacted three people to ask for interviews, but were able to interview only one of them.

2011

https://www.oregonlegislature.gov/lpro/summleg/2018%20Summary%20of%20Legislation%20Combined%204-24-18.pdf, accessed 10/25/18.

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Council of State Governments, The (2016). *The Book of States*. Table 3.27 Summary of sunset legislation [PDF document]. Retrieved from http://knowledgecenter.csg.org/kc/system/files/3.27%202016.pdf

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Council of State Governments, The (2017). *The Book of the States.* Table 4.5 Gubernatorial executive orders[PDF document]. Retrieved from http://knowledgecenter.csg.org/kc/system/files/4.5.2017.pdf

Council of State Government, The (2017). *The Book of the States*. Table 4.10 Gubernatorial methods of selection & appointment [PDF document]. Retrieved from http://knowledgecenter.csg.org/kc/system/files/4.10.2017.pdf

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Legislative Oversight in Pennsylvania

Capacity and Usage Assessment

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

Summary Assessment

Overall, Pennsylvania is a fairly strong example of effective legislative oversight of the executive branch. The Pennsylvania legislature possesses considerable institutional capacity to engage in oversight of a fairly powerful executive branch. Moreover, there is evidence that legislators make effective use of the tools they possess. Committee hearings and testimony appear to be fairly lengthy and substantial. Some sunset reviews result in regulatory changes. Even though Pennsylvania's auditor general is an elected executive branch official, the auditor appears to work collaboratively with legislative committees to enable meaningful oversight of executive agencies, boards, and committees.

Major Strengths

The Pennsylvania General Assembly has outstanding staff resources that appear to provide valuable information and support for the work of the Appropriations Committees and the standing committees. Committees meet frequently and legislators appear well prepared to pose tough questions about state agency performance and the work of other public entities under their jurisdiction. Sunset reviews do not seem to be merely pro forma and routinized. Instead, debate and discussion can lead to legislative changes. The legislature structures its oversight committee so that its partisan composition is balanced. This ensures that the minority party in the legislature can raise concerns and participate in oversight. The legislature appears to take its advice and consent responsibilities seriously with respect to gubernatorial appointees.

Challenges

Pennsylvania's legislature has ceded its rule review authority to an outside commission with the potential to let the governor's appointee to that commission act as the deciding vote on administrative rules. This risk could be high during periods of divided government. This would seem to undermine the purpose of legislative oversight of the executive branch. Despite the

current collaborative relationship between the legislature and the state auditor, the auditor officially does not need to work with the legislature. Depending on the partisan politics at play, one can imagine less cooperative relationships. Therefore, the legislature might benefit from having its own audit agency.

Relevant Institutional Characteristics

Pennsylvania's legislature, which has 203 house members and 50 senators, is considered to be among the most professional in the nation, with Squire (2017) ranking it at 4th place in the country. Legislators in Pennsylvania work the equivalent of a full-time job, with ample compensation of approximately $86,000 a year[2012] and sizeable staffs of roughly 2,350 during session.[2013] This staff includes personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies like the Independent Fiscal Office, the Legislative Reference Bureau, and the Legislative Data Processing Center. House members serve two-year terms, while senators serve four year terms. There are no term limits for legislators.

The Pennsylvania legislature also enjoys an unlimited session length, which essentially affords legislators the ability to convene year-round.[2014] The Pennsylvania legislature may also hold special sessions, sometimes known as extraordinary sessions, which may be called by the governor or the legislature "upon petition of a majority of the members elected to each house."[2015] Given the legislature's unlimited session length, however, special sessions rarely occur. Since 2007, the legislature has only convened for one special session, which occurred during the 2009-2010 fiscal year.[2016]

According to Ferguson (2015), Pennsylvania's governor is the 11th most powerful in the country. Haider-Markel (2009) notes that the governor has "considerable formal and informal powers," including line-item veto power for any bill containing spending authorizations. However, line-item vetoes can be overridden by the legislature with a two-thirds vote in both houses. Moreover, the governor "has the authority to not spend funds authorized by the legislature, and the decision to freeze spending is not subject to an override" (Haider-Markel, 2009). The independently elected executive offices of auditor general and treasurer were created in 1968 as a means of checking the power of the governor, and the attorney general's office was similarly converted into an elected office through a constitutional amendment in 1978 (Haider-Markel, 2009).

Only 9.6% of Pennsylvania's workforce is employed in state or local government (Edwards, 2006). Well below the national average, only Rhode Island and Nevada have lower percentages. 5.3% of Pennsylvanians work in K-12 education, a much smaller proportion of than the national average of 6.1%. The proportion of Pennsylvanians working in other sectors of state and local government employment, such as safety, welfare, services, are much closer to the national proportions.

[2012] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 05/23/18.
[2013] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 05/23/18.
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[2015] http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx, accessed 05/23/18.
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Political Context

Over the last 50 years, neither legislative chamber was dominated by the Democratic Party. From 1978-1992, party control over the legislature was split. However, since 1994, the Republican Party has enjoyed control of both chambers, with the exception of 2008-2012, when legislative control was again split.[2017]

Although legislative control has tended to favor the Republicans over the last 50 years, the same cannot be said about the governorship, which has alternated between the Republican and Democratic parties roughly every five to 10 years since 1979. While the Democratic governors have not enjoyed a trifecta at any time in the last 50 years, Republican governors have done so several times: from 1995-2003 and again from 2011-2015.[2018] Recent budget battles between the current Democratic governor and the Republican-dominated legislature have highlighted the consequences of partisan politics in Pennsylvania. Yet, recent evidence suggests that both chambers of the Pennsylvania legislature are not that polarized along party lines (Shor and McCarty, 2015). Pennsylvania's house has been ranked as the 32nd most polarized lower legislative chamber, while Pennsylvania's Senate has been ranked as the 31st most polarized upper chamber, based on differences between median roll call votes for each party in each chamber.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Pennsylvania has an elected auditor general, who can serve up to two four-year terms. The Pennsylvania Department of the Auditor General (PDAG) is responsible for ensuring that state money is spent legally and properly. To do this, PDAG conducts three types of audits: financial audits, performance audits, and attestation engagements.[2019] The PDAG audits a wide array of state and local entities, including school districts, district courts, universities, municipal pension plans and volunteer firefighters' relief associations, as well as state programs and state-owned facilities. The Pennsylvania Department of the Auditor General consists of 29 audit managers, 45 audit supervisors, 70 upper-level auditors, 199 mid-level auditors, 12 entry-level auditors, six IT auditors, 16 other audit staff, two non-audit professional staff, and 95 support staff for a total of 474 staff (NASACT, 2015). The DPAG personnel and operational expenses for 2017-18 totaled $51.2 million.[2020] Over the course of 2017, the Auditor General produced approximately 2,446 audit reports and 14 performance audit reports.

Many of these audits are mandated by law, but the PDAG also conducts audits at the request of the governor and at the discretion of the auditor general. Despite the fact that the state legislature lacks formal authority to request audits (NASACT, 2015), evidence from committee hearings indicates that the auditor general works collaboratively with the legislature. Transcripts of committee hearings also show that audits do sometimes result in legislative action. For

[2017] http://www.ncsl.org/documents/statevote/legiscontrol_2002_2014.pdf, accessed 05/25/18.
[2018] https://www.nga.org/cms/FormerGovBios, accessed 05/25/18.
[2019] http://www.paauditor.gov/about-the-department, accessed 05/25/18.
[2020] https://www.paauditor.gov/department-expenses-2017-2018, accessed 10/15/18.

example, during a hearing at which the auditor general was giving testimony about underfunded municipal pensions, a longstanding problem in the state,[2021] one committee member noted that he had introduced a bill during the previous legislative session that was intended "to address the issues of the municipal pension plan under-funding and plan management." Although the committee member lamented that the bill "didn't gain any traction," it does indicate a relationship between the activities of the auditor general and those of legislative committees.

Pennsylvania's legislature has an analytic support bureaucracy attached to the Legislative Budget and Finance Committee (LBFC), a joint legislative committee. The Legislative Budget and Finance Committee (LBFC) is a bipartisan, bicameral committee that receives its authority from Act 195 of 1959, as amended, 46 P.S. §70.1-70.6, which grants them the power to "conduct studies and make recommendations aimed at eliminating unnecessary expenditures, promote economy in the government of the Commonwealth, and assure that state funds are being expended in accordance with legislative intent and law." Committee members consist of six senators and six representatives drawn equally from the two major political parties, including the top caucus leaders from each political party for each chamber. The LBFC staff is headed by an executive director, who is appointed by the legislators serving on the committee. At the end of 2017, the executive director managed a staff of 11.[2022]

The LBFC is authorized to "conduct a wide range of research activities pertaining to the operation and performance of state-funded programs and agencies."[2023] The targets of audits and evaluations are dictated by legislative acts and resolutions, and over the last decade or so, the Legislative Budget and Finance Committee produced roughly 10 financial audits and program evaluations per year. The committee is also charged with sunset review—recommending to the legislature programs and expenses that are no longer necessary. Its reports are distributed to the legislature, to the governor, and to the auditor general. The target of recommendations can be either legislature (recommended statutory changes) or the agency (recommended changes to administrative procedures). Although these recommendations are advisory only, sources within the state report that they do result in statutory or administrative changes, and it is difficult to keep track of these impacts because it may take a while for the changes to occur (interview notes, 2018). No official count or tracking of recommendations is available, however. In both 2017[2024] and 2018,[2025] the National Legislative Program Evaluation Society awarded certificates recognizing state agencies for "documenting public policy impact within their respective states." The LBCF was one of 26 offices to receive recognition in 2017 and one of 27 offices to receive the recognition in 2018.

LBCF staff regularly makes presentations to the committee. For example, in February of 2017, the executive director made two presentations: one investigation of overtime in the Department of Corrections and one performance audit of a state-funded legal aid program. The latter was a mandatory review to determine if the program was still needed—a sunset review. In March, she made two more presentations, both about state agencies. There were no presentations made in April, but in May she made three presentations: "Commonwealth Board and

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2021 http://www.paauditor.gov/Media/Default/Reports/Updated%20Municipal%20pension%20special%20report_011420 15_FINAL.pdf, accessed 06/06/18.

2022 http://lbfc.legis.state.pa.us/Staff.cfm, accessed 10/15/18.

2023 http://lbfc.legis.state.pa.us/About.cfm, accessed 05/25/18.

2024 http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESImpactWinners2017.pdf, accessed 10/10/18.

2025 http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESawards-ReportsRecognized2018_30717.pdf, accessed 10/10/18.

Commission Member Compensation and Expenses," "Public Charter School Fiscal Impacts on School Districts," "The Impact of Tavern Gaming on the Pennsylvania State Lottery." Only one presentation occurred in June: "PA's Program for Beneficial Use of Biosolids." The next two 2017 presentations did not occur until October, and those were the final presentations. This demonstrates that the LBCF staff analyzes a wide range of programs that vary by level of government (i.e. local and state) and by topic, including public safety, environment, and education. Given the small size of this staff (11 members plus the executive director), this is an impressive number of reports and presentations.

Finally, the Pennsylvania legislature benefits from the work of a nonpartisan Independent Fiscal Office, created in 2010 by Act 120. Its mission is to perform fiscal analysis, provide revenue projections, and to analyze economic and budget issues for the legislature and the citizens of Pennsylvania. It works collaboratively with both the legislative and executive branches. It has a staff of nine and produces information that assists with budget decisions, such as a report on Pennsylvania Natural Gas Royalties and bi-monthly Pension Actuarial Notes.

Oversight Through the Appropriations Process

The budget process in Pennsylvania begins in August, when budget guidelines are issued to agencies who submit budget requests by October. By the beginning of February, the governor prepares an official budget, which is then submitted to the legislature for review. According to a document by the Office of the Budget outlining Pennsylvania's budget process, committee members question department representatives and request additional information or clarification. At the conclusion of these hearings, a general appropriation bill is introduced in the general assembly for discussion and debate."[2026] The legislature is assisted during the budget process by the nonpartisan Independent Fiscal Office, which "provides revenue projections for use in the state budget process along with impartial and timely analysis of fiscal, economic, and budgetary issues."[2027]

Transcripts of public hearings held by the House Appropriations Committee are available at the legislature's website.[2028] In 2017, the House Appropriations Committee held a total of 30 meetings, the majority of which occurred in February and March and consisted of budget presentations by various executive agencies. Transcripts for these meetings reveals that members of the House Appropriations Committee often questioned individuals from agencies thoroughly and asked them specific questions regarding the activities of the agency. For example, transcripts from a meeting held on February 23, 2017, during which the auditor general gave testimony, suggest that members of the House Appropriations Committee closely reviewed reports produced by the auditor general and were able to pose meaningful questions about audits. Legislators inquired about numerous issues, including municipal pension funding, charter and public school performance and funding, health benefit insurance plan finance, and auditing fraud and abuse.

[2026] http://www.budget.pa.gov/PublicationsAndReports/Documents/OtherPublications/Budget%20Process%20In%20PA%20-%20Web.pdf, accessed 05/25/18.

[2027] http://www.ifo.state.pa.us/about.cfm, accessed 06/05/18.

[2028] http://www.legis.state.pa.us/cfdocs/cteeInfo/index.cfm?Code=4&CteeBody=H, accessed 05/25/18.

Additionally, committee members inquired about the PDAG's use of funding for technology upgrades, which had previously been requested by the auditor and approved by the committee. In addition to making upgrades to the department's website and implementing new secure WiFi infrastructure, the funding made it possible for audit staff to work remotely. During the hearings, the auditor argued that this made his department more efficient, since they were able to close several branch offices throughout the state and thereby reduce the size of the state's automobile fleet. While legislators voiced concerns that employees working from home might not actually be working while on the clock, the auditor replied that employees were required to check-in and verify their time worked. He also pointed out that since the new system was implemented, the department's output had increased by 33%, which seemed to satisfy members of the committee that the IT appropriations were justified.

Transcripts also exist for House Appropriations Committee hearings regarding the governor's budget proposal. These transcripts indicate that the committee is actively exploring ways to increase its ability to exercise oversight of executive branch agencies. One example is to require people giving testimony to provide answers to questions in a timely manner, which had not always been the case previously. As the committee chair noted, "[i]n the past [people] have answered that they don't know on some questions that members have asked and that they will get back to the Committee. Sometimes, those answers have taken weeks, months to get back to our committee on the answers to questions . . . So in the interest of transparency, I reserve the right to recall testifiers and/or the budget secretary to appear before this committee within 48 hours to respond to these questions."[2029]

With respect to the use of checks and balances between the legislative and executive branches, governors exercise their authority to freeze spending as a tool to influence the appropriations process. For example, in 2012, former-Gov. Tom Corbett froze $156 million dollars in response to budget shortfalls.[2030] In 2016, Gov. Tom Wolf froze personnel spending in state agencies to address major gaps in the budget.[2031]

This tactic, however, does not always work. In August 2017, Gov. Wolf again threatened to freeze spending in the state if the legislature was unable to pass a balanced budget in the face of a $2.2 billion budget deficit.[2032] He used this threat to persuade Republicans in the house to agree to certain tax increases passed by the senate. By early October he was forced to "raise $1.2 billion in cash by borrowing against future anticipated payments from the Pennsylvania Liquor Control Board" in order to maintain government services. The possibility was also left open for future spending freezes.[2033] Ultimately, "after months of stalemate pitting [Governor] Wolf, Senate Republican leaders and Democratic lawmakers against the House Republican majority's huge conservative bloc," the legislature did pass what was described as "Frankenstein-like" budget "that flew through the Legislature."[2034] Faced with the prospect of continuing budget

[2029] http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0003T.pdf, accessed 06/05/18.
[2030] https://www.pennbpc.org/governor-announces-157-million-budget-freeze, accessed 06/05/18.
[2031] http://www.pennlive.com/politics/index.ssf/2016/12/wolf_administration_freezes_pe.html, accessed 06/05/18.
[2032] http://www.witf.org/state-house-sound-bites/2017/08/wolf-planning-for-spending-freeze-if-budget-isnt-passed.php, accessed 06/04/18.
[2033] http://www.pennlive.com/politics/index.ssf/2017/10/gov_tom_wolf_angry_about_budge.html, accessed 06/05/18.
[2034] https://www.nbcphiladelphia.com/news/local/Tom-Wolf-Pennsylvania-Budget-453856263.html, accessed 06/05/18.

battles or a government shutdown, the governor signed the appropriations bill without the tax increases that he and other Democrats wanted.[2035]

Oversight Through Committees

The rules of the Pennsylvania House of Representatives and of the senate outline the oversight authority of committees. The House rules state that "each standing committee or subcommittee shall exercise continuous watchfulness of the executive of administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee or subcommittee."[2036] Standing committees, subcommittees, and select committees also have the authority to conduct public hearings, and in the case of an investigation, have the power to issue subpoenas. The Senate rules state that standing committees must "review the work of agencies concerned with their subject areas and the performance of the functions of government within each subject area, and for this purpose to request reports from time to time."[2037] Furthermore, each standing committee is empowered to inspect and investigate any public agency. Like House committees, Senate standing committees have may hold public hearings and issue subpoenas.

Although these committees do not hold oversight hearings as often as the House Appropriations Committee does, recordings[2038] indicate that the oversight conducted by these committees is often rigorous. One standing committee that meets regularly is the House State Government Committee,[2039] which currently has transcripts available for eight meetings in 2017-18. During these meetings, the committee typically considered testimony related to a variety of issues, such as giving full police powers to sheriffs and deputy sheriffs and concerns about regulatory overreach by the Susquehanna River Basin Commission (SRBC). Moreover this committee considers general issues regarding state government regulations, procedures to improve oversight, and ways relieve regulatory burdens.

These House State Government Committee hearings tended to be lengthy and involved committee members posing specific, oversight-related questions to individuals from agencies. For example, transcripts from a committee meeting about regulatory overreach by the Susquehanna River Basin Commission (SRBC) demonstrate that legislators on this committee actively exercise oversight of agencies and commissions under their purview. Regarding the SRBC, for example, one member of the committee noted that when the commission was formed in 1970, "there was no legislative oversight built in whatsoever." This lack of monitoring subsequently resulted in substantial overreach by the SRBC, causing serious problems for municipalities that were suddenly being charged exorbitant fees for decades-old wells under the commission's regulatory control. According to the transcripts, when the House State Government Committee began to look into the SRBC's activities, "What we found literally made the hair stand up on the back of my neck."[2040] After a meeting with the SRBC, which was intended to shed light on the issues that were uncovered, one committee member decried "the

[2035] https://www.reuters.com/article/us-pennsylvania-budget/pennsylvania-governor-signs-revenue-bills-to-wrap-up-stalled-budget-idUSKBN1CZ2PN, accessed 06/05/18.
[2036] http://www.house.state.pa.us/rules/2017HouRules.pdf, accessed 05/29/18.
[2037] http://www.pasen.gov/rules/2017SenRules.pdf, accessed 05/29/18.
[2038] Transcripts of these hearings are available at http://www.legis.state.pa.us/. Accessed 05/30/18.
[2039] http://www.legis.state.pa.us/cfdocs/cteeInfo/index.cfm?Code=36&CteeBody=H, accessed 05/29/18.
[2040] http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0064T.pdf, accessed 05/30/18.

arrogance of this commission and how most of what we had to say was shrugged off." After local news reports[2041] about the meeting were aired, "calls and emails started to roll in from all over the Susquehanna Valley . . . to complain about the overreach and abuse of the SRBC." At that point, the decision was made to hold official hearings about the commission's activities. Legislators called for a full audit of the commission by the PDAG to determine what it was doing with the money.[2042]

These examples demonstrate that standing committees in the Pennsylvania legislature often exercise meaningful oversight of executive agencies, boards, and commissions. Additionally, these committees collaborate with an elected auditor general to ensure that these government entities are functioning as intended.

Oversight Through the Administrative Rules Process

Pennsylvania has a two-track administrative rule review process, in which the Independent Regulatory Review Commission (IRRC) plays a central role. The IRRC is an independent commission established through the Regulatory Review Act of 1982 to "review Commonwealth agency regulations . . . to ensure that they are in the public interest."[2043] The IRRC consists[2044] of five commissioners and a staff of 10. The following officials each appoint one commissioner: governor, president pro tempore of the senate, the minority leader of the senate, the speaker of the house, and the minority leader of the house.[2045] Commissioners may not be state employees or hold a concurrent elected or appointed position in state government.[2046] This structure has raised constitutional issues, and despite the word independent in its name, some critics note that the commission is lobbied heavily by special interests (Schwartz, 2010).

When an agency wishes to propose a new rule or amend an old one, it must deliver the proposal to the IRRC to pertinent legislative committees and to the Legislative Reference Bureau, after which there is a minimum 30-day public comment period. Next, both the IRRC and legislators have time to comment on the proposed rule. The IRRC has 30 days to comment on the rule, and legislative committees can issue comments at any time before the final version of the rule is submitted.

After the IRRC returns its verdict on the original version of the proposed rule, agencies can make amendments and submit a response within two years for further inspection. At this point, the IRRC can review the amended rule and either approve or disapprove it, either with or without approval by the pertinent legislative standing committee. Annual reports of the IRRC's activities are available on its website.

In 2017, the IRRC reviewed 53 regulations, including 31 proposed and 22 final regulations. Of these 75 regulations, three were disapproved. The commission received more than 230 public comments on pending regulations, and 32 members of the house and senate

[2041] http://wjactv.com/news/local/susquehanna-river-basin-commission-under-fire-over-fees, accessed 05/30/18.
[2042] http://www.abc27.com/news/fiscal-watchdog-to-audit-delaware-susquehanna-river-basin-commissions_20180327041025143/1081488729, accessed 05/30/18.
[2043] http://www.irrc.state.pa.us/contact/what_is_irrc.cfm, accessed 05/30/18.
[2044] http://www.irrc.state.pa.us/commission/, accessed 10/12/18.
[2045] http://www.irrc.state.pa.us/contact/faqs.cfm, accessed 10/12/18.
[2046] Ibid.

submitted comments on these regulations, while standing committees submitted formal comments on only one proposed rule. The annual report also indicates that the commission issued comments 34 times, did not issue comments five times, has yet to issue comments twice, and was unable to issue comments due to a rule withdrawal or other reason 10 times. In 2017, there were 23 finalized regulations, and all but five received comments. We are told by sources close to the issue that legislative comments are typically adopted in the IRRC's comments, and agencies do make a good faith effort to consider the IRRC's comments (interview notes, 2018).

The IRRC also has the power to review existing regulations that have been in effect for at least three years. These reviews "may be undertaken either at IRRC's own initiative or at the request of any person or member of the general assembly." Moreover, "[i]f a Committee requests the review, IRRC must assign it a high priority."[2047] In reviewing existing rules, IRRC only plays an "advisory role" insofar as it can only recommend that an agency change the rule or recommend that the general assembly make statutory amendments.

IRRC staff appears to be instrumental to the rule review process. Schwartz (2010) reports that they tour "farms, mines, industries, and other parties effected by Pennsylvania's regulations" to increase their knowledge of the impact of rules and regulations under review (348). IRRC staff also meets with state agencies and tries to educate the public and government officials about rules and rule review criteria.

Legislators often transmit public comments to agencies proposing rules and, even though the legislature has little power to reject a rule, agencies appear to be sensitive to legislators' concerns (interview notes, 2018). It appears that final rules are often altered to resolve these concerns. The IRRC also appears to be sensitive to concerns expressed by the public (interview notes, 2018). This information is reinforced by descriptions of rules governing the sale of raw milk and of hypodermic needles described by Schwartz (2010).

Although the legislature has delegated part of its rule review authority to the IRRC, it appears to play an informal role in the review process. Moreover, the IRRC, especially its staff, appear to be highly engaged in understanding the impact of rules on various groups of citizens and types of businesses in the state. The IRRC webpage and annual report provide abundant information about rules, comments, and the final vote—a level of transparency that is noteworthy compared to other states' rule review processes. The IRRC's process is not, however, legislative oversight of the executive. And one can easily image scenarios in which governor's appointee casts the deciding vote over and over. This would in effect provide a gubernatorial veto over legislative oversight of administrative rules. The most valuable feature of this system appears to be a large staff of 10 professionals dedicated to rule review. This is something that could easily be recommended as a best practice to other legislatures.

Oversight Through Advice and Consent

According to Senate Rule 28, all gubernatorial nominations are referred to the Committee on Rules and Executive Nominations. Nominees are also referred to a pertinent standing committee "for the purpose of holding a public hearing to scrutinize the qualifications of nominees and to report its recommendations."[2048] Interviewees report that the process involves

[2047] https://senate.texas.gov/cmtes/82/c510/0410BI-PIRRC-Process.pdf, accessed 05/31/18.
[2048] http://www.pasen.gov/rules/2017SenRules.pdf, accessed 05/31/18.

three stages. The relevant standing committee receives the nominee's paperwork and that committee interviews and questions the nominee at a public hearing. Next, the committee votes on whether to approve the nominee. Lastly, nominations approved by the committees receive a confirmation vote on the senate floor (interview notes, 2018). According to the state constitution, all nominations must be acted upon within 25 legislative days of submission, and if the Senate does not act within the specified time, the nominee takes office (Constitution of Pennsylvania § 8). Rejection of gubernatorial nominees does not appear to be very common. A review of Senate votes on appointments during the 2017-18 legislative session shows that the majority of votes on executive nominations are nearly unanimously in favor of confirming nominees. The senate does its due diligence, and two committee staff work on reviewing appointments (interview notes, 2018). Senators try to work out any differences with the governor before the nomination gets to a vote (interview notes, 2018).

Pennsylvania's governor has constitutional and statutory power to issue executive orders. There are no provisions for formal legislative review of such orders. The governor does not have the power to reorganize the government through executive orders. In the past, this has meant that proposals, such as one to merge the state's Department of Health and the Department of Human Services into a combined Department of Health and Human Services have been successfully opposed by the legislature.[2049] In that case, the reorganization was touted as a cost-cutting measure[2050] that would not result in cuts to services.[2051] However, legislators expressed numerous reservations about the proposal: "At a state Senate hearing . . . some legislators questioned whether such a large agency would deliver better services, or if certain issues—particularly the concerns of senior citizens and those facing addiction—would become lost in a mega-bureaucracy."[2052] Ultimately, while legislators signaled a willingness to consider the merger, their misgivings were enough for the plan to fail to make it through budget negotiations in 2017.[2053] In 2018, however, the governor again declared his intention to try to convince the general assembly to approve the merger.[2054] These kinds of negotiations suggest that a fair degree of oversight is exercised by the legislature in matters of government reorganization.

Oversight Through Monitoring of State Contracts

Pennsylvania's legislature does little to no oversight of state contracts either by hearing or through audits (interview notes, 2018). The Bureau of Procurement of the Department of General Services is responsible for the administration of contracts. The state's Procurement Handbook also notes that "the using agency's comptroller shall review and approve all

[2049] http://www.pennlive.com/politics/index.ssf/2017/01/wolf_administration_announces.html, accessed 06/01/18.
[2050] http://www.post-gazette.com/news/state/2017/02/08/New-PA-Department-of-Health-and-Human-Services-would-have-90-million-savings-officials-project/stories/201702080031, accessed 06/01/18.
[2051] http://www.post-gazette.com/news/politics-state/2017/01/30/Pennsylvania-Governor-Tom-Wolf-says-merger-of-four-health-departments-won-t-bring-cuts-in-service/stories/201701300137, accessed 06/01/18.
[2052] http://www.post-gazette.com/news/state/2017/03/30/Pa-health-human-services-merger-tom-wolf-proposal/stories/201703300065, accessed 06/01/18.
[2053] http://www.pennlive.com/news/2017/10/health_human_services_merger.html, accessed 06/01/18.
[2054] http://www.post-gazette.com/news/state/2018/02/05/PA-Gov-Tom-Wolf-Health-Human-Services-merger/stories/201802040073, accessed 06/01/18.

contracts for services for that using agency . . ."[2055] There are three criteria for reviewing contracts: fiscal responsibility, budgetary appropriateness, and availability of funds. It does not appear that there is any system in Pennsylvania that routinely determines the quality or at least adequacy of services delivered by contracts for services such as juvenile justice facilities run by private contractors.

Oversight Through Automatic Mechanisms

Pennsylvania is classified as having a regulatory sunset regime, meaning that the state allows its legislature to review only licensing and regulatory boards (Baugus and Bose, 2015). At times the sunset process can become contentious. A recent example is the upcoming sunset of a $2-per-ton fee on waste that helped to fund recycling programs in the state. While the law itself is not up for review, the fee is set to expire in 2020, leaving municipalities with the responsibility of funding recycling from other sources. Certain legislators, however, see the fee sunset as an opportunity to revisit the entire recycling law, which is opposed by many stakeholders.

According to the executive director of the state's Independent Waste Hauler's Association, "if they open it up, it's going to be a nightmare. So many people will want to do so many different things. There's [sic] many things that could be changed. We know for a fact there are things that should be changed in there, but we know how things go in government. God knows what will happen if they do open it up." [2056] According to the original drafter of the law, the fee is essential to the existence of the law. Some analysts therefore argue that the fee should simply be renewed, while others suggest that it should be made permanent and increased to account for inflation.

These were some of the viewpoints that were represented when the Joint Legislative Conservation Committee held hearings about the potential fee repeal. Among other stakeholders and agency representatives, the Deputy Secretary of the Department of Environmental Protection gave testimony, arguing that the sunset provisions for the fee should be abolished.[2057] In the end, these hearings resulted in an amendment to the original law that repealed the sunset clauses and made the existing fee permanent.[2058]

[2055] http://www.dgs.pa.gov/State%20Government/Materials-and-Services-Procurement/Procurement-Handbook/Pages/default.aspx#part1, accessed 06/01/18.

[2056] http://triblive.com/local/valleynewsdispatch/11968800-74/as-pennsylvanias-recycling-mandate-nears-expiration-state-eyes-overhaul, accessed 06/04/18.

[2057] http://jcc.legis.state.pa.us/resources/ftp/documents/Reports/Transcript%20%20Act%20101%20of%201988%20(6- 13-17).pdf, accessed 06/04/18.

[2058] http://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1988&sessInd=0&smthLwInd=0&act=101&chpt=7&sctn=1&subsctn=0, accessed 06/04/18.

Methods and Limitations

Pennsylvania is among the states with the lowest levels of archival recordings for its state legislature.[2059] Therefore, it is difficult for us to be confident of our assessment of the quality of oversight in Pennsylvania. Of the nine people we contacted for interviews, we were able to conduct interviews with four people.

[2059] http://www.ncsl.org/research/telecommunications-and-information-technology/legislative-webcasts-and-broadcasts.aspx, accessed 1/10/19

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Legislative Oversight in Rhode Island

Capacity and Usage Assessment

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

Summary Assessment

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

Major Strengths

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

Challenges

The Rhode Island Legislature faces a number of obstacles to strong oversight: it is understaffed, plays no role in developing administrative rules, and has little evident influence over state contracts. Although agency financial reports are submitted to the various fiscal committees in the legislature, they are not always reviewed. Despite the fact that the legislature coordinates the activities of the auditor general, very few audits of any kind are produced. Finally, in the absence of any kind of sunset regulations, there is little or no continuing review of regulations, boards, commission, or other statutory agencies. The Rhode Island Legislature's website, moreover, makes assessing the activities of committees and commissions quite difficult.

Relevant Institutional Characteristics

Rhode Island, the country's smallest state, has a part-time legislature combined with an extremely weak governor and a very small bureaucracy per capita. Rhode Island's legislature is classified as a "part-time LITE" legislature by the NCSL,[2060] yet Squire (2017) ranks it at 28th with respect to professionalism. This reflects the length of the legislative session—approximately six months annually—and the size of the legislative staff. Despite the length of the sessions, legislators receive only $15,630 per year and no per diem.[2061] Staff resources also have declined in the past decade. Currently, there are 250 legislative staff members, all of whom are year-round employees. But as recently as 2009, the Rhode Island Legislature had a staff of approximately 500; nearly half of which were considered "in-session only" staff. Since that time, "in-session only" staff have been eliminated and the total legislative staff has been substantially diminished (NCSL, 2015).[2062] Notably, there are no legislative term limits in Rhode Island,[2063] nor do citizens have the option of public initiatives (Haider-Markel, 2009).

The Governor of Rhode Island is relatively weak and ranked 48th in the country in terms of institutional power (Ferguson, 2013). The governor has no line-item veto power over the budget. But tenure of the governor is limited only to two consecutive quadrennial terms. After sitting out for one term, the governor can run for election again. The governor and lieutenant governor are elected separately, and so they could be from different political parties. Until it passed a constitutional amendment in 2004, the state was noted as an example of legislative supremacy in which legislators chose members of major boards and commissions that implemented policies. Often legislators appointed themselves to these positions, a practice that facilitated political favoritism, patronage, and corruption (West Jr. 2016). As a result of these changes, the governor is responsible for making numerous top-political appointments, but most of these must be confirmed by the general assembly (Beyle & Wall, 2012).[2064]

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

Political Context

Rhode Island's political history, notably the consolidation of power by the Democratic Party since the New Deal era (Haider-Markel, 2009), makes the state solidly liberal. Democrats tend to dominate Rhode Island local politics and have long controlled both chambers of the legislature. Currently, they control 31 of 38 senate seats in the general assembly and 62 of 75 seats in the house. Political pressures from a moderately left-leaning population mean that Rhode Island's Republican Party also tends to be more centrist and moderate than the national party, and Republicans are therefore not infrequently elected to key positions in state-wide elections.

[2060] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 7/17/18.
[2061] https://ballotpedia.org/Rhode_Island_General_Assembly, accessed 7/30/18.
[2062] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx##session, accessed 7/17/18.
[2063] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 7/17/18.
[2064] http://knowledgecenter.csg.org/kc/content/book-states-2012-chapter-4-state-executive-branch, accessed 7/17/18.

According to data from Shor and McCarty (2015), Rhode Island is among the least politically polarized states in the country; both the house and the senate Democrats are moderately liberal, while Republicans are the second least conservative voting in the country. Republicans often form coalitions with moderate Democrats, resulting in a legislature that is notable for its lack of partisan polarization. Indeed, each chamber has the 46th smallest partisan differences within the chambers (Shor & McCarty, 2015).

While the preceding three governors of Rhode Island were Republicans, dividing government for a decade, the office is presently held by a Democrat, making Rhode Island one of a few Democrat-trifecta states. Unfortunately, the historical dominance of the Democratic Party and the prevalence of "machine" politics resulted in an environment in which "insider dealing, patronage, and corruption" became commonplace (Haider-Markel, 2009). Although efforts have been made to make Rhode Island politics more accountable and transparent, corruption remains a problem in its politics (Arsenault & Andersen, 2014; Providence Journal, 2017). Furthermore, legislative oversight, unfortunately, has not played a major role in addressing Rhode Island's corruption issues. Rather, the State of Rhode Island Ethics Commission[2065] is empowered to "draft and enact ethics-related legislation over and above legislation enacted by the state legislature," where proposals to enact certain measures like creating a dedicated anti-corruption unit in the Attorney General's Office have "repeatedly stalled."[2066]

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Office of the Auditor General is a legislative agency established by statute (Rhode Island General Laws Section 22-13) [2067] in 1974 to evaluate existing administrative programs for their financial efficacy, program performance, and statutory compliance. It is tasked with investigating state agencies, as well as municipalities and school districts when appropriate. The auditor general is appointed by the Joint Committee on Legislative Services (JCLS) [2068] (Rhode Island Statutes Ch. 22-13), which is comprised of three house representatives and two senators. The Office of the Auditor General employs a staff of 41, 13 of whom are CPAs.[2069] The auditor general performs financial post audits, performance audits, "agreed upon procedure" audits, fraud audits, and oversees municipalities' financial audits and "fiscal health."

The auditor general seeks approval from the JCLS to perform audits (Rhode Island Statutes Ch. 22-13-4).[2070] In general, few audits of any kind are performed. In 2016, the auditor general performed seven audits and in 2017 they produced eight audits (both including their respective Comprehensive Annual Financial Report).[2071] Two of the 2017 audits were of the state lottery and the state employee retirement plan. These programs, along with the State

[2065] http://www.ethics.ri.gov/, accessed 7/16/18.
[2066] https://www.law.columbia.edu/sites/default/files/capi-data/reports/rhodeisland_2018.pdf, accessed 7/16/18.
[2067] https://law.justia.com/codes/rhode-island/2013/title-22/chapter-22-13, accessed 7/17/18.
[2068] http://www.rilin.state.ri.us/Pages/JCLS.aspx, accessed 7/17/18.
[2069] http://www.oag.ri.gov/about.html, accessed 7/17/18.
[2070] https://law.justia.com/codes/rhode-island/2013/title-22/chapter-22-13, accessed 7/17/18.
[2071] http://www.oag.ri.gov/reports.html, accessed 10/1/18.

Employees' and Electing Teachers OPEB System, are subjected to financial audits on an annual basis. Importantly, the auditor general does not have the independent authority to issue subpoenas to perform their duties. Instead, the auditor general must request that the Joint Committee on Legislative Service issue a subpoena on its behalf (Rhode Island Statutes Ch. 22-13-4).[2072] The JCLS also determines which audits, in addition to the annual single-financial audit, are to be performed. No performance audits appear to have been conducted in recent years.[2073]

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

Oversight Through the Appropriations Process

Since 2012, state expenditures in Rhode Island are capped at 97% of revenues collected (Constitution of Rhode Island, Article IX, Section 16).[2074] Moreover, the governor must present a balanced budget to the legislature, at which time the general assembly "may increase, decrease, alter, or strike out any item in the budget," as long as the balanced budget is maintained. The governor does not have line-item veto power and can only veto the entire budget. This veto is subject to an override by a three-fifths vote of the legislature. Although battles over the budget do happen in Rhode Island, a 2004 law that continues the previous year's budget in the event that a new budget is not passed ensures that government shutdowns do not occur as they do in other states (Mackay, 2017). Partly because of the governor's limited power over the appropriations process, when impasses over the budget are reached, as occurred in 2017, they are often due to infighting between the house and senate leadership, rather than protracted battles with the executive (Towne, 2017).

Rhode Island lacks a robust staffing structure for supporting substantial oversight via appropriations. The Senate Fiscal Office, for example, is staffed by only seven employees, while the House Committee on Finance has nine analysts and a lawyer. These analysts are responsible for assisting in the fiscal evaluation of all of Rhode Island's departments, agencies, and commissions, as well as their nearly 24,000 full and part-time employees. Agencies are required to submit annual revenue reports, but according to an interviewee, the Fiscal Office sometimes does not even review these reports (interview notes, 2018). On the other hand, the Senate Finance Committee holds annual public hearings featuring testimony from agencies. These hearings feature "questions around expenditures and . . . spending, and what [an agency's] future budget is. Sometimes these hearings can be quite heated" (interview notes, 2018). In most cases, agencies are only brought before the committee once annually, although in rare cases, agencies are summoned back to give further testimony if the agency is not satisfied. This occurred twice in 2018.

[2072] https://law.justia.com/codes/rhode-island/2013/title-22/chapter 22-14, accessed 10/2/18.
[2073] http://www.oag.ri.gov/reports.html, accessed 7/17/18.
[2074] http://webserver.rilin.state.ri.us/RiConstitution/C09.html, accessed 7/17/18.

Oversight Through Committees

All senate committees are tasked officially in the Senate Rules with performing oversight functions.[2075] During committee hearings, agency representatives give testimony and take questions from legislators. During a May 2018 meeting of the Senate Committee on Rules, Government Ethics, and Oversight on the Rhode Island Department of Labor and Training programs called Real Jobs and also Real Pathways, the acting chair noted that "[the] policy staff is going to want [witnesses] to hit on as much data as possible."[2076] She went on to say that, "what we're interested in . . . is just making sure that the message gets out there as to what you're doing, how you're doing it, and how you're helping Rhode Islanders." The director mentioned providing the committee with performance indicators. The chair stated that the committee already knew that the program is successful but wanted to make sure that others learn about the positive programs. Questions asked by legislators were "how" and "what" questions rather than "why" questions. The tenor of the hearing can best be described as friendly and supportive.

Similar to the senate, House Rules determine the authority of various house committees, including the House Oversight Committee, formally known as the Separation of Powers and Oversight Committee. According to Speaker Gordon Fox, "The function of the Oversight Committee is to review the operations and efficiency of various state agencies and fulfilling the legislature's oversight role following implementation of separation of powers." As of 2017, the committee consists of 12 Democrats (including the chair), one Republican, and one third-party member.[2077] Video archives reveal that in 2017, the committee held 14 meetings. They also listen to presentations of audit reports by the auditor general, such as on May 3, 2018.[2078]

Vignette: UHIP/RIBridges and the House Committee on Oversight

The Oversight Committee members engage in in-depth questioning and critique of executive agencies. For instance, the chair criticized the Department of Health and Human Services for contracting with Automated Health Systems (the call center for UHIP), as the CEO of the company is under investigation for tax fraud. UHIP (Unified Health Infrastructure Project, also known as RIBridges), built by the company Deloitte, was intended to distribute "Medicaid, food stamps, and child care assistance for . . . Rhode Islanders." But after launch, the computer system was reported by users for "missing benefits [and long] call wait times" for the Department of Human Services. The agency was aware of the investigation and kept checks on their contract, although was still criticized for not disclosing this information to the public and the legislature sooner (Campbell, 2018a). A month prior, Deloitte testified in front of the committee and apologized for the dysfunction of the program. Now, Rhode Island is being challenged by two federal lawsuits over claims of inadequate notice of the termination of benefits and "illegal delays in providing SNAP benefits" (Campbell, 2018b). During the hearing with the Department of Health and Human Services on May 10, 2018, a minority of committee members

[2075] http://www.rilegislature.gov/SiteAssets/rules/Rules%20of%20the%20Senate.pdf, accessed 7/31/18.
[2076] http://ritv.devosvideo.com/show?video=8d976bee00bd&apg=46373b64, accessed 7/17/18.
[2077] https://ballotpedia.org/Oversight_Committee,_Rhode_Island_House_of_Representatives, accessed 10/3/18.
[2078] https://www.law.columbia.edu/sites/default/files/capi-data/reports/rhodeisland_2018.pdf, accessed 7/16/18.

questioned the agency, although these questions were very thorough. During the hearing with Deloitte on April 12, 2018, a majority of committee members participated in in-depth questioning, with one referencing an audit report.

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

The legislative accomplishments for each year are posted on the Rhode Island Legislature's home page, which makes it easy for the public to determine whether laws have been passed on specific topics.[2079] An inspection of these reports for 2016, 2017, and 2018 did not reveal any action in response to an audit report[2080] describing problems with a Health and Human Service IT system, RIBridges, which suggested formulating broad procedures to govern contract monitoring. Neither the 2017 nor the 2018 list of Legislative Accomplishments includes changes to the contract monitoring procedures. An interviewee indicated that statutory changes in response to studies by special commissions or standing committees are rare (interview notes, 2018). For example, a 2017 report by the Child Fatality Review Panel repeatedly mentions recommendations that were made by a previous panel but not acted upon, either by the legislature or agencies. On the other hand, reports for special legislative commissions, like one pertaining to solitary confinement, have produced regulatory changes within the departments in question (Whitty, 2017). The Special Legislative Commission to Study and Assess the Use of Solitary Confinement in Rhode Island ACI, which consisted of 19 members a few of whom were legislators, produced a report in collaboration with the Department of Corrections and other stakeholders that altered state policies and practices.

Oversight Through the Administrative Rules Process

Agencies wishing to propose a new rule in Rhode Island must first submit their proposals to the Office of Regulatory Reform (ORR), which is a subdivision of the executive branch Office of Management and Budget. A public comment period then ensues, after which "[s]tate agencies . . . consider all submissions received during the public comment period . . . incorporate or reject comments, and . . . note the reasons for their actions."[2081] Once that process concludes, they are submitted to the ORR for "final post-comment review." Once ORR approves the regulation, it is filed with the secretary of state. There is no formal process for legislative review of either new or existing administrative rules. Rhode Island has no equivalent of a Joint Committee for Administrative Review or similar joint committee. Nowhere in the Administrative Procedures

[2079] http://www.rilin.state.ri.us/Pages/Default.aspx, accessed 7/31/18.
[2080] http://www.oag.state.ri.us/%5C/reports/UHIP_RIB_HSRI_CostsReport2017.PDF, accessed 7/13/18.
[2081] http://www.dhs.ri.gov/Regulations/Procedures.php, accessed 7/17/18.

Act is there any mention of action or involvement or notification of the legislature during the rules formulation process.[2082]

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

Oversight Through Advice and Consent

According to the Rhode Island Constitution (Article IX, Section 5),[2083] gubernatorial appointments are subject to senatorial approval. All committees are tasked with evaluating the political nominees of the governor that fall within the committee's substantive jurisdiction. Committees vote to pass the nomination on to be considered by the full chamber with either a "favorable" or an "unfavorable" review. The chamber then votes to either nominate or block the nomination thereby fulfilling their constitutional duty to grant advice and consent. However, there is no evidence that the legislature has recently used its power to block an appointment.

Executive orders do not appear to be especially common in Rhode Island. While 17 executive orders were issued in 2015, only two were issued in 2016. However, 10 were issued in 2017 and 2018 has seen six executive orders promulgated.[2084] (Office of the Governor, 2018). These orders are not governed by the state's Administrative Procedures Act nor do they require legislative approval (Council of State Governments, 2012). Rhode Island's governor can issue executive orders to reorganize specific agencies or to create executive branch agencies (Council of State Governments 2014, Table 4.5). Gov. Raimondo in 2015 relied on a contract with a private corporation to develop a plan to reorganize the state's department of transportation. As noted elsewhere in this description, these gubernatorial powers were established as the result of a lengthy legal battle within the state over separation of powers (West Jr. 2016). In the aftermath of the constitutional amendment providing for separation of power laws, such as RI Gen L 42-72- 22 (2014), directors of some state agencies were provided with the power to divide, consolidate, abolish or otherwise reconstitute the agency with the approval of the governor.[2085]

[2082] http://webserver.rilin.state.ri.us/Statutes/TITLE42/42-35/INDEX.HTM, accessed 7/17/18.
[2083] http://www.rilin.state.ri.us/riconstitution/Pages/C09.aspx, accessed 7/17/18.
[2084] http://www.governor.ri.gov/newsroom/orders/, accessed 7/17/18.

An example of this extension of power can be seen in the case of the Department of Children, Youth, and Families.

Oversight Through Monitoring of State Contracts

All major procurements in Rhode Island must be obtained through a competitive bidding process (Rhode Island General Laws S. 37-2-1).[2086] This process is administered through the Division of Purchases,[2087] whose "goal is to streamline the procurement process to provide more opportunities to the vendors, especially small businesses, women owned businesses, and minority owned businesses."[2088] The rules and regulations that govern the Division of Purchases specify that "periodic summary reports of all transactions" should be furnished to the legislature and the governor. Rhode Island also has a Legislative Oversight Commission for Consulting Contracts, which is "empowered to conduct evaluations and reviews of any and all consulting contracts entered into by and or on behalf of the state or any subdivisions or entities of the state" (Rhode Island General Laws S. 22-14-1).[2089] Attempts have been made to reorganize this commission into the Senate Committee on Rules, Government Ethics, and Oversight,[2090] but these have not passed. Additionally, as noted above, the auditor's report on RIBridges points out the need for improved monitoring of contracts by the legislature.

Oversight Through Automatic Mechanisms

Rhode Island has no active sunset or sunrise mechanisms (Baugus & Bose, 2015). While statutory entities can be schedule to expire on an individual basis, in the absence of a specific date of expiration, it is assumed that it is "the intent of the general assembly to continue the entity in existence until the general assembly by specific legislation ends the statutory existence of the entity" (RI Gen L § 22-14-5.3).[2091] In 2004, Auditor General Ernest Almonte gave testimony to the house, highlighting the importance of sunset laws and calling for the creation such laws in Rhode Island (Almonte, 2004).[2092] The legislature, however, ultimately did not enact such a law.

[2085] https://law.justia.com/codes/rhode-island/2014/title-42/chapter-42-72/section-42-72-22/, accessed 12/16/18
[2086] https://law.justia.com/codes/rhode-island/2012/title-37/chapter-37-2/, accessed 7/17/18.
[2087] http://www.purchasing.ri.gov/, accessed 7/17/18.
[2088] http://www.purchasing.ri.gov/mission/mission.aspx, accessed 7/17/18.
[2089] https://law.justia.com/codes/rhode-island/2012/title-22/chapter-22-14.1/chapter-22-14.1-1/, accessed 7/17/18.
[2090] http://webserver.rilin.state.ri.us/BillText06/SenateText06/S2357.htm, accessed 7/17/18.
[2091] https://law.justia.com/codes/rhode-island/2016/title-22/chapter-22-14/section-22-14-5.3, accessed 7/17/18.
[2092] http://webserver.rilin.state.ri.us/genmenu/soplg/documents/almontehousesop042804.ppt, accessed 7/17/18.

Methods and Limitations

Out of the 14 people that were contacted, seven people were interviewed. The Rhode Island House provides public and online access to audio and video for their committee hearings. The senate also provides public and online access to video, although, not every committee has video.[2093] In both chambers, there are no official minutes or transcripts. Current and recent agendas are up on the committees' websites or are in the committees' possession, while anything that is two years old or older can be requested from the secretary of state (interview notes, 2018).

[2093] http://ritv.devosvideo.com/Show-Access-Points, accessed 12/20/18.

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Legislative Oversight in South Carolina

Capacity and Usage Assessment

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

Summary Assessment

South Carolina presents a mixed picture of legislative oversight. On the one hand, in budgetary matters the General Assembly is clearly dominant and routinely overrides gubernatorial line-item vetoes. Legislative oversight is exercised vigorously through the appropriations process. For a one-party state, there is evidence that the legislature is willing to challenge executive branch agencies when problems arise (fire alarm oversight). The Legislative Audit Council (LAC), meanwhile, provides the legislature with solid performance auditing capabilities. The House Legislative Oversight Committee appears responsive to audit reports.

Major Strengths

Standing committees like the House Legislative Oversight Committee seem to be engaged in genuine and meaningful oversight of agencies when crises arise. Detailed presentations of audit reports are considered by this committee and its subcommittees. The LAC works closely with the legislature to fulfill its requests for information. Likewise the Revenue and Fiscal Affairs Office works closely with the legislature. Also, South Carolina has demonstrated the capacity for massive reorganizations of its budget processes to better monitor appropriations and agency spending. Other staff agencies appear to be providing the legislature with timely information.

Challenges

Legislative audits are sometimes met with aggressive stonewalling on the part of state agencies and are not always backed up with legislative action. Additionally, common sense legislation, such as the criminal penalties for failure to report death of youth in DJJ custody, seem to get stalled in the committee process. Several standing committees do not appear to meet at all regularly. Moreover, we found limited evidence of some types of police patrol oversight. South Carolina's legislature also has very limited power to oversee contracts or check executive

orders. Moreover, as a task force's findings suggest, steps could be taken to improve the General Assembly's role in the administrative rulemaking process. The House appears receptive to improving the process for administrative rule review.

Relevant Institutional Characteristics

The National Conference of State Legislatures classifies South Carolina's legislature as a hybrid, meaning that the job takes more than two-thirds of the time that would be expected from a full-time job, even though the pay typically requires a second job.[2094] Squire (2017) ranks South Carolina at 39 out of 50 in terms of professionalization. Salary for legislators is $10,400, with a daily per diem of $202 while the legislature is in session.[2095] The legislature has 332 staff, 280 of which are permanent.[2096] Senators are elected to four year terms, and House members to two year terms, with no limits on the number of terms, consecutive or otherwise, a legislator may hold. South Carolina's legislature can remain in session from January until the first Thursday in June.[2097] In 2017 and again in 2018, the legislature was in session for four months—from approximately January 10 to approximately May 10. Thus, legislators would have been paid about $35,000 for each year. Squire (2017) reports that South Carolina's legislature met for the equivalent of 57 session days in 2013.

South Carolina's legislative branch is unusually powerful. As Haider-Markel (2009) notes, "Despite its part-time nature, the general assembly has historically been the center of political power. The legislature—with its strong budgetary and appointive authority—is preeminent over the state, and the senate is preeminent over the legislature." By contrast, South Carolina grants a below average amount of institutional power to its governor. Ferguson (2013) ranks the state at 47 out of 50 in terms of gubernatorial authority. In part, this is because of the large number of independent executive positions. Governors in South Carolina have few appointive powers, and until recently all appointees were subject to legislative approval. Although the governor does have line-item veto powers, these can be overridden by a two-thirds vote in the legislature (Haider-Markel, 2009).

At 12.6%, the state has an above-average percentage of its workforce employed in state or local government. The difference reflects a higher than average proportion employed in education (6.3% compared to the national average of 6.1%) and especially in welfare (2.2% compared to the national average of 1.5%). The proportion employed in public safety (1.7%) and in services (1.3%) is exactly equal to the national averages (Edwards, 2006).

Political Context

South Carolina politics have long been characterized as being dominated by one party or the other. Democrats controlled the state legislature from the end of Reconstruction until 1994.

[2094] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#side_by_side, accessed 06/26/18.
[2095] http://www.ncsl.org/research/about-state-legislatures/legislator-compensation-2018.aspx, accessed 06/26/18.
[2096] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 06/26/18.
[2097] http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx, accessed 06/26/18.

By 2002, however, Republicans were ascendant.[2098] The governorship, meanwhile, has alternated between parties more frequently than control of the legislature.[2099] Currently, the House has 80 Republicans and 44 Democrats, while the Senate has 28 Republicans and 18 Democrats. The governorship has most often held by a Republican, with periods of Democratic control from 1979-1987 and 1999 -2003. South Carolina's state legislature is not especially polarized: the House is ranked at 27th most polarized, and the Senate at 31rd (Shor & McCarty, 2015). This likely reflects the tendency of the minority party to move toward more centrist positions when faced with one-party control.

Prior to 1990, South Carolina politics operated under what many South Carolinians refer to as the "good ol' boy" system, referring to the prevalence of influential lobbies and special interests that dominated state politics. After a major FBI sting operation, "Operation Lost Trust," during 1990 in which 17 legislators were indicted on a variety of charges, the state implemented some of the "strongest ethics laws in the nation." These laws regulate campaign contributions and other lobbying behavior and have greatly reduced the influence of lobbyists in the state (Haider-Markel, 2009). Yet, scandal continues to dog South Carolina politics as the recent indictments of South Carolina legislators demonstrate.[2100] This issue of corruption and anti-racketeering laws to reign in nefarious activities by political "consultants" became a campaign issue in the South Carolina gubernatorial election campaigns in 2018.[2101]

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

South Carolina has an Office of the State Auditor (OSA), which is an executive branch position appointed by the Budget and Control Board. OSA is comprised of several divisions, including the State Agency division, which "provides a variety of services to ensure reliability of financial information on both a statewide and individual agency level," including the Comprehensive Annual Financial Report (CAFR) and other financial audits; the Medicaid program, which ensures that "our state's nursing facilities providing Medicaid services comply with state and federal requirements related to cost reimbursement claims"; and Internal Audit Services, which "performs independent and objective assurance and consulting activities through a systematic and disciplined approach to evaluating governance, risk and compliance."[2102] All of the audits performed by OSA are financial audits, and the majority of the audits reports released by the OSA appear to be audits performed by the State Agency division, of which 85 were produced in 2017.[2103] The Internal Audit Services division, meanwhile, produced two risk and control assessments and two follow-ups on previous reports in the same period of time. These

[2098] http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx#Timelines, accessed 10/30/18.
[2099] https://www.nga.org/cms/home/governors/past-governors-bios/page_south_carolina.html, accessed 06/26/18.
[2100] http://www.governing.com/topics/politics/tns-south-carolina-courson-resign.html, accessed 7/29/18.
[2101] http://www.statehousereport.com/2018/05/31/bryant-s-c-still-awaits-true-ethics-reform/, accessed 7/29/18.
[2102] http://osa.sc.gov/about/divisions/, accessed 06/26/18.
[2103] http://osa.sc.gov/reports/, accessed 06/26/18.

reports were addressed to the agencies that were reviewed and to the substantive legislative committees that were concerned with the activities of the agency in question.[2104]

The OSA has a staff of approximately 50 professionals and a 2015 state appropriation of $1.3 million to support its work (NASACT, 2015). It also contracts with outside firms, with a budget of slightly more than $2 million to pay for this work. The contracts typically cover audits of court fees and collections and municipal governments (NASACT, 2015).

Performance audits in South Carolina are carried out by the Legislative Audit Council (LAC), which is supervised by a governing board "composed of five public members, one of whom must be a practicing certified or licensed public accountant and one of whom must be an attorney. In addition, four members of the General Assembly serve ex officio."[2105] Currently these four legislators are all members of the Republican Party, which controls both chambers of the legislature. The LAC Governing Board of appoints the LAC director, who is an audit professional, not a legislator. LAC audits can either be requested by members of the legislature or required by state laws; citizens cannot directly request audits, but are encouraged to "bring their concerns or ideas for audits to their local legislators."[2106] Audit requests are placed on the agenda for the next meeting of the LAC Governing Board, at which time a decision is made about whether to authorize the audit and an audit plan is developed.

The LAC "conducts independent, objective performance audits of state agencies and programs, as requested by the general assembly and mandated by law. The purpose of this oversight role is to provide information that will assist the general assembly and the public in determining whether state agencies are efficiently, effectively, and lawfully managing public resources, and whether agency programs are meeting their intended objectives."[2107] It produces about four performance audits per year.

A scathing January 2017 audit of the South Carolina Department of Juvenile Justice (SCDJJ), which included 74 recommendations for agency change, led to the resignation of the SCDJJ director. The 134 page report is exceptionally thorough and demonstrates the high quality work that LAC produces. It has not, however, resolved the agency's problems with accountability, according to media reports of unreported fights at the facilities.[2108] The audit was conducted at the request of the general assembly after media reports of serious problems at SCDJJ, including the death of two teenagers at institutional SCDJJ facilities that were not investigated or reported to any outside authorities and became known when a county coroner's report surfaced. Hearings on this audit by the House Oversight Subcommittee on Law Enforcement and Criminal Justice are discussed in detail below in the section, Oversight Through Committees.

The Revenue and Fiscal Affairs Office (RFA) staff provides support to legislators with respect to fiscal matters. In 2014, the legislature took three units that were previously part of the Budget Control Board and combined them to create the RFA. These three are the Board of Economic Advisors, the Office of Research and Statistics, and the Office of State Budget. This newly formed unit is governed by the three appointed members of the Board of Economic Advisors and provides assistance and support to the House Ways and Means Committee and the Senate Finance Committee. The original reasoning for this restructuring of revenue and fiscal

[2104] http://osa.sc.gov/internal-reports/, accessed 06/26/18.
[2105] http://lac.sc.gov/Pages/GoverningBoard.aspx, accessed 06/26/18.
[2106] http://lac.sc.gov/Pages/RequestanAudit.aspx, accessed 06/26/18.
[2107] http://lac.sc.gov/Pages/default.aspx, accessed 06/26/18.
[2108] https://www.fitsnews.com/2018/06/20/scdjj-new-scandals-no-accountability/, accessed 7/25/18.

affairs was an effort to give the governor a bigger role in the maintenance of the budget throughout the year and to modernize South Carolina's "archaic" budget and revenue process.[2109] RFA staff participates in budget hearings and provide support during these committee hearings. These analysts produce fiscal impact statements for all legislation for both legislative chambers. Eight RFA staff members are listed as part of the House Ways and Means Committee. No senate committees list staff. The key tasks of the RFA are to provide staff support, conduct fiscal impact statements, and forecast revenue to keep the budget in balance.[2110] Fiscal impact statements are an important "cog" in the both the evaluation of agency budget requests and non-revenue bills.[2111] Legislators utilize impact statements to great effect during the budget process and when considering other non-budgetary bills, with the RFA essentially acting like the Congressional Budget Office.[2112]

Finally, South Carolina's Inspector General, appointed by the governor, has a staff of five members to direct toward investigation of state entities. The list of audits indicates that the attention of this office is focused on boards, commissions, and other quasi-governmental organizations, such as the conservation bank, charter schools, universities, and so on.[2113] These audits are occasionally mentioned during committee hearings.

Oversight Through the Appropriations Process

South Carolina's budget process has been criticized as "secretive" and "bizarre,"[2114] a process in which "citizens have almost no control over the shape and size" of the budget that gets passed.[2115] While state law requires the governor to submit an executive budget to the legislature,[2116] in practice this appears to happen rarely. According to the South Carolina Policy Council, "Gov. Mark Sanford (2003-2011) was the first governor, at least in recent history, to submit full executive budgets to the legislature at the outset of the legislative session. Unfortunately, the legislature invariably ignores the executive budget."[2117] Instead, the budget "is written from scratch in an array of appropriations subcommittees. In general, lawmakers base their decisions on the previous year's budget, adding a little and subtracting a little. The budget doesn't take any kind of coherent shape as a spending plan until it's passed by the House Ways and Means committee. The governor has no practical role in the process."[2118]

This is not to say, however, that the governor is completely powerless in the appropriations process. In June 2017, for example, Gov. Henry McMaster, the current governor, vetoed over $56 million from the budget,[2119] and budget vetoes have even been described as "a

[2109] Interview notes 12/14/18
[2110] Interview notes 12/14/18
[2111] Interview notes 12/14/18
[2112] Interview notes 12/14/18
[2113] https://oig.sc.gov/reports, accessed 7/24/18.
[2114] https://www.scpolicycouncil.org/research/budget/budget-process-remains-secretive, accessed 06/26/18.
[2115] https://www.scpolicycouncil.org/research/budget/scbudgetlaw, accessed 06/26/18.
[2116] http://www.scstatehouse.gov/code/t11c011.php#11-11-70, accessed 06/26/18.
[2117] https://www.scpolicycouncil.org/research/the-state-budget-process-law-vs-reality, accessed 06/26/18.
[2118] https://www.scpolicycouncil.org/research/budget/scbudgetlaw, accessed 06/26/18.
[2119] http://governor.sc.gov/ExecutiveBranch/Documents/H3720.pdf, accessed 06/26/18.

rite of passage for governors in South Carolina."[2120] McMaster's predecessors in office, Govs. Mark Sanford and Nikki Haley, also "took pride in striking out state spending that was approved by state lawmakers." In the face of the willingness of South Carolina governors to make use of their line-item veto powers, however, the general assembly has demonstrated little hesitance to override such vetoes: a proposed gas tax increase vetoed in 2017 was overridden by large margins (32-12 in the Senate and 95-18 in the House). The governor also vetoed two separate expenditures totaling $20.5 million intended to replace a fleet of "fire-prone" school buses, but both the House[2121] and the Senate[2122] overwhelmingly voted to override both of those vetoes as well. This situation is not uncommon in South Carolina: in 2012 the New York Times described how Gov. Haley "marched through the new state budget, cutting spending on teachers' salaries, the arts, rape crisis centers, and even a program to control head lice," but wound up being stymied by legislative overrides.[2123]

Some vetoes have been allowed to stand. Gov. McMaster, for example, vetoed "a proviso that strips authority from the Commission on Higher Education to monitor public colleges and universities spending on non-academic projects and facilities. His staff says the CHE should not be debated within the state's budget, that the debate should take place outside of the fiscal plans for next year."[2124] CHE, whose members are appointed by the governor and approved by the Senate,[2125] has long been controversial: "In theory, the commission oversees South Carolina's public colleges and universities. However, historically, the commission has been weak—by legislative design. Now, legislators have grown frustrated at the commission's shortcomings, including its inability to curb rising college costs." According to its own leadership, CHE has in recent years totally failed to "complete 58 of the 160 tasks it is required to do by state law," including "intensive reviews of colleges and their programs to measure the state's return on investment, and data-driven vetting of capital projects, including classroom buildings and stadiums."[2126]

But, while the CHE has been criticized for having "no real teeth to provide . . . oversight," and its leadership has in fact acknowledged that it "rubber stamped" $534 million in building projects,[2127] the legislature's decision to remove it from the spending process was decried as an unnecessary abdication of oversight powers.[2128] Some lawmakers thus supported the governor's veto, arguing that "if you remove the oversight of the universities and all of their building, the significant deep oversight, then it's going to be costly in the long run and taxpayers are going to pay for it and so is the tuition of students."[2129] Thus, on the grounds that, despite its

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[2120] https://www.postandcourier.com/news/s-c-gov-mcmaster-vetoes-million-from-budget-restores-power/article_e7992f50-4f80-11e7-8e6c-af68318a78f2.html, accessed 06/26/18.
[2121] https://www.thestate.com/news/politics-government/article193807349.html, accessed 06/26/18.
[2122] https://www.greenvilleonline.com/story/news/education/2018/01/10/state-senators-delay-vote-mcmaster-school-bus-veto/1020825001/, accessed 06/26/18.
[2123] https://www.nytimes.com/2012/07/19/us/gov-nikki-haleys-budget-ax-is-blunted-by-legislators.html, accessed 06/26/18.
[2124] http://www.wistv.com/story/35643735/mcmaster-targets-school-buses-arts-parks-money-in-first-vetoes, accessed 06/26/18.
[2125] http://www.che.sc.gov/CHE_Docs/ExecutiveDirector/SCHigherEdSummary.pdf, accessed 06/26/18.
[2126] https://www.thestate.com/news/politics-government/article126218549.html, accessed 06/26/18.
[2127] https://www.thestate.com/news/politics-government/article126218549.html, accessed 06/26/18.
[2128] https://www.postandcourier.com/opinion/editorials/right-move-on-higher-ed-oversight/article_858ba292-4fb8-11e7-bd99-bf81074d012f.html, accessed 06/26/18.
[2129] http://www.wistv.com/story/35643735/mcmaster-targets-school-buses-arts-parks-money-in-first-vetoes, accessed 06/26/18.

flaws, keeping CHE in place would better serve the cause of oversight than abolishing it would, the governor's veto was not overturned, and the commission retained its influence over higher education spending.

The House Ways and Means Committee archives video recordings of its full committee and its subcommittee hearings online.[2130] An example from the unfunded pension liability and a proposed plan to produce solvency demonstrates that committee staff are instrumental in the hearings, making a presentation and explaining details for the proposal to the committee.

Oversight Through Committees

According to state law, standing committees in South Carolina are legally required to engage in oversight: "Beginning January 1, 2015, each standing committee shall conduct oversight studies and investigations on all agencies within the standing committee's subject matter jurisdiction at least once every seven years."[2131] These investigations are intended to determine whether or not agencies are acting in compliance with the law and whether they should be continued or eliminated.

Many committees, therefore, are quite active in oversight matters. The website of the House Legislative Oversight Committee states that it aims "[f]or South Carolina agencies to become, and continuously remain, the most effective state agencies in the country through processes which eliminate waste and efficiently deploy resources thereby creating greater confidence in state government." To achieve this, the committee works to "[d]etermine if agency laws and programs are being implemented and carried out in accordance with the intent of the General Assembly, and whether they should be continued, curtailed or eliminated. Inform the public about state agencies."[2132] A summary of the committee's activities since 2014, as well as full meeting documents, are posted on the website.[2133]

The committee and its various subcommittees meet fairly frequently, sometimes as often as four times per month. Video of these meetings is archived on the legislature's website.[2134] While some meetings are relatively brief, consisting of the approval of minutes, discussion of recommendations for future studies, and general administrative matters, the majority of the Oversight Committee's meetings are between one to two hours; one meeting on June 26, 2018, lasted for nearly four and a half hours. These sessions included testimony from representatives from state agencies, presentations by investigators from the Office of Inspector General, and questions from legislators. These questions tended to be substantive and informed, and suggested that legislators took the oversight process seriously.

There is also evidence that these hearings serve as the basis for legislative action. For example, one of the matters considered during a June 26, 2018, meeting of the House Legislative Oversight Committee pertained to the John de la Howe School,[2135] which "offers education

[2130] https://www.scstatehouse.gov/video/archives.php, accessed 7/24/18.
[2131] http://www.scstatehouse.gov/code/t02c002.php, accessed 06/26/18.
[2132] https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php, accessed 06/26/18.
[2133] https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/Committee%20Timeline%20(June%2025,%202018).pdf, accessed 06/26/18.
[2134] http://www.scstatehouse.gov/video/archives.php, accessed 06/27/18.
[2135] http://delahowe.k12.sc.us/about-us/, accessed 06/27/18.

programs, operates a therapeutic wilderness program in addition to offering residential services" for at-risk students.[2136] An investigation by the Office of the Inspector General, which was requested by lawmakers, revealed gross mismanagement at the school, including a lack of internal controls and documentation for requisitions and inventory, uncollected tuitions, molding and decaying buildings, and an approximately $6 million budget, despite the fact that no more than 30 students are enrolled there at any given time.[2137] Another problem that was identified pertained to the Board of Trustees, who are appointed by the governor. At the time of the hearing, there were three vacancies on the nine member board, and three currently serving members had poor attendance records, present only for 61%, 41%, and 11% of the meetings held during a three-year period from 2016 to 2018. One committee member subsequently wrote a letter to the governor urging him to "take action sooner rather than later with regards to the composition of the John de la Howe School Board of Trustees" and informing him that the Oversight Committee's Education and Cultural Affairs Subcommittee was recommending explicitly authorizing the governor to remove trustees at any time should they fail to regularly attend meetings.[2138]

The June 2018 hearing was not the first time that the John de la Howe school had been considered by the committee. The school had actually been the subject of controversy for several years, and in May 2018, after having held nine hearings on the institution since January 2017, the South Carolina House of Representatives passed legislation[2139] that would have merged John de la Howe with Clemson University. The state senate, however, "disagreed . . . and changed the bill[2140] to have Clemson look at the school, work with the board and prepare a plan to implement the purposes of de la Howe's will. The plan is to be turned in by September 2018, according to the amendment. Lawmakers would then look at the plan and take action on it."[2141]

The Legislative Audit Council (LAC), working on behalf of the legislature, has also been instrumental in bringing public attention to malfeasance on the part of state agencies. In 2015, for example, legislators "requested the Legislative Audit Council to conduct a review of the South Carolina Department of Agriculture's (SCDA) relocation, revenues, expenditures, and leases" related to a state-funded farmer's market.[2142] The market came to legislators' attention because in 2015 the State Ports Authority.[2143] Chairman Bill Stern, who is also an influential real

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[2136] https://www.greenvilleonline.com/story/news/local/south-carolina/2018/05/10/should-clemson-take-over-200-year-old-john-de-la-howe-school/595118002/, accessed 06/27/18.

[2137] https://oig.sc.gov/sites/default/files/Documents/Limited_Review_of_the_John_De_La_%20Howe_School_Operations_and_2017_Feasibility_Report.pdf, accessed 06/28/18.

[2138] https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DNR/6.26.18_Meeting_Packet_LOC.PDF, attendance at board meetings, p. 427. Accessed 06/27/18.

[2139] http://www.scstatehouse.gov/sess122_2017-2018/prever/596_20180509.htm, accessed 06/27/18.

[2140] http://www.scstatehouse.gov/sess122_2017-2018/prever/596_20180510.htm, accessed 06/27/18.

[2141] https://www.greenvilleonline.com/story/news/local/south-carolina/2018/05/10/should-clemson-take-over-200-year-old-john-de-la-howe-school/595118002/, accessed 06/27/18.

[2142] http://lac.sc.gov/LAC_Reports/2015/Documents/State_Farmers_Market.pdf, accessed 06/27/18.

[2143] It is worth noting that the SPA itself has been under investigation on allegations of "money laundering, influence peddling and other misconduct," and that these investigations have involved several members of the South Carolina General Assembly. However, this probe is being conducted by the State Law Enforcement Division and the FBI, and so does not necessarily involve the subject of legislative oversight. See: https://www.postandcourier.com/politics/fbi-investigating-south-carolina-statehouse-corruption-could-expand-scope-of/article_954c1d06-6ca5-11e7-953d-9f2de89f849c.html, accessed 06/27/18.

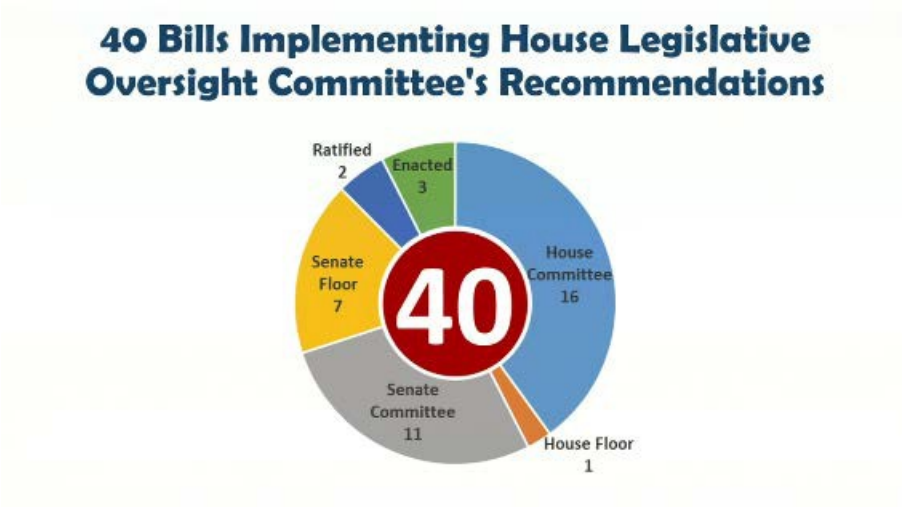
estate mogul, sold a parcel of land to the Department of Agriculture[2144] for the purpose of relocating the farmers market from its former location, a move that was supported by a resolution of the general assembly.[2145]

The LAC report noted that the land was purchased in 2010 for a price of $1.57 million and subsequently sold to the Department of Agriculture for $6.07 million. While Stern contended that he had added value to the property in the form of capital improvements, the auditors found that the Department of Agriculture did not have multiple assessors provide their written assessments of the property, nor did it seek documentation on the properties revenue generation, simply relying on Stern's word. Moreover, the auditors found that Stern had actually made financial contributions to the Commissioner of Agriculture's election campaigns, which was not disclosed prior to the conclusion of the deal. Finally, the auditors found that the Department of Agriculture had subsequently mismanaged the site, leading to meagre revenues, confusion among owners of private property at the farmer's market site, and a failure to collect rents, assess fees, or even outline formal policies and procedures for doing so.[2146]

The Department of Agriculture responded vigorously to the report, rejecting most of its findings and claiming that a previous audit on the farmer's market, the basis for the 2015 report, was fraught with "numerous errors." Much of the 2015 audit, in its view, was therefore "misleading," "irrelevant," and "inaccurate." Some recommendations, such as those pertaining to the installation of a security system and the implementation of fees and other new income streams, were accepted by the agency. But the agency response also accuses auditors of having "blatant political overtones," of "not comprehending the information provided to LAC," a "predisposition toward negative findings," "[a]n alarming lack of basic working knowledge of business principles," and "a refusal to recognize errors when made, and inattention in gathering facts."[2147] The legislature, meanwhile, has taken no action vis-à-vis either the Department of Agriculture or the farmer's market, leaving the agency largely free to ignore the LAC's recommendations.

There is evidence, however, that the legislature does in some instances successfully act on the recommendations provided by the LAC. For example, in response to recommendations made in an audit of the Small Business Development Centers (SBDC) Program,[2148] legislators proposed an amendment that would prohibit appropriations to or expenditures by the SBDC "until the program provides unfettered access of its entire client database to the Legislative Audit Council as requested in the July 2016 LAC report, "A Review of the Small Business Development Centers Programs."[2149] During the May 3, 2018, meeting of the Oversight Committee, the chair presented a graph showing legislative action in the 122nd General Assembly, lasting January 9 to May 10, 2018, in response to audit reports. It demonstrates that 40 bills have been introduced, although most are still in committees. But two have been ratified and three have been enacted.[2150]

[2144] https://agriculture.sc.gov/divisions/agency-operations/state-farmers-markets/sc-state-farmers-market/, accessed 06/27/18.
[2145] https://www.thestate.com/news/business/article32689554.html, accessed 06/27/18.
[2146] http://lac.sc.gov/LAC_Reports/2015/Documents/State_Farmers_Market.pdf, accessed 06/27/18.
[2147] http://lac.sc.gov/LAC_Reports/2015/Documents/State_Farmers_Market.pdf, accessed 06/27/18.
[2148] http://lac.sc.gov/LAC_Reports/2016/Documents/SBDC.pdf, accessed 06/26/18.
[2149] https://www.scstatehouse.gov/amendments.php?KEY=27076 , accessed 06/26/18.
[2150] https://www.scstatehouse.gov/video/archives.php, Meeting of the House Oversight Committee, May 3, 2018, accessed 7/24/18.



As mentioned above, the LAC conducted an extensive audit of the South Carolina Department of Juvenile Justice (SCDJJ), which was initiated in 2015[2151] and published in 2017.[2152] The House Legislative Oversight Subcommittee on Law Enforcement and Criminal Justice, a four legislator subset of the House Oversight Committee, held a nearly five hour hearing on this report on January 26, 2017, that included detailed testimony from LAC audit staff and agency response to the audit. Highlights of that hearing focused on several very serious problems: unreported deaths that were not investigated despite allegations that one of them involve "foul play," gang violence the officers lack of training to deal with and uncertified staff working in positions that state laws prohibit them from holding, failure of staff to enroll in training programs provided to them, and of the 21 enrollees in the training program only 13 were certified. In addition, there were teachers whose highest degree earned was a high school diploma and required staff support visits to at-risk youth that were not documented as occurring, among other concerns.

Questions asked by legislators were insightful, probing and challenging when directed toward the agency representatives. Immediately following that hearing, the director of the SCDJJ resigned. The subcommittee met again on January 31, 2017, in a "work session" to discuss additional information on several pending issues. They spent the first 20 minutes of this meeting itemizing additional information that they wanted from SCDJJ based on the January 26, 2017, meeting. One of the subcommittee members asked to see the contracts that SCDJJ had with AMIKids for operation of some its facilities. AMIKids operates institutional "camps" for at risk youth in nine states, including South Carolina.[2153] One of the deaths occurred at the facility operated by AMIKids. This appears to be another example of legislative oversight of state contracts occurring as an outgrowth of the legislative audit process—a pattern we have found in several other states. The subcommittee held two other meetings to hear constituent testimony and to discuss implementation of the audit recommendations with which the agency agreed. Given the findings of the audit report presented at the January 26th hearing, the subcommittees

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2151 https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Notification%20to%20full%20Committee%20and%20Subcommittee%20Study%20-%20DJJ%20(pdf).pdf, accessed 7/25/18.

2152 http://lac.sc.gov/LAC_Reports/2017/Documents/DJJ.pdf, accessed 7/25/18.

2153 http://www.amikids.org/programs-and-services, accessed 7/25/18.

recommendations seem very modest. "The Subcommittee's recommendations for revisions to the agency's internal operations fall into the following categories: (a) update case manager policies; (b) determine and eliminate duplication in case manager activities; (c) cite to source of data when providing information; (d) review the appropriateness of agency employees' membership in state retirement systems; and (e) provide quarterly updates. There are no specific recommendations with regards to continuance of agency programs or elimination of agency programs."[2154] The agency's budget has been increased consistently for the four years[2155] indicating that the legislature is willing to provide resources needed to improve staff training and provide other resources needed to improve its performance. And the subcommittee members introduced legislation, H 3848, which requires that the Department of Juvenile Justice report child deaths to the coroner and law enforcement or face criminal penalties. The bill was referred to the Judiciary Committee on February 23, 2017. There has been no further action taken.[2156]

Clearly, the House Oversight Committee and its subcommittees are active, and they take oversight of state agencies seriously. It is difficult, however, to determine just how active other standing committees are. The House Judiciary Committee did not meet at all during 2016 and only twice in 2017. Those two meetings, however, were subcommittee meetings rather than the full committee: the General Laws Subcommittee met May 3, 2017, and the Constitutional Laws Subcommittee on November 14, 2017. It is, therefore, unclear what the fate of H 3848 will be, given the infrequent activity of the House Judiciary Committee. The Senate Agriculture and Natural Resources Committee website,[2157] which we discussed earlier, shows no activity since 2017, and no video archives exist for meetings after June 2015. The Subcommittee on Agriculture of the House Agriculture, Natural Resources and Environmental Affairs Committee did meet twice during 2018 despite not meeting in 2017.[2158] Similarly, the Senate Banking and Insurance Committee's website has not been updated since March 2017, and, although it seems to have met relatively frequently in 2015 and 2016, it has archived video for only one meeting from 2017. It appears that many substantive standing committees are not active at all, let alone active in overseeing state agencies under their jurisdiction.

On the other hand, some committees do meet quite regularly. The Senate Judiciary Committee met 32 times in 2018. But several of these meetings were to consider nominees. There were hearings discussing a bill on personhood of fetuses, a subcommittee devoted to determining whether legislative term limits would be appropriate for the South Carolina legislature, and a bill about littering. Oversight does not seem to be a major activity for this committee in the hearings sampled from the video archives for the chamber.

2154 https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Notification%20to%20full%20Committee%20and%20Subcommittee%20Study%20-%20DJJ%20(pdf).pdf, p. 2. Accessed 7/25/18.

2155 https://www.fitsnews.com/2018/06/20/scdjj-new-scandals-no-accountability/, accessed 7/25/18.

2156 https://www.scstatehouse.gov/billsearch.php, accessed 7/25/17.

2157 https://www.scstatehouse.gov/CommitteeInfo/senateagri.php, accessed 06/28/18.

2158 https://www.scstatehouse.gov/CommitteeInfo/houseagri.php, accessed 7/26/18.

Oversight Through the Administrative Rules Process

After state agencies publish a draft synopsis of a proposed administrative rule in the State Register, according to state law, "all regulations promulgated or proposed to be promulgated by state agencies having general public applicability and legal effect . . . must be filed with the Legislative Council,"[2159] which then submits the proposed regulation to the general assembly and provides preliminary studies and recommendations if asked to do so by the general assembly. A request by a minimum of two legislators can force the five-member Budget and Control Board (BCB) to review the rule. The BCB consists of three executive branch officials, (Governor, Treasurer, and Comptroller) and the two legislative chamber leaders. This review includes benefits and costs, feasibility, an implementation plan, as well as environmental and public health consequences if the rule is blocked. The President of the Senate and the Speaker of the House then refer the regulation to the substantive standing committee overseeing the agency in question, as South Carolina does not have a dedicated legislative regulatory review committee. The committees then have 120 days to review the proposal. Committees can request that the agency withdraw, revise, and resubmit the rule. If the regulation is not resubmitted within 30 days of being withdrawn, it is considered to be permanently withdrawn. Then the general assembly can pass a joint resolution approving or disapproving the rule. If no resolution is introduced that either approves or disapproves the regulation by the end of the 120-day review period, the regulation is considered to be approved. All regulations in South Carolina are supposed to be reviewed every five years, with a particular eye towards impacts on small business (South Carolina Code, Section 1-23). Agencies are required to provide a list every five years to the LAC of the rules the agency plans to keep, repeal, or alter.

Schwartz (2010) assessed South Carolina's rule review process as "standardless, inconsistent and opaque" (p. 362) due to the involvement of so many different committees. In the same vein, business interests criticized South Carolina's regulatory environment as opaque, unreasonable, and cumbersome.[2160] This prompted then Gov. Nikki Haley to issue an executive order establishing a Regulatory Review Task Force to study ways to improve rule review. This task force included several legislators, members of the business community, environmental interests, and the health care sector. Among the task force's suggestions were: the consolidation of a variety of regulatory powers under fewer departments, streamlining permitting processes, and making regulations easier for the public to track. Importantly, the task force also suggested several changes that would increase legislative oversight of the regulatory review process, including implementing regulatory sunsetting, which would strengthen the existing five year review cycle by making regulations expire unless explicitly renewed, expanding the oversight capacity of the legislative council by making it easier to reject regulations if the rule exceeds statutory requirements, and requiring up/down votes on all regulations in the general assembly, rather than automatically approving regulations that do not receive a vote. A bill to enact these changes died in committee in 2013.[2161] No further action has been taken to make the changes recommended by the task force.

In practice, Schwartz says South Carolina's legislature does occasionally pass a joint resolution disapproving a rule, but these resolutions only rarely become law. Agency impact

[2159] https://administrativelaw.uslegal.com/administrative-procedure-acts/south-carolina/, accessed 06/28/18.
[2160] https://www.scribd.com/document/184494163/Regulatory-Review-Task-Force-executive-summary#download, accessed 06/28/18.
[2161] https://legiscan.com/SC/text/H3128/2013, accessed 06/28/18.

assessments are not rigorous—often there are no numbers used to assess economic impacts. The public health and environmental and economic impacts might be assessed as "moderate" rather than providing dollar estimates of benefits and costs (Schwartz, 2010).

More recently, beginning in 2015, the South Carolina House established a committee on Regulations and Administrative Procedures. This 13-member committee operates with four subcommittees: Education, Business, Commerce and Administrative, Health, and Environment and Natural Resources. This collection of subcommittees considered 121 agency rules promulgated during the 2017-18 legislative session. They sent 18 of these back to the originating agency. Ten of these were withdrawn by the agency, while eight were revised, resubmitted and approved. Five reviews were pending. The Senate continues to use the earlier committee system for reviewing rules, however it does appear that the House has responded to various critiques of the state's rule review process.

Oversight Through Advice and Consent

South Carolina's governor has relatively limited appointment powers. To begin with, the state has nine separately elected executive positions, substantially reducing the governor's influence over the cabinet. There are over 250 boards and commissions in South Carolina.[2162] When former-Gov. Haley had been in office for one and a half years, media reported that there were more than 600 vacancies on these various boards and commissions. Some of these are important, (e.g., the State Ethics Commission), while others are likely less so (e.g., War Between the States Heritage Trust Advisory Board).[2163] Until recently, all gubernatorial appointees had to be approved by the state senate.[2164] However, a few years ago, the general assembly streamlined the appointment process by eliminating legislative approval for many positions.[2165] A bill (H. 3146) introduced in the general assembly during the 2017-18 session would have shifted the State Superintendent of Education to a gubernatorial appointment. Rather than pass the bill, senators decided to let the voters decide the question during the November 2018.[2166] South Carolina Amendment 1 was defeated quite easily with 60% of voters rejecting the proposed change to make the state superintendent position an executive appointment.[2167] Although there are some reasonable arguments for avoiding a statewide political campaign for this office, this would decrease the legislature's opportunities to check the appointment power of the executive branch. That said, there do not seem to be any recent examples of nominees being rejected. Therefore, it does not appear that this is a power that the legislature wields effectively or frequently.

[2162] http://governor.sc.gov/ExecutiveBranch/Pages/BoardsandCommissions.aspx,, accessed 06/29/18.

[2163]https://www.charlestoncitypaper.com/TheBattery/archives/2013/09/12/gov-haley-has-neglected-to-appoint-nearly-600-positions-on-state-boards-and-commissions, accessed 7/25/18.

[2164] https://www.scstatehouse.gov/code/t01c003.php, accessed 06/29/18.

[2165] https://www.charlestoncitypaper.com/TheBattery/archives/2013/09/12/gov-haley-has-neglected-to-appoint-nearly-600-positions-on-state-boards-and-commissions, accessed 06/29/18.

[2166] https://www.thestate.com/opinion/opn-columns-blogs/cindi-ross-scoppe/article210772699.html, accessed 7/25/18.

[2167]https://ballotpedia.org/South_Carolina_Amendment_1,_Appointed_Superintendent_of_Education_Measure_(2018), accessed 12/13/18

South Carolina's governors make frequent use of executive orders: current Gov. McMaster has issued 61 such orders since coming to office in 2017.[2168] Many of these pertain to states of emergency, the flying of flags at half-staff, and similar topics. At other times, however, executive orders have been used to establish executive oversight groups, order reviews of cabinet agency regulations, or make various appointments.

Executive orders are not subject to any administrative procedures act or legislative review. The governor does not have the power to restructure the government, and any government restructuring must be accomplished through legislation. A reorganization took place most recently in 2014, when the legislature passed the "South Carolina Restructuring Act."[2169] This act was a massive reorganization of how South Carolina's state agencies communication and coordinate their efforts by the creation of a Department of Administration[2170] and splitting budgetary responsibilities between the executive and legislature, as discussed in the earlier section on the Revenue and Fiscal Affairs Office.[2171] This reorganization also created a legislative oversight process whereby the House and Senate separately will review the operations of state agencies on a rotating schedule every seven years.[2172] While South Carolina does not regularly reorganize the form and functions of state agencies, this act demonstrates that it is capable of massive and needed reorganizations.

Oversight Through Monitoring of State Contracts

State contracts in South Carolina are administered by the Procurement Services division of the State Fiscal Accountability Authority (SFAA).[2173] The state's Consolidated Procurement Code does not include any language specifying an oversight role for the legislature beyond occasionally reviewing a report furnished by the SFAA.[2174] The legislature uses the audit process to insert itself into the oversight of contracts, however. As we noted above, the House Oversight Subcommittee on Law Enforcement and Criminal Justice was eager to hear from the DJJ about the contract with AIMKids, which operated residential facilities for juveniles at which serious problems occurred. But as is true in most states, the legislature's efforts in this area of severely constrained.

Oversight Through Automatic Mechanisms

South Carolina previously had a sunset law, but it was repealed in 1998. Currently, the state has neither sunset nor sunrise laws. The one exception is the five-year review of agency rules, discussed in the section, Oversight Through Administrative Rules Review.

[2168] https://www.scstatehouse.gov/reports/ExecutiveOrders/execrpts.php, accessed 06/29/18.
[2169] https://www.scstatehouse.gov/sess120_2013-2014/bills/22.htm, accessed 06/29/18.
[2170] At the time, South Carolina was the only state not have a Department of Administration.
[2171] https://www.scetv.org/stories/palmetto-scene/2014/gov-nikki-haley-signs-government-restructuring-act-2014, accessed 12/18/18
[2172] https://www.scetv.org/stories/palmetto-scene/2014/gov-nikki-haley-signs-government-restructuring-act-2014, accessed 12/18/18
[2173] https://procurement.sc.gov/, accessed 06/28/18.
[2174] https://www.scstatehouse.gov/code/t11c035.php, accessed 06/28/18.

Methods and Limitations

Of the seven people we contacted to request interviews, two responded. Committee hearings are archived and readily available along with detailed minutes of meetings. Overall, South Carolina's readily available resources allowed us to better assess the legislature's levels of oversight.

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Legislative Oversight in South Dakota

Capacity and Usage Assessment

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

Summary Assessment

After reviewing legislative oversight in South Dakota, two things became clear: the legislature has only some tools and prerogatives needed to exercise strong oversight of the state's executive branch, and the use of some of these oversight mechanisms appears limited. The Department of Legislative Audit and the Interim Rules Review Committee both provide opportunities for oversight. Moreover, South Dakota is adding to its capacity to perform legislative oversight. These additions, in particular performance auditing and program evaluation, could increase oversight, as long as the legislature makes effective use of them.

Major Strengths

This is a state infused with a political culture that has historically abhorred corruption. Therefore, the legislature emphasizes advice and consent on gubernatorial appointments to ensure that there are "good people" in powerful places. The legislature can challenge gubernatorial executive orders that reorganize government. The state seems aware of the need to increase its oversight capacity-- a recent law establishes a division in the Legislative Research Council to conduct performance audits.

Challenges

South Dakota does not currently possess adequate capacity to produce performance audits. The legislature is institutionally weaker than the governor. Long-term, single-party domination of state politics tends to reduce oversight. Additionally, the legislative session is very short and might simply provide too little time for effective oversight.

Relevant Institutional Characteristics

South Dakota ranks among the lowest in the nation with regard to legislative professionalism at 48th (Squire, 2017). The National Conference of State Legislatures (NCSL, 2017) classifies South Dakota's legislature as "[p]art-time, [with] low pay [and a] small staff." The regular session of the legislature begins each year on the second Tuesday of January (Art III, Section 7) and each and every regular session shall not exceed forty days (Art. III, Section 6).[2175] The 2018 Regular Session consisted of 38 days in which legislative activity was conducted (South Dakota Legislative Calendar, 2018).

The South Dakota legislature may also hold a special session (also known as an extraordinary session), which may be called by the governor or the legislature. The governor has always had this power, but the legislature relatively recently gained it through a 1990[2176] change to the constitution[2177] initiated in the legislature and ratified by a majority vote on a statewide ballot.[2178] In order for the legislature to call a special session, the presiding officers of both houses must obtain a written request of two-thirds of the members of each house (Art. III, Section 31). Furthermore, the petition requesting a special session must state the purposes of the session; only business encompassed by those purposes may be transacted (NCSL, 2009). Since 2010, the South Dakota legislature has convened for two special sessions, which occurred during 2011 and 2017 (LegiScan, 2018). The former was initiated by the governor for the purpose of drawing redistricting[2179] maps,[2180] and the session consisted of a single day in October.[2181] The latter was also initiated by the governor to address a specific issue--property rights to meandered/non-meandered water.[2182]

Legislators are paid $6,000 annually, plus a $142 per diem, and an additional $142 per day for those legislators who sit on interim committees during the period in which the legislature is not in regular session. During 2015, the legislature had 114 staff members, 58 of whom were permanent. Legislators are limited to eight consecutive years of service in each house (NCSL, 2017). Since these are not lifetime limits, it is possible for legislators to accumulate experience by cycling between chambers.

South Dakota's governor has fairly extensive powers, including full budget-making powers, as well as the right to reorganize state agencies by executive order. Furthermore, the governor may use a line-item veto on appropriations bills, with a 2/3 majority vote of legislators required to override such veto (Beyle, 2008). According to information provided in Ferguson (2015), the South Dakota's governor is tied for the 6th most powerful among the 50 states.

The size of South Dakota's state and local bureaucracy is smaller than the size of most other state bureaucracies. Approximately 10.5% of those employed in South Dakota work in

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[2175] https://ballotpedia.org/Article_III,_South_Dakota_Constitution accessed 7/12/18

[2176] https://sdsos.gov/general-information/about-state-south-dakota/summary-south-dakota-state-government/legislative-branch.aspx accessed 7/12/18

[2177] https://sdsos.gov/elections-voting/election-resources/election-history/1990/1990-ballot-question-text.aspx accessed 7/12/18

[2178] https://cdn.ballotpedia.org/images/4/45/Referenda_Elections_for_South_Dakota_1968-1990.pdf accessed 7/12/18

[2179] https://ballotpedia.org/Redistricting_in_South_Dakota_after_the_2010_census#cite_note-10 accessed 7/12/18

[2180] https://sodakgovs.wordpress.com/2017/06/08/special-legislative-sessions-in-south-dakota/ accessed 7/12/18

[2181] http://sdlegislature.gov/docs/legsession/2011s/calendar.pdf accessed 7/12/18

[2182] http://ktwb.com/news/articles/2017/jun/08/daugaard-calls-for-meandered-waters-special-session/ accessed 7/12/18

state and local government. Of these state and local government workers, 6.2% work in education, while roughly 1% work in safety, 1% in welfare, 1% in services, and 1% in other areas (Edwards, 2006).

Political Context

A Republican trifecta has become the norm in South Dakota over the last two decades. Both chambers have had Republican majorities since 1995 (NCSL, 2017). A Republican has held the governorship since 1979. In 2018 both chambers of South Dakota's legislature, as well as its governorship, were controlled by the Republican Party. Currently, the House of Representatives is comprised of 58 Republicans and 12 Democrats, while the Senate has 27 Republicans and 8 Democrats.

Ideology appears more salient the political party. Shor and McCarty's (2015) find that South Dakota's legislature is less politically polarized than most states. In 2014 South Dakota's House was the 41st most polarized—or the 9th least polarized, while its Senate was the 38th most polarized—or 12th least polarized. According to Haider-Markel (2008), politicians must account for two key features in the political environment: populism—a suspicion of big government and big business—and agrarian conservatism—limited government that only acts on moral issues like abortion or gay marriage.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Although South Dakota elects a state auditor, that position is responsible for the state's payroll and various fund balances and performs accounting duties. This is not a position that is involved in auditing the performance of state agencies, and so we do not discuss it further.

The Department of Legislative Audit (DLA) is the primary analytic bureaucracy of the South Dakota Legislature. Established by statute in 1943, it performs audits of state, county, and local government entities. The statutory authority for the DLA can be found in 4-2 of the South Dakota Codified Laws.[2183] Although the DLA is designed to work independently, it is administratively assigned to the Executive Board of the Legislative Research Council (LRC). The LRC is another analytic bureaucracy, and its work is supervised by this Executive Board, an oversight committee. This "fifteen member board consist[s] of nine legislators from the majority party and four legislators from the minority party plus the President Pro Tempore of the Senate and the Speaker of the House. The thirteen legislators are chosen by their respective parties and can serve on this board for only three consecutive terms." (Department of Legislative Audit-About) The Executive Board appears to function as a kind of legislative management council, which performs standard legislative functions outside of the regular session. As the administrative agent for the DLA, the Executive Board of the LRC hears their budget requests,

[2183] http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=StatuteChapter&Statute=4-2

sets basic policy including details of operations and compensation, oversight, and accountability, but practitioners tell us the LRC does not direct the work of the DLA.

According to sources, DLA does not produce performance audits or program evaluations, instead they do financial audits, special reviews like fraud investigations or internal reviews, and attestation engagements on very small local governments. Sources told us that occasionally audits or reviews that DLA produced led legislature to direct DLA to investigate further. This, they say, is not typical. We were also told that audits have many sources: citizens can report fraud through the DLA website, a board member could come to them with information worth investigating, individual legislators or legislative committees or the governor have the authority to request audits, and some audits are mandated by statutes. DLA staff screen these audit requests to filter out ones that are baseless. This preserves the DLA's independence and conserves its resources (interview 2018). The department is led by the Auditor General, who is appointed by the legislature[2184] and may be removed, without cause, by a joint resolution of the legislature.[2185]

During 2018, the Auditor General managed a staff of 35 individuals, most of whom were accounting professionals (Department of Legislative Audit-About). The primary mission of the DLA appears to be to monitor the accuracy and transparency of the self-reported financial statements of state-level entities, counties, municipalities, schools, special districts [e.g. irrigation districts and redevelopment commissions, regional railroad authorities, and statewide school board funds (e.g. the school benefits fund)] (Department of Legislative Audit-Reports). None of these reports were described as performance audits.

In 2017, the Department of Legislative Audit (DLA) produced 15 reports on state-level entities, in addition to an extensive single audit of state government. In 2018 DLA produced 13 reports on state-level entities, such as the Soybean Research Promotion Council, the Lottery, the Housing Development Authority, the Drinking Water State Revolving Fund. The focus appears to be on authorities, funds and other entities rather than state agencies per se. Moreover, examining the report on the Lottery reveals that the first nine pages of the report consist of the annual report from the executive director of the Lottery submitted to the governor, legislature, and the people of South Dakota. This is followed by a financial audit of the Lottery conducted by the DLA transmitted by the auditor general (pages 10-27 of the report). While the GOAC does not have statutory authority to direct DLA, we were told that in practice the DLA works closely with the GOAC (interview 2018).

The GOAC is a joint standing committee that meets during the regular session and during the interim. It reviews the audits conducted by the DLA. Evidence of this can be found on the South Dakota Legislature's website in the detailed meeting minutes and audio files from past meetings held by the Committee (SD Legislature Government Operations and Audit). A sampling of the minutes and practitioner feedback indicates that legislators do engage with issues revealed by DLA audits. GOAC membership is dominated by the majority party in each chamber. "The committee is composed of five members of the Senate and five members from the House of Representatives. The majority party has three members from the House of Representatives and four members from the Senate. The minority party has two members from the House of Representatives and one member from the Senate" (Department of Legislative Audit-About).

2184 http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=4-2-2

2185 http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=4-2-5

Although the DLA works year-round with the Government Operations and Accountability Committee (GOAC), it has some flexibility to work with other committees; we were told that sometimes it works with an appropriations committee or subcommittee (interview notes). There are times when the DLA will discuss an audit request with the LRC before proceeding. This occurs when the audit will require extensive resources or when the audit request is particularly urgent (interview 2018). GOAC provides feedback to audited entities, the primary legislative enforcement mechanism for compliance recommendations to agencies. The DLA provides staff support for the GOAC, producing minutes, managing logistics, agenda preparation, clerical services, preparation for meetings, coordination, etc. (interview 2018). In addition to the work products that it provides, primarily to the GOAC but occasionally to other committees, the DLA: (1) provides assistance to the legislature by answering requests for information, (2) monitors bills during the legislative session, and (3) provides testimony or commentary when it is appropriate or requested by the legislature (Department of Legislative Audit-About).

As mentioned above, the LRC is another important analytic bureaucracy that provides three kinds of services to the legislature through its corresponding divisions: maintenance of the statutes and administrative rules including finalizing bill drafts with respect to state laws and the constitution (Code Counsel Division); fiscal research, analysis, and producing fiscal impact statements (Fiscal Analysis Division); maintenance of the legislative library, studies, and research (Research Analysis Division).[2186] There are 22 professional staff listed on the LRC website.[2187]

An important development to watch in South Dakota is the creation of performance audit capacity. We are told by practitioners that the Legislative Research Council was recently tasked by the legislature with developing a performance audit capacity, and the legislature appropriated money for this purpose. Talks of developing this capacity have gone on for years, according to sources close to the issue, but the recent challenges uncovered in the states EB-5 Visa program and the Gear Up program were a catalyst, precipitating a dedicated appropriation for independent program evaluation and performance audit services. These two scandals were focusing events that played out in news headlines from 2013 through 2018, sparking[2188] ballot[2189] measures,[2190] executive actions, and legislative hearings.

Vignette: Belated Oversight of EB-5 and Green Cards for Sale

EB-5 is a federal visa program administered by the states. Basically, the program grants an immigrant a green card in exchange for making a $500,000 investment in a business that will create jobs in the U.S. South Dakota's former Secretary of Tourism and State Development, Richard Benda, charged with implementing EB-5, privatized the program.[2191] In 2010, after Secretary Benda left office, he went to work for the now privatized EB-5 program.[2192] In 2013,

[2186] https://ballotpedia.org/South_Dakota_Legislative_Research_Council
[2187] http://sdlegislature.gov/LRCStaff/StaffListing.aspx#divAll
[2188] https://www.argusleader.com/story/news/politics/2016/11/09/amid-voters-call-change-sd-chooses-massive-campaign-finance-reform/93539374/ accessed 1/8/19
[2189] https://rapidcityjournal.com/opinion/editorial/ours-amendment-w-adds-needed-transparency/article_217c178c-2957-572e-a99a-2b5777bdc06c.html accessed 1/8/19
[2190] https://www.apnews.com/6ff638a5120e400a8b2ae671e6e94187 accessed 1/8/19
[2191] https://www.argusleader.com/story/davidmontgomery/2014/10/08/eb-5-primer/16890965/ accessed 1/8/19
[2192] https://www.argusleader.com/story/davidmontgomery/2014/10/08/eb-5-primer/16890965/ accessed 1/8/19

while under investigation for diverting $550,000 to pay for his own monitoring fees, Mr. Benda committed suicide. One of the projects he worked on, Northern Beef Packers, received $100 million in investments on a total cost of $115 million, but went bankrupt within a year of its opening. Subsequently the Chinese investors who had been recruited to fund the project, but lost their money, tried to sue the State of South Dakota. An investigation in 2013 by the executive branch resulted in the cancellation of the EB-5 implementation contract with the private entity.[2193] The governor ordered the Department of Legislative Audit (DLA) and independent accounting firms to conduct audits of the Governor's Office of Economic Development (GOED), in which the South Dakota Tourism and State Development Department are located.[2194]

In 2014, citing an attorney general's report, the legislature passed House Concurrent Resolution 1010, requesting GOAC to conduct hearings on GOED.[2195] GOAC held hearings on March 7th,[2196] July 29th,[2197] September 24th,[2198] and November 13th[2199] of 2014. There was no archival recording of a June 18th hearing available, but minutes of this hearing confirm that subpoenas were amended to include certain documents and required an official appear before the committee.[2200] DLA staff assisted, answering committee questions and discussing the audit reports, recommendations, and providing their opinion on whether GOED was in compliance.[2201] These hearings frequently included testimony from officials including the attorney general, current Commissioner of GOED, and written answers to legislative questions by former Governor Rounds and another executive official, Joop Bollen, who was eventually charged with a felony in federal court. Issues of audit compliance were connected to the department's internal controls—noting failure to check the background of all new hires and also documenting reimbursement procedures that allowed an employee to double bill for travel costs. The agreed-upon procedures of engagement were found to lack documentation of an audit of governmental funds in GOED. The GOAC report and audio of the meetings indicates that legislators questioned officials, legislative audit staff advised GOAC, and officials were held accountable for compliance with audit recommendations. The hearings determined that the former secretary, Mr. Benda, took "inappropriate actions." the risk of such occurrences in the future. The scandal included the prosecution of Joop Bollen,[2202] whose legal trial took place in 2017-18.[2203] The legislature conducted a total of approximately 22 hours of hearings on this issue. DLA's audit recommendations focused on ways to improve internal oversight to avoid future problems at GOED.

[2193] http://politicalsmokeout.tumblr.com/post/65819551933/state-quietly-ends-contract-with-company-related accessed 1/8/19

[2194] http://sdlegislature.gov/docs/interim/2014/documents/GOA11-13-14HCR1010GOACReport.pdf accessed 1/8/19

[2195] http://sdlegislature.gov/docs/interim/2014/documents/GOA11-13-14HCR1010GOACReport.pdf accessed 1/8/19

[2196] https://sdlegislature.gov/docs/Interim/2014/minutes/MGOA03072014.pdf accessed 1/8/19

[2197] http://sdpb.sd.gov/SDPBPodcast/2014/Interim/Goa07292014.mp3 accessed 1/8/19

[2198] http://sdpb.sd.gov/SDPBPodcast/2014/Interim/GOA09242014.mp3 accessed 1/8/19

[2199] http://sdpb.sd.gov/SDPBPodcast/2014/Interim/goa11132014.mp3 accessed 1/8/19

[2200] https://sdlegislature.gov/docs/Interim/2014/minutes/MGOA06182014.pdf accessed 1/8/19

[2201] http://sdlegislature.gov/docs/interim/2014/documents/GOA11-13-14HCR1010GOACReport.pdf accessed 1/8/19

[2202] https://www.usnews.com/news/best-states/south-dakota/articles/2018-10-20/deposition-uncovers-details-about-south-dakota-visa-scandal accessed 1/8/19

[2203] http://sdlegislature.gov/docs/budget/BoardPapers/2017/2%20-%20AG%20Presentation%20FY18.pdf accessed 1/8/19

Vignette: Oversight of an Education Cooperative using federal funds--Gear Up

A similar scandal involved a non-profit, Mid-Central Education Cooperative, and its administration of a $4.3 million federal Gear Up[2204] grant, designed to help prepare low-income students for a postsecondary education. In 2015, The Secretary of Education Melody Schopp notified the cooperative that they were cancelling their contract citing "conflicts of interest and other red flags."[2205] Soon after the cancellation, the coop's business manager, Scott Westerhuis, killed his wife and four children, then committed suicide. An investigation by the South Dakota Division of Criminal Investigation revealed he had used the coop to funnel money from Gear Up to other nonprofits to pay himself and others. [2206] Charges in connection to the scandal were brought against three officials, resulting in two acquittals and one plea bargain. In 2017, DLA released their audit of Mid-Central Education Cooperative for 2015. The audit noted

> *A plethora of witnesses told law enforcement authorities and the DLA that not only did MCEC and its Board not know about the fraudulent and illegal activities of Scott and Nicole Westerhuis, but also that MCEC and the Board could not have known about them. These illicit activities were deliberately kept secret and out of view by Scott and Nicole Westerhuis, that it was the inappropriate action of the business manager and his wife, who was also an employee of the cooperative.[2207]*

GOAC discussed the audit with the Auditor General at their August 25th, 2017 meeting. The meeting focused on details of the audit, and legislators pledged to allocate enough time to review all relevant materials.[2208] A June 6th, 2017 GOAC meeting included further discussion of Gear Up details and one legislator expressing an interest in having a public hearing "where people testify under oath."[2209] Secretary of Education Schopp provided testimony regarding the scandal and the program generally at the July 24th GOAC hearing, which included this particular exchange about the programs outcomes

> *Senator Nelson asked since receiving the grant, how many Native American students went to college because of GEAR UP. Dr. Schopp referred to Tab C in the report, showing 285 students were reported for 2016-2017. Data in the annual performance reports submitted to the USDOE detail results achieved by the GEAR UP grant. Senator Nelson asked what metrics DOE was using to report the grant was a success. Dr. Schopp referred to the annual performance reports where evaluations were performed. High school graduation rates were an important metric.[2210]*

[2204] Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

[2205] https://www.argusleader.com/story/news/politics/2018/06/22/gear-up-investigation-trial-jury-decision-midcentral-marty-jackley-platte-westerhuis-sioux-falls/696070002/ accessed 1/8/19

[2206] https://www.argusleader.com/story/news/politics/2018/10/12/south-dakota-gear-up-trials-school-district-funds-scandal-analysis/1601877002/ accessed 1/8/19

[2207] https://sdlegislature.gov/docs/interim/2017/documents/goa7-24-17mcecsingleaudit15.pdf accessed 1/8/19

[2208] http://sdlegislature.gov/docs/Interim/2017/minutes/MGOA04252017.pdf accessed 1/8/19

[2209] http://sdlegislature.gov/docs/Interim/2017/minutes/MGOA06062017.pdf accessed 1/8/19

[2210] http://sdlegislature.gov/docs/Interim/2017/minutes/MGOA07242017.pdf accessed 1/8/19

At the next GOAC meeting on August 29th, 2017, discussions between legislators and auditors revealed that the Gear Up Grant had not been audited within the last 7 years.[2211] Legislators proceeded to ask audit staff and other legislators about the program's history. These were answered by some auditor staff and some representatives, who were on the committee who helped write the first Gear Up grant. At the next meeting on October 5th, legislators discussed how to monitor Gear Up more effectively. Again, the discussions occurred between legislators and audit staff. According to the meeting minutes, one legislator criticized the oversight conducted by the GOAC.

> *Senator Tapio commented on what has been learned. He advised that he would be an opponent of any legislation that comes out of this because he feels they have not done a proper analysis of what the problems are. Senator Tapio identified the following problems:*
> *1. There was fraud, and fraud possibly by State employees*
> *2. There were warnings of fraud to State employees that were not acted upon*
> *3. There were matching funds that were allocated and valued that were later determined never used*
> *4. We don't know who in State government knew about fraudulent activity and the valuation of the match to federal funds*
> *5. All of the players are interconnected*
> *Senator Tapio stated he is ashamed of the Committee because there are unanswered questions and the Committee didn't subpoena people who know the answers. Representative Anderson made a point of order objecting to Senator Tapio's comment.[2212]*

Gear Up was discussed again during the October 30th, 2017 GOAC meeting in the context of the Annual Report. One legislator made a motion to highlight in the Annual Report that fact that the committee had heard evidence brought by the Directors of Indian Education saying that the Department of Education had ignored their concerns about Gear Up. The motion to include this in the Annual Report failed, 3 Ayes, 5 Nays, and 2 excused.[2213] This provided an opportunity to execute oversight of a state agency, the Department of Education, for poor performance. Those voting against this amendment were all Republicans, so their motivation might have been partisan - to protect a department head appointed by a governor from their own party. On the other hand, one Republican did cross over to vote, along with the only two Democrats on the committee, for the amendment. This hints at some potential for bipartisan oversight, but this is only a small indication of that potential.

The legislature took action to improve grant monitoring in the aftermath of the Gear Up hearings. SB 100 was signed into law on March 22nd, 2018.[2214] The bill was promulgated[2215] in

[2211] http://sdlegislature.gov/docs/Interim/2017/minutes/MGOA08292017.pdf accessed 1/8/19
[2212] http://sdlegislature.gov/docs/Interim/2017/minutes/MGOA10052017.pdf accessed 1/8/19
[2213] http://sdlegislature.gov/docs/Interim/2017/minutes/MGOA10302017.pdf accessed 1/8/19
[2214] https://sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Bill=100&Session=2018 accessed 1/8/19
[2215] https://www.capjournal.com/news/in-response-to-gear-up-scandal-house-tightens-financial-standards/article_20e3b6bc-21a0-11e8-b461-d3bf910385f7.html accessed 1/8/19

the wake[2216] of the Gear Up scandal and includes some of the items discussed in GOAC hearings noted in this section. It establishes provisions to improve grant monitoring and review. It also requires certain record retention policies. The legislature did not take decisive action on the EB-5 problems; they conducted hearings—many hours of them; and the hearings may have revealed information used by the DLA to make its recommendations. But the legislature deferred to its analytic bureaucracy to recommend improved internal procedures and to the federal government to take punitive action.

Oversight Through the Appropriations Process

According to Article XII, Section 2 of South Dakota's Constitution, a general appropriations bill may only include "ordinary expenses" of state institutions, including debt payments. Any spending outside of these parameters must be included in a separate, single-item bill, which "require[s] a two-thirds vote of all the members of each branch of the Legislature." (p. 42)

Per the legislature's joint rules, The Joint Committee on Appropriations "is deemed to be a standing committee of the Senate and House of Representatives for the limited purposes of hearing agency or other budget presentations, and introducing, hearing, or acting on appropriation bills." (South Dakota Legislature-Joint Rules (2018), Rule 7-12). Most appropriations-related activities are conducted by the Joint Committee on Appropriations.

Undetailed meeting minutes and audio files from past meetings held by the Joint Committee on Appropriations are available on the South Dakota Legislature's website. This material reveals that the joint committee held extensive hearings that were attended by agency heads. A typical meeting includes an executive branch official making a presentation, followed by legislators asking questions of the officials, and policy discussion among legislators. An example from the minutes of an exchange regarding school districts meeting certain standards demonstrates the sort of questioning that takes place. (Failure to meet the standards means that the district will incur a penalty unless the district is granted a conditional waiver.)

> Representative David Anderson asked Ms. Darnall to explain the process for monitoring these conditional waivers. Ms. Darnall said the Department of Education has ten days after this meeting to notify each school district of the conditions of each waiver. Each district will be required to provide documentation on how these conditions are met. If the school district does not meet the condition, the Department of Education will withhold the amount of the penalty.[2217]

The Department of Legislative Audit sometimes will report findings to appropriations committees in an effort to ensure agency compliance (interview 2018). Reporting could take the form of attending a hearing to provide testimony, staffing in preparation for a hearing, informal communication about an audit finding, a dialogue about an agency that is struggling to get into compliance, or suggesting that the Government Operations and Accountability Committee route a report to an appropriations committee. The implication is that audits are occasionally

[2216] https://rapidcityjournal.com/news/local/senate-oks-tougher-standards-in-wake-of-gear-up-scandal/article_d5e15476-24f8-59d2-8a98-f0b123b6cb41.html accessed 1/8/19
[2217] https://sdlegislature.gov/docs/Interim/2017/minutes/MAPP12052017.pdf, accessed 1/8/19

considered in the budgeting process, although examples of this activity were not apparent from a sampling of meeting minutes. Furthermore, the available committee materials indicate that most appropriations-related legislative activities occur within the joint committee, not the separate House and Senate Appropriations Committees. The South Dakota Legislature's website also provides various reports concerning budgetary information about specific state agencies.

No recent examples of serious budget battles between the executive and legislature could be found, rather there were some minor disagreements about narrow bill details. The Governor consistently expressed that his budget priority was to have a structurally balanced budget. Legislators broadly support the principles that underlie the governor's approach.[2218] There have been substantial surpluses in each and every one of the last 7 years, and from all appearances, the governor and the majority of his party are in broad agreement on the budgeting priorities. The 2018 legislative session ended with gubernatorial vetoes[2219] on a very narrow set of items: lower standards for home schooled students to receive a state college scholarship compared to public school students and a bill that would have allowed the legislature to file up to 10 bills before the start of the legislative session.[2220] Despite using up all the days available to them in the 2018 session to debate these vetoes and even though some of the bills initially passed with veto-proof majorities, the legislature did muster a 2/3s majority to override any veto.[2221]

Oversight Through Committees

We have not identified anything in the constitution, chamber rules, or statutes that specifically delineate the oversight responsibilities of any standing committees, aside from GOAC. Practitioners confirm this claim and state that GOAC is the primary oversight committee. As discussed above, the Department of Legislative Audit (South Dakota's legislative analytical bureaucracy) reports to the Joint Government Operations and Audit Committee (GOAC). GOAC serves as the legislature's main oversight committee (interview 2018), reviewing agency performance reports and audits. The GOAC holds extensive hearings in which officials from various government agencies are questioned, for details see the section *Oversight through Analytic Bureaucracies*, in particular the discussion of EB-5 and Gear Up. Detailed descriptions of committee proceedings are provided through the committee website (SD Legislature-Government Operations and Audit). We are told that GOAC will occasionally routes key audits to specific committees, but for the most part the main form of dissemination is informal communication amongst legislators and legislative staff.

We were told that recently state agencies have been tasked with developing indicators and performance measure reports that they share with the legislature. The effort is a relatively new practice that has only recently completed its first full cycle. GOAC reviewed these operations. We were told that legislators were facilitating this new process—in the absence of

[2218] https://rapidcityjournal.com/opinion/columnists/tsitrian-lawmakers-put-politics-over-people/article_37c8c3a2-b841-5bd2-9b59-145b01229b6a.html , accessed 1/8/19

[2219] https://www.usnews.com/news/best-states/south-dakota/articles/2018-03-23/daugaard-vetoes-3-bills-lawmakers-could-override-next-week , accessed 1/8/19

[2220] https://www.argusleader.com/story/news/politics/2018/03/23/daugaard-vetoes-home-school-scholarship-requirements-earlier-bill-filing/450976002/ , accessed 1/8/19

[2221] https://www.argusleader.com/get-access/?return=https%3A%2F%2Fwww.argusleader.com%2Fstory%2Fnews%2Fpolitics%2F2018%2F03%2F26%2Fhome-school-scholarship-requirements-fall-short-veto-override-pierre%2F458008002%2F , accessed 1/8/19

independent external auditing—by questioning agency indicators and occasionally pressing for more useful measures. Practitioners are hopeful that the capacity, which is being developed by the LRC to conduct program evaluation and performance audits, will improve the validity of these agency reports.

In addition to GOAC, the legislature occasionally creates a study committee to consider a specific issue. For example, the Legislative Committee on Non Meandered Waters met and discussed solely the meandered waters issue that was eventually the subject of a special session called by the governor. The special session lasted a single day and was dedicated to this one issue. This targeted oversight is conducive to a legislative body that has limited resources at its disposable and little slack legislative staff capacity.

Oversight Through the Administrative Rules Process

According to the Council of State Governments (2016), the South Dakota Legislature's Joint "…Interim Rules Review Committee may, by statute, suspend rules that have not become effective yet by an affirmative vote of the majority of the committee." (p. 126) Administrative rules that are not acted upon by the committee go into effect automatically.

South Dakota Codified Law, Chapter 1-26 directs the administrative rules process.[2222] Statute 1-26.1 creates the six-member Interim Rules Review Committee, including three house members and three senators, appointed by the Speaker of the House of Representatives and President Pro Tempore of the Senate, respectively. It further requires that no more than four committee members be from the same political party (a maximum of two from each house). One distinct tool the IRRC possesses is the ability to have promulgated rules suspended until they have had additional public hearings. This tool could be abused and used to delay a rule's adoption perpetually, or it could be used adjust a rule for better fit with the regulatory environment and problems experienced by citizens, or it provides an opening for special interests to exercise outsized influence through public hearings.

During 2017, the Interim Rules Review Committee appears to have reviewed between 50-100 items; either new rules or amendments to existing rules.[2223] Of these items, most were fully approved. However, there were some instances where rules were reverted, rejected, returned to a prior phase in the approval process due to some procedural defect. Sometimes rules were partially accepted. Votes were most commonly either unanimous or along party lines. Representatives from the proposing agency testified during each review, and public testimony was heard during a handful of reviews (SD Legislature-Interim Rules Review).

Overall, Schwartz (2010) grades South Dakota poorly, giving them "D" for the overall quality of the review process. The state is lauded for its rules transparency and processing, which

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[2222] Section 30

Text of Section 30:

Power of Committee of Legislature to Suspend Administrative Rules and Regulations

The Legislature may by law empower a committee comprised of members of both houses of the Legislature, acting during recesses or between sessions, to suspend rules and regulations promulgated by any administrative department or agency from going into effect until July 1 after the Legislature reconvenes.

History: Section proposed by SL 1980, ch 4, approved Nov. 4, 1980.[30]

[2223] http://sdlegislature.gov/Rules/RegisterArchive.aspx?Year=2017, accessed 1/8/19

ensures that public notice is given. But he is critical of the weak requirements for impact statements and the lack of a true cost-benefit analysis of rules.

Oversight Through Advice and Consent

The appointment powers of the governor are somewhat limited in South Dakota, as the most influential executive branch offices are elected by popular vote (including secretary of state, attorney general, auditor general, and others) (SD Constitution, Article IV-7). Agency heads who are not directly elected are appointed by the governor, "by and with the advice and consent of the senate" (SD Constitution, Article IV-9, p. 21-22). Of 50 agency heads, only 18 are gubernatorial appointments that require the advice and consent of the Senate (Book of the States). Despite the opportunities for the senate to exercise advice and consent, we have not identified any recent instance in which the senate has rejected a gubernatorial appointment or even an instance where the appointment was in question. This is true despite the current governor and the past governor being publicly criticized for cronyism and nepotism in some of the appointments, including the 2010 appointment of the governor's son to an executive level position.[2224]

The South Dakota Constitution also gives the governor the power to reorganize state agencies, excepting those of "elected constitutional officers". "If such changes affect existing law, they shall be set forth in executive orders," and can be overturned by majorities of either chamber of the legislature (Article IV-8, p. 21). In 2017, two separate Reorganization Orders and one Administrative Closure were issued by the Governor.[2225] No evidence was found to suggest the legislature attempted to overturn these executive orders.

The executive appears to use order fairly regularly, issuing 11 in 2017, 10 in 2016, and 11 in 2015. Most orders deal with weather or drought emergencies. Each and every year in the sample there was an executive order to declare Good Friday a closure for all offices of state government under the director control of the governor. The legislature has no power to oversee these orders except through the legislative process. It is not clear, given the nature of these orders in South Dakota, that the legislature would want to object even if it had additional prerogative to do so.

Oversight Through Monitoring of State Contracts

The Bureau of Administration's Office of Procurement Management provides a list of state contracts on its website. It is unclear what, if any, oversight is conducted of the contract-granting process. State contracts over $25,000 must be competitively bid, with some exceptions. The bidding process is explained in the South Dakota Local Government Guide for Acquisitions, Disposals and Exchanges, published by the Department of Legislative Audit (2012).

[2224] https://rapidcityjournal.com/news/daugaard-appointments-family-jobs-inspire-debate-over-hiring-connections/article_7c8eba6a-faad-11df-bbb2-001cc4c03286.html, accessed 1/8/19
[2225] https://sdsos.gov/general-information/executive-actions/executive-orders/search/, accessed 1/8/19

Oversight Through Automatic Mechanisms

South Dakota is one of three states with an irregular or ad hoc sunset process (Baugus & Bose, 2015). According to the Council of State Governments (2016, p. 133), "South Dakota suspended sunset legislation in 1979. A later law directing the Executive Board of the Legislative Research Council to establish one or more interim committees each year to review state agencies was repealed in 2012." In contradiction to that assertion, we found a few instances of sunset clauses being attached to legislation in 2017 (Heidelberger, 2017; SD Department of Revenue, 2017). This appears consistent with the Baugus and Bose (2015) assessment that the sunset process is irregular and ad hoc.

Methods and Limitations

We contacted three people about oversight in South Dakota and interviewed two of them. Agendas, minutes, and audio recordings are available for most committee meetings, although it typically takes a year for the official minutes to be posted. This did not prose a major impediment for our investigation of oversight in South Dakota, but its citizens might not want to wait for many months in order to hear how thoroughly their elected officials are pursuing problems with state programs. We suspect that limited staff resources impair the ability of the legislature to provide this information promptly.

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Legislative Oversight in Tennessee

Capacity and Usage Assessment

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

Summary Assessment

The Tennessee General Assembly has extensive analytic tools available to conduct rigorous oversight—particularly its Office of the Comptroller. The general assembly has several institutional prerogatives that enhance its ability to conduct oversight—sunset review, separate committees tasked with fiscal review and with government oversight. However, despite these advantages we found instances in which in-depth oversight exercised by the legislature is not conducted on a level consistent with the tools available. Moreover, the legislature has cut some of its own oversight committees. As is true in many states, private contracts for service delivery, appear to be especially difficult for the legislature to oversee. The example of the problems with private prisons illustrates this dilemma.

Major Strengths

The Tennessee General Assembly possesses excellent tools at its disposal to conduct robust and rigorous oversight of the executive branch. The primary analytic agency, the Office of the Comptroller, has ample budgetary, staff, and investigative resources. The comptroller produces a wide range of reports from financial audits to performance audits for legislators to utilize. The comptroller's size and resources may in fact be so large that legislative action is not always necessary to activate change in an agency. The legislature appoints the comptroller, and the comptroller appears to work collaboratively with legislators. Tennessee also has aggressive sunset provisions that require all rules to be renewed by the legislature every year and state agencies to be reviewed on a rotating basis. Furthermore, in 2014, votes gave the general assembly review over gubernatorial judicial appointments to fill court vacancies.

Challenges

First, the short legislative session provides a disincentive to conduct in-depth investigations of agencies and commissions. Short session length focuses legislators' attention on more pressing and immediate concerns like passing the budget. Second, Tennessee's

administrative rules review process may be too comprehensive, but also not nuanced enough to improve rules. Again, with so little time legislators are forced to deal with a large number of new rules and may simply not take the time to fully engage in oversight of the impact of the proposed rules. The same can be said of the sunset process. Third, the size, scope, and reputation of the comptroller's office may actually lessen the role of the legislature in leading on oversight. The comptroller is fully capable of conducting investigations and audits and soliciting change before the general assembly is engaged. Recent decisions to eliminate oversight committees for corrections, children's services, and TennCare seem ill-advised.

Relevant Institutional Characteristics

The Tennessee General Assembly is characterized as a hybrid legislature, meaning legislators receive low pay and roughly 2/3rd of their time is spent working as a legislator.[2226] The general assembly is comprised of 33 senators and 99 representatives, who are paid $22,667 per year. Legislators who reside more than 50 miles from the capital receive a $220 per diem and legislators who live less than 50 miles receive a $59 per diem for every legislative day.[2227] Senators serve a four-year term and representatives a two-year term, with no limits on the number of terms they can serve. With only 322 staffers, of which 264 are permanent, the Tennessee General Assembly has lower staff resources compared to other similarly-sized hybrid legislatures. For example Kentucky has 468 staffers, and Arkansas has 435.[2228] Rank-and-file members of the senate and house have one dedicated staffer, while those in leadership positions--speaker of the house, senate speaker, respective majority and minority leaders, and committee chairs--employ two to six staffers (interview notes, 2018). The general assembly meets for a relatively short period of time, convening for a constitutionally mandated 90 legislative days over the two-year session.[2229] The general assembly can meet in special session upon request of the governor or the presiding officers of the legislature with the written consent of 2/3rd of members from the senate and house.[2230] The most recent special session was called in 2016 for two days to deal with federal highway funds.[2231] Based on these, and other factors, the Tennessee General Assembly was ranked as the 44th most professional legislature in the country (Squire, 2017).

Tennessee diffuses executive power through several executives who are not elected by voters. The legislature elects the secretary of state, state treasurer, and state comptroller (auditor). The attorney general is appointed by the Tennessee Supreme Court (Council of State Governments, 2008). Tennessee is one of several states where the lieutenant governor is not elected on the same ticket of governor, indeed he or she is not elected by the voters of the state. In Tennessee, the speaker of the senate, who is elected by his peers, is the next in line to succeed the governor and carries the honorary title of lieutenant governor.[2232]

[2226] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 10/27/18.
[2227] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 10/27/18.
[2228] http://www.ncsl.org/research/about-state-legislatures/legislative-staff.aspx, accessed 10/27/18.
[2229] http://www.capitol.tn.gov/about/, accessed 10/27/18.
[2230] http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx, accessed 10/27/18.
[2231] www.ncsl.org/documents/ncsl/sessioncalendar2016.pdf, accessed 10/27/18.
[2232] http://www.capitol.tn.gov/senate/speaker.html, accessed 10/27/18.

The governor has moderately strong budgetary powers that include proposing the annual budget and a line-item veto. However, these powers are easily overcome by the general assembly, since the governor shares budget making powers with the legislature and his line-item vetoes apply only to appropriation bills and can be overridden with a simple majority vote of legislators present (Council of State Governments, 2008). Additionally, Tennessee governors have no ability to "pocket-veto" a bill, since any bill not signed within 10 days becomes laws regardless of whether the general assembly is in session (Council of State Governments, 2017). Tennessee governors rarely veto bills as evidenced by current Governor Bill Haslem only vetoing five bills since 2011 (Ebert, 2018a). None of those five vetoes have been overturned by the legislature (Ebert, 2016). Historically, the legislature has called special sessions just to override a governor's veto, but at present there is no movement to call a special session to override the governor's latest veto of a proton cancer therapy bill (Ebert, 2018b).

The governor is limited to two consecutive four-year terms of service but is eligible for office again after sitting out for four years. The governor has extensive powers granted through statute to reorganize and reshape the executive branch through executive orders (Council of State Governments, 2014). Current Governor Bill Haslem has issued 70 executive orders since first taking office in 2011, covering ethics, disclosure and transparency in government to transferring policy responsibilities from one agency to another.[2233] As a result, the Tennessee governor is ranked as the15th most powerful governor in the country despite fairly limited budget powers and constraints on gubernatorial vetoes.

Political Context

Divided party control of state government was the norm from 1992 through 2010, but from 2011 onward Tennessee is one of the states with a Republican trifecta. Often the divided party control in the state resulted from a Republican governor facing a general assembly controlled by Democrats. There were two periods of one-party Democratic control, 1992-1994 and 2003-2004. From 2005 to 2010, the two chambers of the general assembly were divided, with Republicans controlling or tied for control. Shor and McCarty rank the Tennessee Senate as only the 28th most polarized upper chamber in the country and the house of representatives the 23rd most polarized chamber in the nation (2015). This is likely to reflect this history of divided party control in which compromise was necessary to get anything accomplished.

Currently, Republicans have supermajorities in both houses with a 28 to five majority in the senate and 74 to 25 majority in the house. At the national level, Tennessee is one of the most reliably Republican states in the country. At the state level, however, the governorship has alternated between Democrats and Republicans since 1970. Since 1979, every governor has served two full four-year terms, suggesting Tennessean voters are hesitant to oust incumbent governors of either party. Republicans have had unified control of government since 2011.

[2233] https://sos.tn.gov/products/division-publications/governor-haslam-executive-orders, accessed 10/27/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Office of the Comptroller of the Treasury (OCT) is the primary analytic bureaucracy in Tennessee. The comptroller is a constitutional office elected jointly by the general assembly and serves a two-year term with no term limits.[2234] The comptroller's duties are set out in statute. The OCT is responsible for auditing both state agencies and local government. Moreover, the OCT participates in the "general financial and administrative management and oversight of State government."[2235] The OCT is a massive well-funded legislative agency with a FY17-18 budget of $109.5 million.[2236] The primary division relating to oversight in the OCT is the Department of Audit, but the OCT performs many other duties, such as property assessments, management services, small business advocacy, as well as serving on a wide range of state boards and commissions.

The Department of Audit in the Office of the Comptroller is comprised of two distinct sections, the State Audit Section and the Local Government Audit Section, which often work in conjunction with the Investigations Section.[2237] The FY 17-18 budget for the Audit Department was $27.5 million. Its staff of 300 published over 62 audit reports in 2017 of which 19 were performance audits of state agencies or programs.[2238] The Audit Department is a post-audit agency that conducts financial and compliance audits, performance audits, information systems audits, attestation agreements, and the state Comprehensive Annual Financial Report.[2239] Within the State Audit Division is the State Audit Section, the Information Systems Audit Section and a whole section devoted to Medicaid/TennCare audits.[2240] Also, working in support of the State and Local Government Audit sections, is the Division of Investigations which investigates allegations of waste, fraud, or abuse of public funds often leading to criminal prosecutions.[2241] In 2017, the Division of Investigations issued 34 reports that detailed the loss of over $841,000 due to fraud and $484,000 in waste or abuse of public funds. These investigations resulted in 19, mostly local officials, being indicted on 189 felony counts.[2242] Moreover, the comptroller's Waste and Fraud Hotline produces a large number of opportunities for audits or investigative follow-up. Between 2016 to 2017 the Audit Division receive over 900 notifications of possible fraud, of which 462 were considered substantive allegations and were referred for action, with over 350 responses have been reviewed, with over 100 still open.[2243] The bulk of the other notifications were either repeat notifications or calls made to the wrong agency. The data suggest that the Audit Division in comptroller's office is an extremely active agency with abundant staff, budgetary, and investigative resources to conduct oversight.

[2234] http://comptroller.tn.gov/shared/pdf/COTGUIDE.pdf?v062018, accessed 10/27/18.
[2235] http://comptroller.tn.gov/shared/pdf/COTGUIDE.pdf?v062018, accessed 10/27/18.
[2236] http://www.capitol.tn.gov/joint/staff/budget-analysis/docs/Budget%20Summary%20for%20FY%2018-19%20final.pdf, accessed 10/27/18.
[2237] http://www.comptroller.tn.gov/audit/, accessed 10/27/18.
[2238] http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf, accessed 10/27/18.
[2239] http://www.comptroller.tn.gov/sa/Index.asp, accessed 10/27/18.
[2240] http://comptroller.tn.gov/shared/pdf/COTGUIDE.pdf?v062018, accessed 10/27/18.
[2241] http://comptroller.tn.gov/shared/pdf/COTGUIDE.pdf?v062018, accessed 10/27/18.
[2242] http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf, accessed 10/27/18.
[2243] http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf, accessed 10/27/18.

Given that the comptroller is an elected official, he or she has a high degree of independence to audit or investigate agencies. The OCT is statutorily required to conduct performance audits of all agencies every eight years in compliance with Tennessee's Governmental Entity Review Law or Sunset Law. As a result, there is not a specific legislative committee tied to the OCT; many committees often react to the reports conducted by the Audit Division. Despite this, the joint committees on Government Operations and Fiscal Review appear to be the primary committees utilizing the work done by the comptroller. The Fiscal Review Committee reviews all comptroller audits and conducts the majority of hearings related to audit findings.[2244]

There is another analytic bureaucracy that aids the finance and budgetary processes, the Legislative Budget Analysis Office (LBAO). The LBAO provides support to the Joint Fiscal Review Committee (FRC), as well as the House and Senate Ways and Means Committees. This office was created by statute in 1999 to conduct detailed analyses of the state's budget and condition of financing for state programs. Its staff of seven examines and makes recommendations on the fiscal impacts of policy decisions, as well as monitoring federal grants and information management.[2245] The FRC itself also has a committee staff of 14 professionals plus two administrative assistants.

Oversight Through the Appropriations Process

The budgetary process in Tennessee is a shared responsibility between the governor and the general assembly. Both the senate and house have ways and means standing committees, as well as, the Joint Fiscal Review Committee (FRC), which meets during the interim as well as during the regular sessions. The FRC is comprised of 17 members, six senators and nine representatives, plus the speakers of the house and senate, with a current partisan split of 12 Republicans and five Democrats. As noted above, this committee has a staff of 14 to aid legislators. The committee was established by statute in 1967 and is responsible for reviewing revenue collections, budget requests, the recommended executive budget, appropriations, work programs, reserves, the state debt, and the condition of various state funds.[2246] The FRC also prepares fiscal notes on all bills introduced in the general assembly that may have a fiscal impact on the state or local governments. From 2017 thru 2018, FRC met seven times and from the agenda action items, much of their work was focused on approving non-competitive bids over $250,000. To provide some budgetary context, Tennessee recently passed its annual budget which for FY18-19 was $37 billion.[2247]

Aiding the FRC, as well as the House and Senate Ways and Means Committees is the Legislative Budget Analysis Office, described above. The Ways and Means Committee has a specific subcommittee dedicated to investigations and oversight, the Senate Finance, Ways and Means Oversight Subcommittee. This subcommittee held five meetings between 2017 and 2018. On one occasion hearings were held in response to the comptroller's report concerning the

[2244] http://www.capitol.tn.gov/joint/committees/fiscal-review/, accessed 10/27/18.
[2245] http://www.capitol.tn.gov/joint/staff/budget-analysis/, accessed 10/27/18.
[2246] http://www.capitol.tn.gov/joint/committees/fiscal-review/, accessed 10/27/18.
[2247] http://www.capitol.tn.gov/joint/staff/budget-analysis/docs/Budget%20Summary%20for%20FY%2018-19%20final.pdf, accessed 10/27/18.

troubled Department of Human Services (DHS) summer food programs.[2248] While the bulk of funding for the programs comes from the federal government, Tennessee contributes over $800,000 towards two summer food programs. Since 2015, DHS has encountered numerous problems relating to oversight of approved vendors, meal counts, abuse of reimbursement of meals provided,[2249] to outright theft of funds by vendors.[2250] However, during the course of the hearings, few substantive questions were asked about DHS procedures in response to recent reports. Rather, most questions focused on the "how to" type questions, focusing on how the programs work, how someone becomes a vendor, or how people qualify to receive benefits.[2251]

While the FRC focuses much of its attention on granting and extending contracts, the respective House and Senate Ways and Means Committee are more likely to hold hearings in which agency heads defend their budget requests. However, an examination of Ways and Means hearings demonstrates that agencies do not provide much testimony. Additionally, many questions that are asked are technical in nature when an agency does in fact testify.[2252] In comparison to the FRC, the House and Senate Ways and Means Committees meet more frequently with the house committee meeting 22 times from January to April 2018 and its senate counterpart also meeting 22 times.

At one hearing of Senate Finance, Ways and Means Committee, the head of the Department of Finance and Administration gave the governor's annual budget request for that department. Many senators asked questions about the governor's budget proposal. The chair of the Ways and Means Committee inquired directly on how much oversight needs to be conducted regarding "reductions" of all programs. The chair was concerned that there might be a lack of discipline on the part of agency commissioners and executive branch broadly about reviewing the efficiency of various programs considering the monetary resources being investing in them.[2253] This demonstrates his desire for accountability through oversight, but the focus was on "how" and "what" rather than "why" questions.

Oversight Through Committees

There is evidence of robust and comprehensive oversight from the general assembly's non-appropriation committees. In a recent instance the Senate and House Education Committees dealt with issues surrounding sexual misconduct in Tennessee public schools. A report by USA Today demonstrated that Tennessee had gaps in its definitions of misconduct, licensure revocations, and reporting (Reilly, 2016). This prompted the Office of Research and Education Accountability (OREA), a subunit within the OCT, to conduct an audit of state policies and regulations related to reporting of teacher misconduct. OREA focuses on policies related to local education and higher education institutions. OREA's report identified problems in six areas: 1) several levels background checks were not being performed or were not performed often enough,
2) there was little follow up on the references for new hires, 3) the State Education Board had a backlog of sexual misconduct reports, 4) most districts lacked a working definition of what

[2248] http://tnga.granicus.com/MediaPlayer.php?view_id=404&clip_id=14158, accessed 10/27/18.
[2249] http://www.comptroller.tn.gov/repository/ia/allaboutgiving.pdf, accessed 10/27/18.
[2250] http://www.comptroller.tn.gov/repository/NR/20160502KingdomDominion.pdf, accessed 10/27/18.
[2251] http://tnga.granicus.com/MediaPlayer.php?view_id=404&clip_id=14158, accessed 10/27/18.
[2252] http://tnga.granicus.com/MediaPlayer.php?view_id=376&clip_id=14297, accessed 10/27/18.
[2253] http://tnga.granicus.com/MediaPlayer.php?view_id=402&clip_id=14222, accessed 10/27/18.

constitutes sexual misconduct, 5) vague Tennessee law regarding revocation of licensure, and 6) teachers retained their license even if misconduct had been properly reported.[2254]

The OREA report was issued in January 2018 followed by joint hearing of the Senate and House Education and Planning Committees on January 23. In this hearing both the comptroller, OREA analyst, and the State Board of Education gave presentations regarding the report's findings and offered concrete policy solutions to address the problem.[2255] Legislators were engaged and for the most part asked probing questions of the analyst and the State Board of Education staffers. While the USA Today report came out in late 2016, the OREA analyst noted that there had been *only* four instances of criminal sexual misconduct in Tennessee by teachers or other school personnel. This, however, did not reflect reported issues of misconduct that did not reach a level criminality. The result of the hearing was the passage of several bills aimed at closing gaps in reporting and clarifying vague language regarding revocation of licensure, which were passed before the end of session in April (Nicholson, 2018). These bills, including action by the U.S. Department of Education, have provided districts and the State Board of Education with the tools and language necessary to prevent teachers accused of misconduct from gaining employment in other districts (Gonzales, 2018).

While there is certainly a "fire alarm" quality to this example, the legislature took substantial action in response to serious gaps in Tennessee's background check process for teachers. The pertinent committee held an in-depth hearing, which produced legislation aimed at addressing a large portion of the problem. The reaction by the education and planning committees demonstrated a coordinated effort by the house and senate to affect some change. This example shows that the general assembly is fully capable of working in conjunction with the comptroller, affected agencies, and the other legislative house to find comprehensive solutions to a pressing problem. This seems to meet the criteria of evidence-based, solution-driven, nonpartisan oversight.

The Tennessee Legislature eliminated three oversight subcommittees in 2011. One of these, the Prison Oversight Committee, an interim legislative committee, received recent media attention after a prison riot in April of 2017. State media reported that in 2015 the prisons in the state were so overcrowded that the governor could have declared an emergency, but both he and the Tennessee Department of Corrections (TDOC) claimed that there was no emergency (Hale, 2017). According to a local TV station, their investigating team and a state representative asked to visit another prison to interview people who worked at the facility, but their requests were denied (Kalodimos, 2017). Family and former employees of that prison provided graphic details of the use of excessive force by guards. A minority party legislator argued that that oversight committee needed to be reinstated in the wake of the riot. Despite the media attention, senators stripped a provision from a bill that would have reinstated oversight committees for corrections, children's services and TennCare. The speaker of the senate, also known as the lieutenant governor, claimed that the state and local committee of the senate has "a corrections subcommittee that meets regularly and holds hearings when needed" (Lowary, 2017). Yet the media reported in a story dated April of 2017, that that subcommittee had met only twice recently, in June 2016 and in September 2016. This reaction by senate leadership indicates that the legislature may not be fully committed to devoting time and resources to some varieties of oversight. Moreover, as the following OCT audit and hearing by the Government Operations

[2254] http://www.comptroller.tn.gov/Repository/RE/!TeacherMisconductMultipleofFour.pdf, accessed 10/27/18.
[2255] http://tnga.granicus.com/MediaPlayer.php?view_id=370&clip_id=14164, accessed 10/27/18.

Committees illustrates, without an oversight subcommittee, the tools available to the legislature to hold the TDOC accountable are a sunset review of the entire department.

In addition to standing committees with substantive jurisdiction, the House and Senate Government Operations Committees use OCT audits to review state agencies periodically (Sher, 2009). These reviews allow them to extend or terminate an agency. The decision to terminate an entire state agency even in response to a "scathing" audit report is a fairly blunt oversight instrument, however. This is apparent in the continuing problems with prisons in Tennessee described below.

The OCT has conducted audits of Tennessee's prisons in the past, and these audits have documented serious problems (Reutter, 2014). After the prison riot in April of 2017, the OCT conducted another audit of the TDOC. The audit found multiple staffing violations that put prison employees at risk, inadequate health care for prisoners that resulted in deaths, and severe overcrowding. The OCT report criticized TDOC for not holding its private contractor, CoreCivic, accountable for its failures. The Government Operations Committee met in November 2017 for four hours with the OCT to grill TDOC (Sisk, 2017). This committee has the power to terminate the department and reportedly considered this. But they delayed the decision until December, at which point they decided to reauthorize the department for one year instead of the usual four-year extension because if they terminated TDOC, then the entire corrections system would be privatized. Given that the problems emanated from poor performance by the private contractor, CoreCivic, some legislators argued that terminating TDOC could make the problems worse. In exchange for another year of existence, TDOC promised to fine CoreCivic for violations, and a legislator on the committee promised to write legislation addressing problems with prison privatization. The tools available to the Government Operations Committee appear to be so extreme that they cannot be used to oversee the work of state agencies, especially if those agencies provide essential services. Therefore, the more consequential the agency is, the more difficult to is for the Government Operations Committee to impose consequences on it.

Oversight Through the Administrative Rules Process

Tennessee grants its general assembly substantial rule review power. Proposed rules that do not need public hearings become effective 150 days after being filed with the secretary of state. Rules that receive a public hearing take effect 90 days after the hearing. But during this waiting period, the Joint Government Operations Committees can stay any proposed rule that has already received a public hearing for up to 60 days and request an agency to amend, repeal, or withdraw the rule. More importantly, all permanent rules expire at the end of the fiscal year in June, unless the legislature acts to extend the rule (Council of State Governments, 2015). The committee considers the following factors when deciding whether to terminate a rule: "authority, clarity, consistency, justification, necessity, and reference (2010 Tennessee Annotated Code).[2256] As a result of the short termination period, the Government Operations Committees can exercise considerable authority of the rulemaking process.

A review of the Joint Government Operations Committee website demonstrates that the committee meets regularly. In 2017, the committee held 14 hearings, and so far in 2018 they

[2256] https://law.justia.com/codes/tennessee/2010/title-4/chapter-5/part-2/4-5-226/, accessed 10/18/18.

have held 11 hearings on rules from a variety of agencies and commissions.[2257] In several hearings a wide range of rules were considered but committee members asked only a few questions. In most instances questions centered on clarifying the rule or asking for additional information from the presenters. One hearing in April 2018 considered 19 rules. Only one rule was not adopted; it was stayed 45 days. This suggests that the hearings themselves are not a forum where the benefits and costs of the rules are fleshed out.[2258] One observer of the administrative rules review process stated that all agencies that propose a new rule must legally have public hearings prior to bringing the rule to Government Operations Committee. This often gives legislators and their staff a full month to review objections or issues with the rule from concerned parties and work those issues out prior to the hearing (interview notes, 2018). Given this opportunity to confer informally, the *pro forma* nature of the hearings could indicate that concerns over the rules are dealt prior to the official hearing.

It is rare that the legislature uses its strict sunset review to allow existing rules to expire. Since 2005, only a handful of rules have been terminated, and the legislature has a history of extending all rules beyond the expiration date (Shwartz, 2010). Yet, this power is occasionally used. For example, in a recent hearing the Government Operations Committee rejected a Tennessee Department of Transportation rule to allow gas stations along the interstate highways to advertise on their signs, thereby affecting the business of billboard operators and owners (interview notes, 2018). These examples notwithstanding, the current structure of delayed implementation of rules followed by an automatic yearly sunset for all rules is a very time-consuming procedure for a legislature with such a short session and limited staff resources.

Schwartz (2010) considers the binary choice of terminate or not as inefficient and ineffective because it does not help improve or adjust rules—in his words, calibrating rules (p. 371). It appears that reviewing all rules on a yearly basis may contribute to *pro forma* hearings rather than targeted effort directed at specific problems. This is the same committee that met to determine whether the state would still have a Department of Corrections, as discussed in the previous section. Therefore, the workload seems exceptionally heavy even for a committee that can meet during the interim.

Oversight Through Advice and Consent

The Tennessee governor has the ability to appoint numerous individuals to a wide range of boards and commissions. In October 2017, current governor Bill Haslem appointed 217 individuals to 95 boards and commissions.[2259] There no evidence that these appointments were considered with in-depth hearings in the respective senate committee of jurisdiction. However, in the recent past there have been some outright rejections of the governor's nominees for the University of Tennessee Board of Trustees. The general assembly passed legislation reducing the size of the board from 27 to 12 members and correspondingly rejected four of Governor Haslem's 10 appointments (Humphrey, 2018). This effort to revamp the UT Board of Trustee structure was designed to give the governor and by extension the general assembly more control over the board and the UT university system in general (WATE 6, 2018). This effort probably

[2257] http://wapp.legislature.state.tn.us/apps/videowrapper/default.aspx?CommID=400023, accessed 10/27/18.
[2258] http://tnga.granicus.com/MediaPlayer.php?view_id=392&clip_id=15151, accessed 10/27/18.
[2259] https://www.tn.gov/governor/news/2017/10/16/haslam-makes-appointments-to-state-boards-and-commissions.html, accessed 10/27/18.

has more to do with on-going issues between the general assembly and the UT system, than the governor and his choices for the Board of Trustees.

However, in the area of judicial appointments there is a great deal of contention between the governor, the legislature, and between both houses of the general assembly. In 2014, Tennessee voters approved by 60%-39% margin, a constitutional amendment giving the legislature the power to confirm judicial appointments made by the governor to fill vacancies.[2260] Since approval the general assembly has had issues crafting a system to confirm judges that does not disproportionally favor one house over the other (Associated Press, 2015). The amendment allows the house and senate to confirm or deny judicial appointments within 60 days of the start of the annual legislative session. If the appointments are not acted on within that timeframe, the appointment is automatically approved. However, the amendment is vague regarding the mechanism to be used by the general assembly, which has resulted in an impasse between the upper and lower houses.[2261] As recently as 2016, the general assembly still debating whether to vote as one body, with senators and house members each casting one vote, or to vote as separate chambers, each needing to confirm the nominee (Sher, 2016). Ultimately the general assembly decided that the two chambers will vote separately on confirmation, and the nominee will need to be confirmed by both chambers.[2262]

As noted earlier, Tennessee's governor can issue executive orders dealing with all of the categories of such orders described in the Book of the States (Council of State Governments, 2015). Moreover, there is no opportunity for legislative input on these orders. In addition, they do not have to meet the specifications of the state's administrative procedures act.

Oversight Through Monitoring of State Contracts

Major non-competitive state contracts are approved and overseen by the Joint Fiscal Review Committee. Fiscal Review comments and reviews all contracts that exceed $250,000 and extend beyond one year.[2263] Other contracts are approved or monitored by the Department of General Services (DGS) Chief Procurement Officer's office, which is located in the executive branch.[2264] The DGS website provides a "contract dashboard" where all issued contracts can be viewed and provides a level of transparency that is easily accessible.[2265] Furthermore, all contracts that are up for bid are available at the DGS website, with detailed instructions on how to bid on the contracts and become a vendor for the state.[2266] The level of transparency available for contract awards, combined with the oversight of the Fiscal Review Committee, and the follow-up of any Waste and Fraud Hotline notifications by the Investigations Section of the comptroller's provides a level of contract monitoring that appears to be fairly comprehensive. While it would take pulling information from several different sources, it is not an impossible task to have effective contract monitoring through these various committees, agencies and

[2260] https://ballotpedia.org/Tennessee_Judicial_Selection,_Amendment_2_(2014), accessed 10/27/18.
[2261] Article VI, Section 3: http://www.capitol.tn.gov/about/docs/TN-Constitution.pdf, accessed 10/27/18.
[2262] http://www.tba.org/info/amendment-2-to-the-tennessee-constitution, accessed 10/27/18.
[2263] http://www.capitol.tn.gov/joint/committees/fiscal-review/, accessed 10/27/18.
[2264] https://www.tn.gov/generalservices/procurement.html, accessed 10/27/18.
[2265] https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/contract-information/all-contracts-dashboard.html, accessed 10/27/18.
[2266] https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST, accessed 10/27/18.

departments. Moreover, the Fiscal Review Committee's website has seven hearings from 2017 and 2018 where each contract is discussed and voted on to be awarded or extended.[2267] After an examination of several hearings, it appears that there is little discussion of the merits of the contracts or the performance of these contracts by the committee members. There is a routine quality to the hearings, suggesting that a lot of groundwork about the contracts is done prior to the hearings themselves.[2268] Moreover, performance of private contractors, such as CoreCivic, is a major problem in Tennessee, as it is in many other states. Thus, despite having more tools to oversee contracts, it is not clear how effectively Tennessee's general assembly monitors this method of delivering state services. Given that the review is conducted by the Fiscal Review Committee, the oversight may involve financial accounting rather than performance monitoring.

Oversight Through Automatic Mechanisms

Tennessee has comprehensive sunset provisions that require the Joint Government Operations Committee to review every agency, board, or commission in the state once every eight years (Council of State Governments, 2016). Tennessee's sunset procedures are derived from statute, specifically the Tennessee Governmental Entity Review Act (Sunset Law), and the Office of the Comptroller is responsible for conducting these sunset reviews for the legislature.[2269] In FY17 the comptroller's Department of Audit conducted 19 performance reports under the Governmental Entity Review Act, reviewing boards as small as the Board of Chiropractic Examiners to an agency as large as the Department of Safety and Homeland Security.[2270]

In some cases, the issues identified by the comptroller did not require legislative action or even necessitated a hearing by the Joint Government Operations Committee. A performance audit of the Department of Safety and Homeland Security found four out of the five previous recommendations of the comptroller's previous reviews had been resolved and two more issues required the attention of the department.[2271] An examination of the hearings of the Joint Government Operations Committee in the 109th general assembly session yielded no hearings on this performance audit or any of the other 19 reports conducted under the Sunset Law which would have jurisdiction.[2272] However, as discussed in the section on "Oversight Through Committees," some agency audits trigger lengthy hearings and raise questions about whether to terminate an entire state agency—specifically TDOC.

Additionally, while the comptroller's Division of Audit conducts a large number of reviews and provides a large amount of information on its website, it is not clear how many agencies or boards have actually been abolished or consolidated since passage of the Sunset Law. The comptroller's office is a large legislative bureaucracy with ample budgetary resources. Tennessee's legislature is part-time, and several committees, such as the Government Oversight Committee, have broad agendas. Consequently, it appears that the legislature cannot engage in extensive oversight on all of its possible oversight targets. Audits by the comptroller might be

[2267] http://wapp.capitol.tn.gov/apps/videowrapper/default.aspx?CommID=400004, accessed 10/27/18.
[2268] http://tnga.granicus.com/MediaPlayer.php?view_id=391&clip_id=14281, accessed 10/27/18.
[2269] http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf, accessed 10/27/18.
[2270] http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf, accessed 10/27/18.
[2271] http://www.comptroller.tn.gov/repository/SA/pa16109.pdf, accessed 10/27/18.
[2272] http://wapp.legislature.state.tn.us/apps/videowrapper/default.aspx?CommID=400005, accessed 10/27/18.

enough to solicit compliance from agencies and boards, without legislative action. However, it is just as likely that the committee of jurisdiction and the legislature broadly, are not in session long enough to carefully examine the massive amount of reporting being conducted by the Division of Audit.

Methods and Limitations

There are archival video recordings of hearings that are easy to access, and committee agendas readily available and easily accessible. We contacted 12 people to request interviews and were able to interview two people about legislative oversight in Tennessee.

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Legislative Oversight in Texas

Capacity and Usage Assessment

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

Summary Assessment

The unique distribution of authority among the branches and agencies of Texas' state government has resulted in an unusually powerful state legislature. This characteristic, coupled with the legislature's direct control over three major analytic bureaucracies, and the outsized influence of those bureaucracies (particularly the Legislative Budget Board), creates the potential for extensive legislative oversight. Various factors, however, prevent high quality oversight from occurring. Foremost among these factors is that the members of the committees and boards that direct the activities of the analytic bureaucracies are appointed by the lieutenant governor and the speaker of the house. When both offices are held by members of the same party, as they typically are, objectively-conducted oversight is less likely to occur. High levels of partisan polarization within the legislature exacerbate this. Further, the practice of directly electing most agency heads limits the legislature's ability to conduct oversight of such officials.

Major Strengths

The Texas legislature appears to be responsive to recommendations from the Legislative Budget Board (LBB). Out of 106 recommendations listed in the Government Effectiveness and Efficiency Report for the 84th Legislature, 44 were approved. In addition, Texas' Sunset Advisory Commission claimed in 2016-17 to have saved or gained nearly $34 million in revenue through consolidation or removal of ineffective agencies, but this success depends on a legislature that makes effective use of its sunset capabilities.

Challenges

Sometimes the legislature fails to heed the warnings or accept the recommendations of its analytic bureaucracies. In the aftermath of the 2010 Deepwater Horizon oil spill, the Texas legislature adopted only one of three recommendations by the LBB concerning fiscal oversight. Additionally, while reports from the State Auditor's Office (SAO) detailing corrupt contracting practices at the Texas Health and Human Services Commission and the Department of State

Health Services did lead to the resignation of key officials, reported mismanagement by the SAO dating back to 2014-15 had gone unheeded by the legislature.

Relevant Institutional Characteristics

The National Conference of State Legislatures classifies Texas' legislature as a hybrid between full and part time.[2273] Members of both the house and senate are paid $7,200 annually, plus $190 per diem while the legislature is in session.[2274] Regular legislative sessions last 140 days, and take place once every other year, although the governor may convene a special session at any time he or she chooses.[2275] The legislature has 2,359 staff members, 2,059 of whom are permanent staff.[2276] No term limits exist for Texas legislators.[2277]

The Texas governor's powers are relatively weak in comparison to those of the legislature. The governor is part of what is termed a "plural executive" branch. A plural executive is an institutional arrangement in some states where executive power is distributed throughout the executive branch, often with other executive offices being elected independently of the governor. Texas is an extreme example, with six of the seven major executive offices being elected separately from the governor. These offices include the lieutenant governor, attorney general, land commissioner, commissioner of agriculture, comptroller, and commissioner of the General Land Office. Additionally, heads of major regulatory agencies like the Railroad Commission and State Board of Education are directly elected.

Accordingly, the legislature is comparatively strong, with relatively extensive powers. The relative power of the legislature and executive is discussed further, below. A key player in the executive and legislative branches is the lieutenant governor. The lieutenant governor contends with the governor as the most powerful office in Texas government. The lieutenant governor presides over the Texas Senate, appoints committee chairs and can also assign bills to specific senate committees. Additionally, he serves as co-chair of the influential Legislative Budget Board (LBB) and Legislative Audit Committee. In the case of the LBB he serves as co-chair with the speaker of the house and appoints two additional board members from the senate to the 10-member LBB. The speaker makes a similar appointment from the house and the remaining seats are filled by the respective chairs of the Budget and Appropriations/Finance Committees. As a result, the lieutenant governor has a direct role in appointing four of the 10 board members, not including himself.

The governor shares budget-making power with the legislature. The governor has the power to use a line-item veto on appropriations bills only. The legislature can override such a veto with a two-thirds majority vote (Beyle, 2008). According to the Council of State Governments' Governors' Institutional Powers Index (2015), the office of Texas governor is the tenth least powerful among the 50 states (Ferguson, 2015). Additionally, Texas is one of the few states that utilize a biennial budgeting process. To provide some budgetary context, the biennial Texas budget for fiscal year 2016-17 was $209 billion. Texas governors were historically modest

[2273] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 7/10/18.
[2274] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 7/10/18.
[2275] http://www.laits.utexas.edu/txp_media/html/leg/0200.html, accessed 7/10/18.
[2276] http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf, accessed 7/10/18.
[2277] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 7/10/18.

in their use of the veto powers: 62 for Ann Richards, 95 for George W. Bush. These are typical for most past governors. Rick Perry, however, departed from this pattern with 248 vetoes. It is possible that the relationship between the governor and legislature is changing in Texas, but this could just be the approach taken by one specific governor.[2278]

Texas has a larger than average share of its citizens working in state and local government (12.3% compared to 11.3% nationally). This places Texas as the state with the 14th largest proportion of its citizens employed in state and local government. The education section is especially large (7.4% compared to 6.1% nationally), accounting for most of the difference between Texas and the rest of the nation (Edwards, 2006).

Political Context

In 2018, Republicans controlled both houses of the legislature, as well as the governorship. Republicans hold a 93-55 majority in the house (with two seats vacant)[2279], and a 20-10 majority in the senate (with one vacancy).[2280] According to Shor and McCarty (2015), in 2014 Texas' house of representatives had the fourth-highest level of partisan polarization in the nation.

Historically, the Democratic Party has dominated Texas state politics. This situation has been reversed in recent decades. The first post-reconstruction Republican governor was elected in 1979. Republicans have held the governorship since 1995. They first took control of the state senate in 1997, and the state house in 2003. Subsequently, they have held uninterrupted majorities in both houses (Republican Party of Texas, 2017).[2281] Therefore, during the last 15 years, Texas has been a Republican trifecta.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are three analytic bureaucracies within the legislative branch. They include the State Auditor's Office (SAO), the Legislative Budget Board (LBB), and the Sunset Advisory Commission. Each was established by statute.

The State Auditor's Office was established by the legislature in 1943.[2282] Its purpose is to "perform audits, reviews, and investigations of any entity receiving state funds, including state agencies and higher education institutions."[2283] During fiscal year 2016, it conducted 41 audits of subjects including state agencies, pension funds, universities, boards, commissions, and some county-level entities.[2284] It also monitored compliance with federally-mandated directives, and

[2278] http://texaspolitics.utexas.edu/archive/html/exec/governors/index.html, accessed 7/4/18.
[2279] https://ballotpedia.org/Texas_House_of_Representatives, accessed 7/10/18.
[2280] https://ballotpedia.org/Texas_State_Senate, accessed 7/10/18.
[2281] https://www.texasgop.org/overview-and-history/, accessed 7/10/18.
[2282] https://www.sao.texas.gov/About/History/, accessed 7/10/18.
[2283] https://www.sao.texas.gov/About/, accessed 7/10/18.
[2284] https://www.sao.texas.gov/Documents/AnnualReports/SAOAnnualReport_FY2016.pdf, accessed 7/10/18.

provided reports to the legislature about financial practices of government entities within the state.[2285] Although it has the authority to request information from agencies, it lacks subpoena power. It is not authorized to conduct economy and efficiency audits, program audits or sunset reviews, concentrating instead on financial audits, IT audits, and financial statements. It is, however, empowered to assess performance measures. Audits are either mandated by state law or chosen by the agency director rather than by legislators (NASACT, 2015).

The SAO is subject to "the six-member Legislative Audit Committee (LAC), a permanent standing joint committee of the State Legislature."[2286] LAC members include the lieutenant governor and the house speaker, who appoint the remaining members: one each from the House Appropriations, House Ways and Means, and Senate Finance committees, as well as one additional senator.[2287] From 2011-2015, the SAO averaged 47 audits per year of various state agencies. From 2013 to 2016 the SAO reports that it completed 52 performance audits of the state agencies and institutions of higher education, which means that SAO conducts approximately 12 to 13 performance audits per year. Based on these 2013-2016 audits it made 703 recommendations of which 79 percent were fully implemented by February of 2018.[2288] For fiscal year 2017, the SAO budget appropriation was approximately $21 million to conduct audits.[2289] It employs a staff of 215, 127 of whom are directly involved in producing audits.

The LBB is a joint standing committee comprised of ten legislators, appointed by the lieutenant governor and house speaker. It was established by the legislature in 1949. It employs over 100 staff members, who are tasked with reviewing and analyzing the financial operations of various state and local entities, assisting agencies' fiscal operations, studying the potential costs of proposed legislation. "During the legislative session, the LBB supports the legislative appropriations process by providing staff resources for the House Appropriations Committee, the Senate Finance Committee, and the Conference Committee on Appropriations." State agencies must report contracts exceeding $50,000 to the LBB, with some exceptions (Texas Legislative Budget Board, 2017).[2290] For fiscal year 2016-17 the LBB's budget was $23 million. The LBB provides biennial reports on the overall effectiveness of state programs. This massive report, entitled State Government Effectiveness and Efficiency Report (GEER), is distributed to both the governor and to the legislature. It includes various recommendations for elected officials to consider. The 2015 GEER conducted 49 analyses of government effectiveness and efficiency and made 106 specific recommendations ranging from an economic stabilization fund, addressing the insolvency of the state's teacher retirement insurance fund, coordinating and oversight of border security, and improving oversight of funds related to the Deepwater Horizon oil spill. [2291]

In terms of performance reviews, the LBB is authorized to conduct performance reviews and evaluations of state agencies, as well as local school districts and institutions of higher learning (interview notes, 5/21/18). Every biennium the LBB compiles the GEER, which presents legislators with findings and recommendations resulting from reviews and related policy

[2285] https://www.sao.texas.gov/Documents/AnnualReports/SAOAnnualReport_FY2016.pdf, accessed 7/10/18.
[2286] https://www.sao.texas.gov/About/LegislativeAuditCommittee, accessed 7/10/18.
[2287] https://www.sao.texas.gov/About/LegislativeAuditCommittee, accessed 7/10/18.
[2288] http://www.sao.texas.gov/reports/main/18-021.pdf, accessed 1/11/19.
[2289] http://www.lbb.state.tx.us/Documents/Publications/Fiscal_SizeUp/Fiscal_SizeUp.pdf, p. 546. Accessed 4/23/18. For the biennium fiscal year 2016-2017 the SAO was appropriated $43.4 million.
[2290] http://www.lbb.state.tx.us/responsibilities.aspx, accessed 4/23/18.
[2291] http://www.lbb.state.tx.us/Documents/Publications/GEER/Government_Effectiveness_and_Efficiency_Report_2015.pdf, accessed 1/11/19

analyses. For example, the 2015 GEER mentioned above summarized 49 reports and made 106 recommendations for improving state government (interview notes, 5/21/18). The legislature acted on 20 of the 34 report's recommendations for statutory and budgetary changes. This suggests some responsiveness on the part of legislators on key appropriations and standing committees to the recommendations of a central analytic bureaucracy.

The Comptroller's Office "was established by Article IV, Sections 1 and 23 of the Constitution of 1876." It serves as the state's tax collector, as well as auditor of state tax collection. It also "submits financial reports to the governor and the legislature with statements on the previous fiscal year, outstanding appropriations, and estimates of anticipated revenue."[2292]

The Sunset Advisory Commission was established in 1977 by the legislature.[2293] Its functions are discussed below, under "Automatic Oversight Mechanisms."

Oversight Through the Appropriations Process

The Senate Finance and House Appropriations Committees' main oversight responsibilities include examining and amending, as well as holding hearings on, the general appropriations bill, prior to its submission to the full legislature.[2294] These committees meet several times per week during odd-numbered years, when developing a budget. But in even numbered years, the committee meets once a month or less. In-depth oversight of state agencies' finances appears to occur primarily through the LBB, technically its own joint standing committee. The committee's responsibilities include drafting appropriations bills and providing information and advice to committees.[2295]

In the GEER report produced by the LBB, various legislative and rules recommendations are made to legislators. One key area that impacts Texas is the presence of natural disasters, like hurricanes and tornadoes, and man-made disasters like the Deepwater Horizon oil spill. There is an appropriation subcommittee, the Appropriations Subcommittee on Disaster Impact and Recovery, tasked with managing the often-complicated financial responses to these disasters. In the 2015 GEER report, the LBB analyzed oversight of funds related to the spill. The Deepwater Horizon explosion released nearly 5 million barrels of oil before finally being capped. As a result, the ecological and economic damage was extensive. Texas currently receives funds from five different sources: BP, an energy company that leased the oil rig; MOEX Offshore, an investor in the oil well; Transocean, the owner and operator of the well; and federal and state funding sources. With nearly $320 million in restoration funds, fines, and civil penalties, the LBB was concerned that no formal process was in place that required state agencies to provide reports or updates to the legislature.[2296]

The LBB made three specific recommendations to the governor and legislature regarding this lack of oversight. First, to attach a rider in the general appropriations bill requiring agencies that receive, expend, or conduct projects relating to Deepwater funds, to submit quarterly reports to the LBB. The second recommendation is to attach a rider to the general appropriations bill that

[2292] https://tshaonline.org/handbook/online/articles/mbc04, accessed 7/10/18.
[2293] https://www.sunset.texas.gov/about-us/frequently-asked-questions#2, accessed 7/10/18.
[2294] http://texaspolitics.utexas.edu/archive/html/pec/features/0403_01/slide3.html, accessed 7/10/18.
[2295] http://www.tlc.texas.gov/docs/legref/legislativeprocess.pdf, accessed 7/10/18.
[2296] file:///F:/State%20Oversight%20Project/Government_Effectiveness_and_Efficiency_Report_2015.pdf, p. 85. Accessed 4/23/18.

requires any agency spending $1 million or more for a project using Deepwater funds to submit an expenditure request to the LBB and governor's office. The final recommendation is to create a new standing subcommittee in the house and senate finance or appropriation committees to provide oversight for "exceptional fiscal or policy matters such as the influx of oil spill-related funds."[2297]

In the following legislative session, the Texas legislature adopted only one of the three recommendations, the requirement that agencies send quarterly reports to the LBB on the use of oil spills (interview notes, 5/21/18).[2298] This suggests that on some issues the Appropriations and Finance Committees pursue oversight less vigorously than the LBB would advise.

The House Appropriations Committee has taken some oversight actions in recent months to examine the failures of the Health and Human Services Commission over the agency's continued contract procurement, monitoring and reporting issues.[2299] This suggests a somewhat engaged oversight process in the state house of representatives. Currently, however, there have been no hearings scheduled in the Senate Finance Committee regarding this high-profile issue, but there have been hearings in the Senate Health and Human Services Committee.[2300] This further indicates that there is some reluctance on the part of Texas' legislators with respect to using the appropriations process to conduct oversight.

It appears that the Appropriations Subcommittee on Budget Transparency and Reform consider audit reports and other evidence of needed improvements in state government processes, such as fleet management. That subcommittee met twice during 2017, once on 3/6/17 for an hour and again on 4/4/17 for 1.5 hours.

Oversight Through Committees

Rather than creating separate standing and interim committees, Texas' legislative leaders assign interim "charges" to standing committees that they are responsible for investigating and reporting on. The analytic bureaucracies serve as an oversight resource for the standing committees both during the regular session and during interim. To the extent that the standing committees conduct oversight, it appears to be based on the investigations conducted by the analytic bureaucracies. Indeed, assistance and consultation with the legislature are essential functions of each of the three legislative-branch analytical bureaucracies discussed above.

For instance, the Texas Health and Human Services Commission had serious contract monitoring and procurement issues. Despite these problems, there has been very little action on this high-profile failure. There was one hearing by the House Committee on General Investigations and Ethics in February 2018.[2301] During that hearing there were multiple witnesses from the state analytic bureaucracies, especially the Legislative Budget Board and the State Auditor Office, but no witnesses from the agency in question--the Health and Human Services Commission. The Joint Health and Human Services Transition Oversight Committee

[2297] file:///F:/State%20Oversight%20Project/Government_Effectiveness_and_Efficiency_Report_2015.pdf, p. 85. Accessed 4/23/18.
[2298] Article IX Sec. 7.10 2018-2019, Biennium Reporting Requirement for Deepwater Horizon Oil Spill Funds.
[2299] https://www.mystatesman.com/news/state--regional-govt--politics/texas-lawmakers-rebuke-state-health-officials-for-contract-flap-again/Zl7KQFQzpwHk78GNPWHMbM/, accessed 5/1/18.
[2300] https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C6102018032110001.PDF, accessed 5/1/18.
[2301] http://tlchouse.granicus.com/MediaPlayer.php?view_id=40&clip_id=14800, accessed 5/1/18.

met on May 24th, 2018 to investigate this topic. The minutes of the meeting show that the Chief Policy Officer of the Texas Health and Human Services Commission testified. That is the only item recorded on the meeting minutes. This joint oversight committee met again on September 12, 2018 the meeting minutes and witness list show that four state officials testified: three from the state's Health and Human Services Commission and one from the Department of State Health Services. We were unable to find archival recordings that correspond to these hearings. There were no further meetings of this joint committee in 2018. This might suggest limits on the rigor of oversight.

A search of archives of the Legislative Reference Library of Texas for reports on state administrative hearings found one committee report for 2015 (for the Senate Natural Resources and Economic Development committee) and no similar reports for either 2016 or 2017. That report, entitled Interim Report to the 85th Legislature, [2302] lists the seven charges for the committee, the three interim hearings held, and the actions taken on each committee charge. Charge 5 (pg. iii) gives the committee authority to "[c]onduct legislative oversight and monitoring of agencies programs under the committee's jurisdiction." The report notes (p. 121) that "[t]he committee took no action on this charge." A summary of the items considered at each of the three committee hearings for this committee documents that charge 5 was the only change for which the committee took no testimony (p. x). In fairness, charge 7, which did receive some attention involved the implementation of a permitting process, which could be a form of oversight. But this report reinforces other evidence that legislative oversight of state agencies is not vigorously pursued by interim committees in Texas.

During the 2017 interim this same committee took action on its charge to oversee the Texas Railroad Committee through a sunset review process. So, there is some evidence in the report it filed [2303]that this time this interim committees conducted oversight, but it appears that this is not a high priority.

Oversight Through the Administrative Rules Process

Texas Government Code 2001 establishes the administrative rules process. Prior to the adoption of a rule, state agencies must perform a variety of reviews, prepare various impact statements, and allow public comment. As part of this process, the legislature is required to conduct a review of the proposed rule, through the pertinent legislative committees. Proposed rules are sent by agencies to the lieutenant governor and the speaker of the house, who in turn forward the rules to the appropriate legislative committee. Under this process, the legislature reviews proposed rules and either supports or rejects them. This is advisory only; it does not formally approve or reject such rules (Sec. 2001.032). These reviews include fiscal impacts, environmental impact statements, and especially an assessment of impacts on small businesses mandated by HB 3430 of 2007. These committees then provide statements declaring their opinion. Such statements, however, are nonbinding.[2304] Existing rules are reviewed every four years. It is the responsibility of agencies to assess whether the rule is still necessary under Texas law (Sec. 2001.039).

[2302] https://lrl.texas.gov/scanned/interim/84/N219E.pdf, accessed 1/12/19

[2303] https://lrl.texas.gov/scanned/interim/85/N219E.pdf, accessed 1/12/19

[2304]https://www.lawserver.com/law/state/texas/tx-codes/texas_government_code_chapter_2001, accessed 5/1/18.

Schwartz (2010) finds that legislative committees and subcommittees rarely if ever review administrative rules. Moreover, the analysis of the impacts of administrative rules focuses almost solely on costs of rules rather than considering benefits to the public of, for example, protection from environmental toxins. Our efforts to find information on instances of administrative rule review led us to a 2011 Senate Committee of Government Organization that was charged with examining the pros and cons of "cost-effectiveness analysis in state agency rule making" [2305] This committee reported that the costs associated with mandatory cost-effectiveness analysis would outweigh any benefits, and therefore this analysis should only be considered on a case-by-case basis (p. 3). We were unable to locate other specific instances in which committees reported on their administrative rule review activities.

Oversight Through Advice and Consent

The Texas governor's power to make major appointments is relatively limited, as "[t]he only executive official appointed by the governor is the Secretary of State."[2306] Department heads and state judges are all directly elected, except for the secretary of state and the heads of some minor agencies. However, the governor can appoint supporters to over 200 different boards and commissions, as well as vacant judicial seats. Gubernatorial appointments must be approved by two-thirds of the state senate. The governor can appoint individuals to interim appointment when the legislature is not in session, which is frequent. Additionally, state senators, much like U.S. senators, observe senatorial courtesy. This allows the senator from the district in which the nominee resides to effectively block or veto the governor's nominee.[2307]

Further complicating the governor's appointment power is the fact that most appointees serve staggered six-year terms, and the governor cannot fire appointees from previous governors.[2308] As a result, it can take a governor several years to finally get their "people" into place on key boards and commissions. Overall, the Senate Nominations Committee is fairly accommodating of the governor's appointees. From 2001 to 2017, the senate refused to confirm 13 of the hundreds of gubernatorial nominees (interview notes, 5/26/18). The number of nominees the senate refused to confirm peaked in 2015 with five rejected (interview notes, 5/26/18). While most of the rejected nominees have been noncontroversial, in 2013 the governor's nominee for insurance commissioner was rejected. During her time as an interim appointment she had several conflicts with the legislature and was subsequently rejected when the senate reconvened, and her interim appointment concluded (interview notes 5/26/18). Despite these occasional forays into oversight, there have been problems with some recent gubernatorial appointees, (see discussion of the Health and Human Services Commission in the section on State Contracts, below), that suggest that some gubernatorial nominations might need to be scrutinized more carefully.

Texas' governor is not empowered to issue executive orders reorganizing state government or creating agencies and so forth. The legislature has the power to "create new

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[2305] https://lrl.texas.gov/committees/cmtesDisplay.cfm?from=LegRpt&cmteID=11351&passSearchparams=termid=3355**subject=Administrative%20Rule&from=LegRpt&cftoken=85709074&cfid=75510450%20&chargeSearched=, accessed 1/12/19

[2306] https://www.laits.utexas.edu/txp_media/html/exec/print_exec.html#41, accessed 7/10/18.

[2307] https://www.laits.utexas.edu/txp_media/html/exec/print_exec.html, accessed 5/1/18.

[2308] http://www.laits.utexas.edu/txp_media/html/exec/0401.html, accessed 5/1/18.

agencies or abolish existing ones."[2309] It also may modify the purposes and duties of agencies. (Texas Politics Project, 2005).

Other than the limitation on government reorganizations, Texas' governor has wide latitude in issuing executive orders. As is often the case, gubernatorial executive orders—which typically cover things like hurricane evacuations—are not overturned by the legislature. Governors vary widely in the number of orders they issue and in the policy making they attempt through executive orders. When governors issue more controversial executive orders, it appears that the legislature has been quite willing to overturn these. Gov. Perry was especially zealous, by Texas standards, in using this tool, issuing 80 executive orders in 13 years. Some of these were quite controversial. By contrast, Gov. Abbott issued only one executive order during his first two years in office.

In 2007 then-Gov. Perry issued an executive order requiring all Texas girls entering the 6th grade to be vaccinated against human papillomavirus (with the option for parents to fill out a conscientious-objection affidavit form).[2310] The disease causes cervical cancer, and it could be considered a public health emergency. But the legislature objected vigorously, and tIt took them only a few months to overrule him.[2311] They did this by passing bills by overwhelming (veto-proof) majorities in both chambers, which is the only mechanism they possess to reject an executive order.

Oversight Through Monitoring of State Contracts

The State Auditor's Office (SAO) audits state contracts through its normal review processes, as specified by statute.[2312] As noted above, state agencies must report any contract exceeding $50,000 to the Legislative Budget Board (LBB). In 2018, the State Auditor's Office issued a report that highlighted the failures of the Texas Health and Human Services Commission and the Department of State Health Services regarding the mishandling of state contracts. The SAO report stated that the commission used "inconsistent methodology, inconsistent math formulas, inaccurate calculations, and data entry errors to score the contracting competition between five companies. Officials also did not verify that the competing companies were qualified for the job."[2313] The Health and Human Services Commission (HHSC) has a history of contract mishandling and lack of reporting to the LBB. In 2017, the Commission failed to report at least "42 contracts worth $100 million to the LBB in a timely manner." Also, in 2014-2015, it was discovered that the HHSC had awarded a $20 million contract to 21st Century Technologies, a relative newcomer in the fraud software tracking market, through a no-bid competitive process.[2314] Once made public, this resulted in the resignation of the HHSC Deputy Inspector General, three separate investigations and a lawsuit.

[2309] http://www.laits.utexas.edu/txp_media/html/leg/0503.html, accessed 7/10/18.
[2310] https://www.texastribune.org/2011/08/15/facing-new-scrutiny-perry-walks-back-hpv-decision/, accessed 11/16/18.
[2311] https://www.texastribune.org/2017/06/02/analysis-governors-executive-order-doesnt-go-very-far-texas/, accessed 7/4/18.
[2312] https://www.sao.texas.gov/About/, accessed 7/10/18.
[2313] https://www.texastribune.org/2018/04/16/audit-report-finds-two-texas-health-agencies-fault-over-contract-error/, accessed 5/1/18.
[2314] https://www.texastribune.org/2015/02/03/21ct-health-commission-recap/, accessed 5/1/18.

As of April 2018, three commission employees had been fired and the Chief Operating Officer and Deputy Executive Commissioner for Procurement and Contracting Services had resigned. These contracting lapses had occurred shortly after a required sunset review and reforms. Despite these reviews, the Health and Human Services Commission still exhibited issues regarding contract management.[2315] Additionally, the Executive Commissioner for HHSC Charles Smith resigned in May, dogged by the continued contracting management woes at the commission.[2316] On April 18, 2018, the House Appropriations Committee held a hearing on the current contract monitoring and procurement lapses and asked very pointed questions on Executive Commissioner Smith.[2317] Representatives repeatedly inquired how the HHSC could have repeated problems with procurement and reporting of contracts after its recent failures. From Commissioner Smith's testimony, there appears to be a heavy reliance on internal oversight.

The relationship between the SAO and the legislature appear to enhance the power of the Texas legislature to oversee state contracts. This power is still limited to situations that trigger an audit by SAO, but this is more power than many state legislatures have over these service contracts.

Oversight Through Automatic Mechanisms

The 12-member Texas Sunset Advisory Commission reviews all agencies prior to the expiration of such agencies' mandate. It is comprised of 10 legislators and two non-legislators, appointed by the lieutenant governor and speaker of the house. The commission's findings and recommendations are provided to each chamber of the legislature through pertinent committees, which either reauthorizes or abolishes each agency, subject to the governor's approval or veto.[2318,2319]

Most state agencies are subject to the sunset process. That is, their existence must be periodically reauthorized. Reauthorization is usually required every 12 years. Entities subject to the sunset process include, but are not limited to, departments, boards, commissions, and authorities. Universities and courts are not subject to sunset law.[2320] Since 1977, the Sunset Advisory Commission has conducted nearly 500 reviews and abolished 37 agencies, consolidated 47 more programs and agencies, and nearly 80% of SAC's recommendations become law.[2321] Considering SAC's budget for fiscal year 2016-17 was only $4.7 million, and it claims to have saved or gained revenue totaling nearly $34 million over that time, this is impressive rate of return. Finally, every four years agencies review their own rules to determine whether they still fulfill the purposes for which they were initially adopted.

[2315] https://www.texastribune.org/2018/04/20/health-commission-official-resigns-amid-contracting-woes/, accessed 5/1/18.
[2316] https://www.texastribune.org/2018/05/03/charles-smith-out-head-texas-health-commission/, accessed 5/1/18.
[2317] www.house.state.tx.us/video-audio/committee-broadcast, accessed 4/18/18.
[2318] https://www.sunset.texas.gov/about-us/frequently-asked-questions, accessed 7/10/18.
[2319] https://www.sunset.texas.gov/how-sunset-works, accessed 7/10/18.
[2320] https://www.sunset.texas.gov/about-us/frequently-asked-questions#5, accessed 7/10/18.
[2321] http://www.lbb.state.tx.us/Documents/Publications/Fiscal_SizeUp/Fiscal_SizeUp.pdf, accessed 7/10/18.

Oversight Through Other Mechanisms

The Legislative Budget Board website also offers citizens the opportunity to submit specific ideas for performance or evaluation audits. However, how often this option is utilized by citizens and acted upon by the LBB is unknown. The LBB could not provide data on the utilization of this online option.

Methods and Limitations

Texas provides archival recordings of committee hearings, but it is hard to locate recordings that correspond to specific dates for a specific committee. Meeting minutes are cryptic. This makes it difficult to follow a line of oversight activity to document the quality of the oversight carried out. We contacted 12 people to request interviews and were able to interview two of them about legislative oversight in Texas.

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Legislative Oversight in Utah

Capacity and Usage Assessment

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

Summary Assessment

The Utah legislature possesses adequate formal authority to engage in oversight over the executive branch. Yet, given its short legislative sessions, Utah's legislature has little time to carry out extensive oversight of state agencies. Passing a budget consumes most of the legislative session. Even though Utah is a one-party state, there is conflict with the governor over the budget, leading the legislature to use checks and balances to restrain the executive. The legislature has expressed some interest in strengthening oversight, but its efforts to do so were hamstrung by Utah's strong special interests, with the result that a proposed Joint Committee on Oversight was so thorough altered that the bill failed. Despite the limits on oversight through the committee process, Utah has a selective sunset review process and the administrative rules process incorporates annual and five-year review of administrative rules.

Major Strengths

Utah mandates annual reauthorization of rules and the review of specific rules every five years. Although it lacks the power to block administrative rules, the legislature has a rule review committee, the Administrative Rules Review Committee (ARRC) that can use the sunset provisions to convince agencies to comply with the legislature's wishes on administrative rules. The budget process involves every legislator in the appropriations committee and subcommittees. There is extensive staff support during the budget process. The legislature has the power to create special investigation committees when an audit identifies a major problem, such in the case of child welfare. Special committees tend to perform oversight on a specific topic when a crisis puts agency performance on the public agenda.

Challenges

There seems to be only a limited interface between the Office of the Legislative Auditor General (OLAG) and the legislature. Despite having input into the audits conducted, the link between legislators and the OLAG appears to be informal. There is no evidence of audit reports

being used consistently and systematically during budget hearings to elicit agency compliance with audit recommendations. When an audit is used by the legislature it is through the creation of a special committee specifically created to deal with the subject of the audit rather than through standing committees. A joint oversight committee could fill this lacuna.

Relevant Institutional Characteristics

Utah has a citizen legislature, with most legislators holding full time professions outside of their legislative responsibility. Utah is currently ranked 46th in terms of legislative professionalism according to the Squire Index (Squire 2017). The legislature meets annually, beginning the fourth Monday of January for no more than 45 calendar days. The legislators receive $273 per calendar day and a per diem of up to $141 in lodging and meal vouchers. During the session, there is one full-time secretary for the legislature. Utah's legislature employs 227 staff members, of which 133 are permanent.[2322]

Utah has a bicameral legislature with 75 members in the House of Representatives and 29 in the Senate. Representatives serve a two-year term and Senators serve a four-year term. There are no term limits imposed on either position. The absence of term limits allows legislators who win reelection to gain substantial experience in their roles. In 2012, the average Representative was beginning their sixth legislative term, having already served for 10 years. The average Senator, meanwhile, was "beginning a tenth year of cumulative legislative service, with 2.8 years served in the House and 7.1 in the Senate."[2323]

In Utah, both the state constitution "and political expectations give significant power to the legislature," and "[m]any observers note that the governor must often appease the legislature in order to get things done" (Haider-Markel 2009). But while the legislative branch in Utah is viewed as powerful, the governor also has substantial formal power. The Utah governor is ranked as the 16th most powerful in the country (Ferguson 2015). There are no term limits for the position, and the governor has line-item veto power in the appropriations process. The governor has the sole power to call a special session of the legislature, and there are few checks on executive orders. On the other hand, there are separate elections for several executive offices. In addition to the frequently elected position of attorney general, Utah elects top executive branch office holders such as the treasurer and the state auditor. Additionally, gubernatorial appointment power is constrained both by Senate confirmation and by involvement in candidate selection from boards and agencies the limits the governor's choices.

Utah is share of its workforce employed by state and local government (11.2%) is almost the national average of 11.3%, according to the CATO Institute (Edwards 2006). Slightly more of these employees are concentrated in education (6.5%) compared to 6.1% nationally.

[2322] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 06/0/18

[2323] http://utahdatapoints.com/2012/05/utah-legislators-serve-longer-than-they-used-to/ , accessed 06/04/18

Political Context

Utah has a socially conservative political culture.[2324] The state has been Republican dominated for 30 years, and no Democrat has been elected as Governor since 1980. Currently, the Senate has 24 Republicans and 5 Democrats, while the House has 63 Republicans and 12 Democrats. In recent years, and in response to perception of extreme partisanship in their respective parties,[2325] some centrist Republicans and Democrats have created a new political party, the United Utah Party. This party has branded itself a centrist party that represents the interests of Utahans: "The Party Platform calls for free religious expression, endorses the right to own guns, favors increased education spending and supports abortion in the case of rape, incest, and danger to the mother."[2326] The 2018 election cycle will determine whether the new party is able to disrupt the longstanding Republican Party dominance seen in the state. The Utah House is ranked as the 19th most polarized in the country, with the Senate being ranked as 18th most polarized (Shor and McCarty, 2015).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

In Utah, the Office of the Legislative Auditor General is distinct from the publicly elected position of State Auditor. In 1975, the Utah State Legislature created the Office of the Legislative Auditor General (OLAG).[2327] OLAG is headed by a Legislative Auditor General, a constitutional position that is appointed by, and answerable only to, the legislature (UT Const. art. VI, sec. 33). The Legislative Auditor General must be a Certified Public Accountant or a Certified Internal Auditor, and he or she reports to the Legislative Audit Subcommittee of the Legislative Management Committee (UT Code Title 36 Ch. 12 Sec. 8). With a state appropriation of $3.4 million to support its work, the Auditor General's office currently employs approximately 45 staff members, including the Auditor General, auditors, and support staff. Additionally, it can employ up to 14 interns (NASACT 2015). Most of the audit staff hold either and M.S. in accounting or are CPAs. It compensates for its small staff by working with CPA firms to conduct part of the state agency audits and also part of the state's single audit. These firms are selected by the State Auditor and paid for with funds other than those appropriated by the OLAG (NASACT 2015).

The Audit Subcommittee has six members including the President of the Senate, the Speaker of the House, and the Senate and House Minority and Majority Leaders, is responsible for approving new audit requests, prioritizing approved audits, and hearing and releasing completed audit reports. Any legislator can make a request for an audit by submitting a letter in writing to the audit subcommittee, and OLAG has authority to audit any state agency, local government, or entity that receives state funding. In addition to audits requested by legislators,

[2324] http://www.pewforum.org/religious-landscape-study/state/utah/political-ideology/ Accessed 06/04/18
[2325] http://archive.sltrib.com/article.php?id=5317869&itype=CMSID Accessed 06/12/18
[2326] https://www.deseretnews.com/article/865680509/Frustrated-Utah-Republicans-Democrats-form-new-centrist-political-party.html Accessed 06/04/18
[2327] https://le.utah.gov/audit/office.htm Accessed 06/04/18

the Legislative Auditor General selects some audits, and outside requests for audits are also considered (NASACT 2015). The OLAG conducts a wide variety of audits, including financial audits, program audits, performance measures, and accounting reviews. It does not conduct IT audits or sunset reviews (NASACT 2015).

Audits fall into three categories: performance audits, financial and compliance audits, and miscellaneous audits, which may include cost/benefit analysis, short-term policy research, and assessments of performance measures and data. OLAG can issue subpoenas for information it needs, and it also has the authority to audit all local governments in the state as well as all state agencies (NSACT 2015). In 2017, OLAG completed 19 audits, 16 of which were "in-depth audits" and 3 of which were "special projects." In addition, 15 "follow-up inquiries" were completed regarding previously completed audits from 2017 and 2016.[2328] Audits included a review of best practices for internal control of Utah's limited purpose entities, a review of the procurement process for the University of Utah's Heritage 1K Project, and a review of sources of funding and expenditures for homeless initiatives in the state. Agencies are required to submit a written response to an audit for the inclusion in the final audit report.

OLAG reports contain both agency and legislative recommendations, and progress on addressing these recommendations is tracked. Agencies must provide an update on the status of the recommendations within 6-18 months of audit. The 2017 Annual Report contained 122 agency recommendations and 36 legislative recommendations. At the time of the report, 73% of agency recommendations had been implemented, and 36% were in process. Meanwhile, 50% of the legislative recommendations had been implemented, and 39% of the recommendations were in process.[2329] Some bills passed by the legislature have performance notes attached that indicate program goals, objectives, outcomes, and performance measures. OLAG is responsible for reviewing programs that include performance notes as well.

The Legislative Management Committee appoints the Legislative Fiscal Analyst (LFA), who then needs to be approved by the whole legislature. The LFA is responsible for fiscal oversight and reviews the executive budget before the legislative session convenes and makes recommendations to the legislature on each item, program, and specific levels of funding. It also reports and makes recommendations to the appropriations subcommittees, responds to information requests from the Joint Appropriation Committee and prepares the appropriation bill to submit to the legislature. Additionally, the LFA ensures that fiscal notes are provided on all proposed legislation and prepares revenue estimates for existing and proposed revenue acts. The office also proposes and analyzes statutory changes to ensure more effective administration and conducts organization and management improvement studies. At the end of each legislative session, the LFA reports on the fiscal impact of legislative action taken during that session.

Evidence suggests that the LFA's recommendations are not always taken seriously by the legislature. Until 2017, it was routine for subcommittees, in response to pressure from the Republican Party leadership, to announce 2% cuts to the budget, "only to see the Executive Appropriations Committee restore about all of them later in the session."[2330] This process, however, resulted in few meaningful cuts to the budget, and so for the 2018 budget session the LFA was enlisted to come up with a more specific set of spending reduction proposals. Those proposals, however, met resistance from legislators: "House and Senate leaders have already

[2328] https://le.utah.gov/audit/2018_annual_report.pdf. Accessed 06/04/18

[2329] https://le.utah.gov/audit/2018_annual_report.pdf. Accessed 06/04/18

[2330] http://utahpolicy.com/index.php/features/today-at-utah-policy/15622-legislative-leaders-want-to-cut-162-million-from-the-base-budget-but-lawmakers-aren-t-taking-the-request-seriously Accessed 06/04/18

taken some of the LFA's suggested cuts off the table, knowing lawmakers would never approve of them and not wanting to set some special interests hair on fire."[2331]

Oversight Through the Appropriations Process

Although the governor shares budget power with the legislative branch, he is still able to set his agenda through the State of the State message and the budget. However, the Office of the Fiscal Analyst (OFA) and the Executive Appropriation Committee, along with numerous legislative appropriations subcommittees have power over the final budget and appropriations. The number of appropriations subcommittees fluctuates from year to year. In 2018, there were nine such subcommittees, up from eight in 2017. Prior to 2012, the Utah legislature had eleven joint subcommittees involved in the appropriations process. The large number of subcommittees means that every legislator serves on at least one appropriations subcommittee. Thus, "Utah's budgeting process actively involves every legislator in a bipartisan/bicameral process."[2332]

Each subcommittee deals with a particular topic: education, infrastructure, social services, etc. After the governor has submitted a budget, each subcommittee marks up the portion of the budget under its purview. One person in the Utah Senate who is familiar with the process notes that this is "an intensive process from start to finish" and that every agency with funding from the state—or any agency requesting state money—has to come before a pertinent subcommittee for questioning. After that, the budget moves into the Executive Appropriations Committee, a standing committee created under Joint Rule JR3-2-401. The committee is made up of the majority and minority leaders from each chamber of the legislature. Subcommittee co-chairs must defend their budget recommendations before the Executive Appropriations Committee, which then sorts through the subcommittee recommendation to put together a comprehensive budget bill.[2333] Since portions of the budget have gone through extensive review in subcommittees, by the time the full budget comes up for a vote in the full chamber, major objections are rare.

Both the Legislative Fiscal Analyst and Executive Appropriations Committee are responsible for review and approval of certain federal funds. The LFA may include federal funds in the base budget appropriations act and will submit a federal funds request summary to the legislative appropriations subcommittee responsible for that agency's budget during each annual session.[2334] Each subcommittee reviews the federal funds summary and recommends the agency either accept or decline the federal funding. The Executive Appropriations Committee will review the subcommittee recommendations, determine whether the agency should be authorized to accept the funds, and direct the LFA on whether to include the funds in the annual appropriations act for legislative approval. The Committee also has an additional oversight function: each year, the Committee is responsible for selecting an agency, program, or institution for an in-depth budget review.[2335] Based on this review, the Committee makes recommendations for reduction or additions to the budget of that agency, institution, or program.

[2331] ibid
[2332] http://www.theutahbee.com/2017/12/05/utahs-budget-process/ Accessed 06/04/18
[2333] http://www.theutahbee.com/2017/12/05/utahs-budget-process/ Accessed 06/04/18
[2334] https://le.utah.gov/xcode/Title63J/Chapter5/C63J-5-S201_1800010118000101.pdf Accessed 06/12/18
[2335] https://le.utah.gov/URC/LegislativeRules.pdf Accessed 06/12/18

The governor's line-item veto power, however, means that the legislature's budget is often the subject of serious dispute between the legislature and the executive. This occurred in 2016, when the governor vetoed several million dollars from the legislature's budget, including $250,000 for "Teen Chef Masters," a reality cooking television program favored by some legislators.[2336] However, reflecting the strong influence of special interests in Utah's legislative process,[2337] the Utah Restaurant Association successfully lobbied the legislature to pass bills restoring the funding for "Teen Chef Master." The lobbyist for the Utah Restaurant Association is the son of a senator who sits on the committee that recommended that the governor approve the money for the show, while the daughter of the director of the Utah Restaurant Association headed the production company that was producing "Teen Chef Master." These circumstances led to questions about the roles played by personal connections and special interests in appropriating taxpayer money for the program.[2338] The restoration of funding for the program occurred during a special session called by the governor himself in response to threats of holding a veto override session to reverse the governor's cuts.[2339]

The role of special interests in Utah's appropriations process is also evident in what has been described as the state's "narrowing tax base" as a result of tax carve-outs, deductions and loopholes created to favor particular businesses or special interests," which the governor has advocated eliminating.[2340] What this and the Teen Chef Masters controversy suggest is that, while Utah's legislature has substantial power to exercise oversight over the appropriations process, it is the governor who, through the power of the bully pulpit and the line-item veto, sometimes serves as a check on the legislature and the special interests that often influence the appropriations process. At the same time, there is evidence that recommended cuts to agency budgets are either made and subsequently undone or simply ignored.

Despite the comprehensive staff support provided by the LFA and the extensive involvement of all legislators in the budget process, there is no evidence that the OLAG reports are part of this process. Nor is there a process through which the power of the purse is used to gain agency compliance with OLAG recommendations.

Oversight Through Committees

Because Utah's legislature only meets for 45 days, numerous standing committees and subcommittees are required to handle most of the work that occurs during the legislative session. The Utah Legislature has a total of 27 standing committees, with 15 House committees and 12 Senate committees. Committee meeting minutes indicate that committee meetings are focused on the movement of bills through committee. Although the standing committees do have the power to subpoena witnesses or documents, there is no evidence that the legislative standing committees functioned in any oversight capacity prior to 2018.

[2336] https://www.sltrib.com/news/politics/2016/03/31/governor-uses-veto-pen-on-six-bills-including-one-for-tv-cooking-show/ Accessed 06/04/18

[2337] https://www.sltrib.com/news/politics/2018/02/18/special-interests-find-that-the-best-way-to-utah-lawmakers-hearts-or-at-least-their-calendars-is-through-their-stomachs/ Accessed 06/04/18. See also Haider-Markel 2009.

[2338] http://kutv.com/news/local/utah-senator-says-taxpayers-should-not-be-funding-tv-cooking-show Accessed 06/04/18

[2339] https://www.deseretnews.com/article/865652474/Governor-legislative-leaders-agree-to-restore-vetoed-education-funds.html Accessed 06/04/18

[2340] https://www.alec.org/article/state-of-the-state-utah-2/ Accessed 06/04/18

Sometimes, special joint interim committees are created to exercise oversight functions. One notable example is the Child Welfare Oversight Panel**,** which was a joint interim legislative committee created in 1995 to oversee the Child Welfare system in the state. This panel was created after a series of events indicated that the Utah Department of Human Services was not handling allegations of child abuse and neglect in a manner that was in the best interest of the children impacted. It is responsible for complete oversight of the child welfare system. The panel does case review, reviews court proceedings, completes studies on medicine use in foster children, conducts fatality reviews, and reviews child welfare legislation. Due to the oversight efforts of the panel,[2341] a federal lawsuit originally filed in 1993 was finally dismissed December 2008.[2342]

In the 2018 legislative session, however, the House of Representatives passed legislation (after previously rejecting a more expansive version of the same bill)[2343] that "would create a new legislative committee with power to investigate the state's executive branch of government."[2344] The proposed nine-member Joint Committee on Governmental Oversight, would be able to conduct investigations under direction of the Legislative Management Committee, the Legislative Audit Subcommittee, the House or Senate Leadership, or by resolution of the legislature as a whole.[2345] Critics, however, claimed that HB 175 fails to implement truly robust oversight, since "the legislature caved to pressure from the very entities they created and exempted them from the jurisdiction of the proposed Joint Committee on Government Oversight."[2346] Originally, HB 175 would have investigated cities, counties and school boards, but the version that passed focused solely on executive branch agencies, particularly on rulemaking.[2347] The revised bill failed to pass because it duplicates the existing rules review committee,[2348] described below. This appears to be a missed opportunity to improve legislative oversight in Utah by tasking a specific committee with monitoring state agencies and local governments.

Oversight Through the Administrative Rules Process

The Utah legislature's involvement in the administrative rules process occurs in two places. The first is simply when the legislature "creates a program and authorizes an agency to regulate."[2349] More substantively, the Legislature's Administrative Rules Review Committee (ARRC) "exercise[s] continuous oversight of the rulemaking process" by determining whether rules proposed by government agencies are authorized by statute, comply with legislative intent,

[2341] http://www.standard.net/Government/2015/07/01/Child-Welfare-in-Utah-has-come-a-long-way Accessed 06/12/18
[2342] https://youthlaw.org/publication/utah-foster-care-lawsuit-permanently-dismissed/ Accessed 06/12/18
[2343] https://www.deseretnews.com/article/900011026/utah-house-shoots-down-bill-to-create-legislative-oversight-committee.html Accessed 06/04/18
[2344] https://www.deseretnews.com/article/900011585/utah-house-passes-bill-creating-government-oversight-committee.html Accessed 06/04/18
[2345] http://le.utah.gov/~2018/bills/hbillamd/HB0175S04.pdf Accessed 06/04/18
[2346] https://www.utahstandardnews.com/strong-oversight-committee-utah-leglistature/ Accessed 06/04/18
[2347] https://www.sltrib.com/news/politics/2018/02/02/cities-counties-team-with-governor-to-block-bill-that-would-create-powerful-new-oversight-committee-at-the-statehouse/ Accessed 06/04/18
[2348] https://le.utah.gov/~2018/bills/static/HB0175.html Accessed 7-9-18.
[2349] https://rules.utah.gov/agencyresources/rulemakingprocess-overview.pdf Accessed 06/04/18

and what impact they will have on the economy, the government, and affected persons (Utah Code 63G-3-501). Created in 1983, the committee includes ten permanent members, five from each chamber, and there can be no more than three members from each chamber from the same party. Members serve a two-year term on the committee (Utah Code 63G-3-501).

The committee reviews new agency rules and amendments to existing agency Due to stringent sunset and reauthorization procedures, existing agency rules are often terminated. All agency rules must be reviewed every five years, and if the agency does not meet the deadlines to get a rule reauthorized, the rule is stricken. Even though is lacks formal authority to block a rule, the ARRC can use the sunset provisions to "encourage" agency compliance with its preferences (Schwartz 2010). This is a very demanding process Therefore, since 1988 the committee has been provided with staff for used in reviewing existing rules. Since that time, the committee has worked to "delete the broad grants of rulemaking authority given to several state agencies, and [worked] with each affected agency to ensure the rewritten authorizing statutes would still provide needed specific rulemaking authority."[2350]

In 2017, the committee reviewed rules related to charter schools, driver's licenses and DUI hearings, firearms permit fees, and immunization exemptions for students, among other things. In reviews of existing rules, the committee can invite the appropriate standing committee chairs and appropriations chairs to participate as non-voting ex-officio members of the committee. The committee may also request that the LFA provide a fiscal note for any administrative rule change. The committee also has the power of legislative interim committees, including administering oaths, issuing subpoenas, compelling the attendance of witnesses and the production of documents (Utah Code 36-12-11).

However, the committee does not have any power of its own to block the adoption of new rules or force the repeal of existing ones. It can only prepare written recommendations, which may include legislative action. According to someone familiar with the process, if a rule passes out of the Administrative Rules Review Committee with a recommendation for approval by the whole legislature, then it is very likely that the rule will be adopted (interview notes 2018).

Oversight Through Advice and Consent

The governor has unchecked executive order powers. There is no legislative review or public filing. In 2017, the governor issued 18 executive orders, the majority of which were related to wildland fire management or convened a special session of the legislature. Other executive orders promulgated in 2017 created or repealed various boards and commissions.

The governor directly appoints 21 executive or administrative officials, not including members of boards and commissions. Out of the 21 officials, 19 require approval by the Senate (CSG 2016). These appointments are not usually objected to by the Senate: of 35 recent gubernatorial appointments, the confirmation committee voted to recommend all of them for confirmation by the full Senate. In addition, the governor has the power to appoint or confirm members to approximately 275 of the 400 executive boards, commissions, and committees functioning in the state. The remaining 125 are appointed by agency heads, advisory councils,

[2350] https://le.utah.gov/asp/interim/Commit.asp?Year=2017&Com=SPEADM Accessed 06/04/18

commissioners, the Attorney General, or other executive officers, depending on the specific position.[2351]

In some cases, the legislature has opted to vest in the governor more power of appointment. During the 2018 legislative session, the legislature passed a bill reorganizing the Utah Transit Authority (UTA). Unlike other state agencies, the UTA is "a public transit district organized under the laws of the State of Utah."[2352] One provision of the Senate bill[2353] that will overhaul the UTA will disband the 16 member Board of Trustees, which was previously appointed by city and county governments served by the UTA, and replace it with a 3 member, governor-appointed commission. In the words of one of the bill's sponsors: "Here's my favorite part of the bill: At any point of time, the governor can fire any of these members."[2354] Nominees, however, would still be subject to Senate approval.

Finally, a recent conflict between legislators and the governor over how to handle a special election has led the legislature to challenge the governor's sole power to call special sessions (Roche 2017). According to the Utah House Majority Leader, "In certain circumstances, it looks like we [the legislature] need to be able to call ourselves in special session."[2355] The legislature was successful in getting a ballot initiative for the November 2018 election added to the ballot. This initiative, House Joint Resolution 18, calls for a constitutional amendment that would give the President of the Senate and the Speaker of the House the power to call a special session for up to 10 days with a 2/3 vote in each chamber.[2356]

Oversight Through Monitoring of State Contracts

The legislature does not have oversight over state contracts with vendors. The Division of Purchasing and General Services is responsible for all state cooperative and agency contracts. Although the legislature does not have oversight regarding state contracts, there is still opportunity for the legislature to act if there is concern. This was evident in 2014 when legislators raised concerns about the state's purchasing interaction with WSCA-NASPO, a cooperative purchasing organization. WSCA-NASPO, which changed its name to NASPO ValuePoint Cooperative Purchasing Organization in 2013, is a public cooperative contracting organization which allows states to leverage their purchasing spending. There were several concerns with the Utah Division of Purchasing and General Services (UDP)'s relationship with WSCA-NASPO, including concerns that the arrangement may not be beneficial to the state, about whether the creation of the nonprofit status of the organization and the handling of high fund balances was being done correctly, and whether the Director of UDP had personally benefited from his position as the chair of the WSCA-NASPO management board. There was also concern that the agreement could be harming local vendors. When the Office of the

[2351] https://boards.utah.gov/Board Accessed 06/12/18
[2352] https://www.rideuta.com/-/media/Files/About-UTA/Ordinances/2016Ordinances.ashx?la=en Accessed 06/04/18
[2353] https://le.utah.gov/~2018/bills/sbillenr/SB0136.pdf Accessed 06/04/18
[2354] https://www.sltrib.com/news/politics/2018/02/06/proposed-transportation-tax-hikes-raise-plenty-of-ire-while-uta-reorganization-now-seems-settled/ Accessed 06/04/18
[2355] https://www.deseretnews.com/article/865679313/Legislative-leader-looks-at-limiting-governors-power-to-call-special-session.html Accessed 06/04/18
[2356] https://le.utah.gov/~2018/bills/hbillenr/HJR018.pdf Accessed 06/04/18

Legislative Auditor General completed a review, however, it determined that the allegations were unfounded.[2357]

Oversight Through Automatic Mechanisms

Utah facilitates oversight through a selective sunset process (Utah Code 63I). Utah is one of 12 states that have a selective review process, meaning that only certain agencies and regulatory boards go through a review process (Baugus and Bose 2015). Any statute or agency that is scheduled for termination may be reviewed. The review is completed by interim committees under the direction of the Legislative Management Committee (CSG 2016). The statute or agency will terminate as listed in the code unless action is taken by the legislature to reauthorize it. Reauthorization cannot exceed 10 years. In addition, as noted above, administrative rules and regulations are subject to annual and five-year sunset reviews.

Methods and Limitations

The Utah Legislature provides agendas and minutes for committee hearings, and audio recordings of most committee hearings. These materials are easy to access. We were able to interview six of the 10 people to contacted for information about legislative oversight in Utah.

[2357] https://le.utah.gov/audit/14_11rpt.pdf Accessed 06/04/18

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Legislative Oversight in Vermont

Capacity and Usage Assessment

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

Summary Assessment

While Vermont has a relatively weak governor, it also has limited legislative oversight mechanisms. Vermont's legislature does not appear to regularly use the oversight tools available to it. Growing partisanship and increasing tensions between the legislature and the executive in recent years appear to magnify some of the flaws in the system of legislative oversight in Vermont.

Major Strengths

Vermont's legislature has an unusually large amount of influence over the appropriations process, a circumstance resulting from the fact that the governor does not have line-item veto authority. Similarly, standing committees routinely call agency heads in for questioning, which at times has prompted policy changes from those agencies. While recent disputes between the legislature and the governor have made the appropriations process more contentious, the legislature has remained united across partisan lines and was able to pass a budget in the face of repeated gubernatorial vetoes. Vermont also has sunrise laws in place that require agencies to demonstrate that any new rules will yield positive outcomes before being enacted.

Challenges

Vermont's legislature has the power to block gubernatorial appointees, but this power is used rarely. In recent cases when it has happened, blocking of nominees has been characterized as "highly unusual" and motivated by partisanship. Similarly, since 2017, the legislature has blocked only two of the 19 executive orders promulgated by the governor, and both pertained to agency reorganization. Vermont's legislature has a minor role in the monitoring of contracts, which is instead left to executive agencies or the attorney general. Vermont has sunrise laws in place, but the state has no automatic sunset mechanisms in place to expire laws. Finally, and perhaps most importantly, while the legislature is able to request non-audit investigations of

particular programs, the governor is the only person empowered to request performance audits, which in any case occur relatively infrequently. Consequently, the general assembly's power to independently audit the executive is severely curtailed. Similarly, rulemaking is subject to review by the legislature, but LCAR cannot independently block the adoption of regulations.

Relevant Institutional Characteristics

Vermont, like other states in New England, is typified by a relatively large citizen legislature and a weak governor (Haider-Markel, 2008). The Vermont General Assembly is classified by the NCSL as part-time[2358] and with Squire ranking it as 33rd in terms of professionalism (Squire, 2017). The Vermont General Assembly holds sessions for five months out of the year (Haider-Markel, 2008). Vermont also has one of the most poorly compensated legislatures in the US; legislators receive a total pay of only $707.36 per week while in session and a $100 reimbursement per day for travel expenses.[2359] Additionally, Vermont has the smallest legislative staff in the country, with only 92 total full-time and seasonal staffers. This is approximately half the size of the 180 member general assembly.[2360]

While the contemporary institutional powers of the governor's office are much stronger today than has historically been the case (Haider-Markel, 2008), Vermont's governor is still one of the weakest in the country, ranking 40th out of 50 states in terms of gubernatorial authority (Ferguson, 2013). The governor serves only two-year terms and has no line-item veto power. While Vermont governors do have the power to reorganize executive agencies, this power is checked in practice by the administrative regulation process (Haider-Markel, 2008). Previously, Vermont's governors were restricted to one-year terms and were informally restricted from seeking reelection; the office was considered a position of "first citizen" rather than the chief executive (Haider-Markel, 2008). Gubernatorial terms were eventually extended to two years and, since the 1920s, incumbent governors have successfully run for re-election 95% of the time.

Vermont's bureaucracy is average-sized per capita (Edwards, 2006). However, the allocation of human capital across the bureaucracy is uneven; the state's education system employs an above-average percent of the Vermont population (7.1% in 2006) while welfare services and public safety programs employ a smaller percentage of the state's population than nearly all other states. Overall, however, the proportion of the population employed in state and local government is similar in size to other states.

Political Context

Vermont's political context is similar to that of neighboring New England states. As in much of the region, local politics is dominated by the Democratic Party. In Vermont, however, the general assembly consists of four partisan groups: Democrats and Republicans, nine Vermont

[2358] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#side_by_side, accessed 6/7/18.
[2359] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 6/7/18.
[2360] http://www.ncsl.org/Portals/1/Documents/Elections/Legis_Control_2017_March_1_9%20am.pdf, accessed 6/7/18.

Progressive Party members (seven in the house, two in the senate), and seven independents in the house. While a strong tradition towards liberal politics and a strong Democratic Party are par-for-the-course in New England politics, the presence of multiple influential political parties is somewhat unusual. Democrats control more than two-thirds of the senate (23 of 30 seats) and form a majority in the house (84 of 150 seats). Vermont Progressive Party members often caucus with the Democrats, giving the latter a veto-proof majority in the house.

The number of self-identifying Democrats, Republicans, and conservatives in Vermont has decreased since the 1990s. While the percentage of self-identifying independents and liberals has increased. As of 2008, Vermont had the most self-identifying independents per-capita in the country, with 44% of the state identifying as such (Haider-Markel, 2008). The Republican Party in Vermont therefore typically adopts fairly centrist policies in order to stay competitive (Shor & McCarty, 2015). Vermont's House ranks at 25th in terms of partisanship, while the senate ranks at 33rd (Shor & McCarty, 2015), reflecting Haider-Markel's observation that, while the Vermont house tends to be openly partisan, the senate "operates in a highly collegial manner" (Haider-Markel, 2008).

Despite Vermont's tradition of left-liberal politics, Vermont's current governor is a Republican. This means that Vermont currently has a divided government, with the Democratic Party/liberal coalition controlling the general assembly and the Republican Party controlling the executive branch.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Vermont state auditor is a constitutional officer elected by popular vote every two years. The Office of the Vermont State Auditor (OSA) has 15 staff members, including the state auditor, three appointed positions, a financial manager, and 10 audit staff.[2361] The state appropriation for the OSA is fairly small, even for a small state—approximately $600,000 in 2015 (NASACT, 2015). There is, however, an additional $1.6 million appropriated for audits performed by contracts, such as CPA firms. The OSA is responsible for conducting three types of audits: federal single audits of agencies, boards, and municipalities that receive federal grant funding; a comprehensive state-wide governmental audit; and special (performance or other) audits. Currently, however, the federal single audit and the state's Comprehensive Annual Financial Report (CAFR) are handled under contract with an external auditor, KPMG. This leaves the state auditor's staff "free to focus almost exclusively on performance audits."[2362] In 2017 the OSA completed four performance audits, seven in 2016, six in 2015, three in 2014, and six in 2013—an average of five audits per year.[2363] In Vermont, the governor may require that the OSA conduct special/performance audits[2364], but the state auditor is empowered to conduct

[2361] http://auditor.vermont.gov/sites/auditor/files/documents/2016-17%20Strategic%20Plan%20and%20PR%20Final%2001-31-17.pdf, accessed 6/7/18.
[2362] http://auditor.vermont.gov/sites/auditor/files/documents/2016-17%20Strategic%20Plan%20and%20PR%20Final%2001-31-17.pdf, accessed 6/7/18.
[2363] http://auditor.vermont.gov/node/95, accessed 5/4/18.
[2364] Title 32, Chapter 3, § 163 of the Vermont State Code.

performance audits of his or her choosing (NASACT, 2015). The legislature, however, has no opportunities to dictate what agencies will be audited. Copies of audit reports are distributed to the senate pro tempore and the speaker of the house, as well as to the governor's office; the reports must also be available "prominently" on their website.[2365] The legislature is merely a consumer of these performance audits.

In addition to more formal "yellow book" audits, the state auditor may perform non-audit investigative reviews on specific programs. These reviews do not have to meet "yellow book" auditing standards, nor do they offer recommendations to the legislature. These reviews, however, "may lead to or complement performance audits."[2366] The OSA completes an average of five such evaluations each year. Unlike performance audits, legislative committees may initiate an investigative review, while other audits are initiated by the executive branch.

Audits and reports do occasionally serve as the basis for legislative action, though a representative from the OSA says that it is "extremely rare" that audits or non-audit investigations directly result in actual legislation. More often, the outcome is a regulatory change, not a statutory one. This is because most of the OSA's recommendations are targeted at agencies themselves. The auditor general's 2017 Performance Report notes that, while the OSA has no power to compel agency responses. Between 29-100% of the Auditor's recommendations are implemented within one year (with the majority implementing above 67% or more), depending on the agency and the specific issue in question.[2367] From 2003 to 2015 there was a steady upward trend in repeat findings in subsequent audits, followed by a very sharp decline in 2016. The Performance Report attributed this reduction to "the hard work of [Department of] Finance & Management staff who now provide more and better guidance and support to the various state agencies and departments."[2368]

The Joint Fiscal Office (JFO) is the analytic support agency that works closely with the legislature. It provides non-partisan staff support to committees that have jurisdiction over some facet of policy related to state finances. These include health care and education funding. It works closely with the committees most directly involved in the budget and appropriations processes: both chambers' appropriations committees, both chambers' transportation committees, the House Ways and Means Committee and the Senate Finance Committee, and the Joint Fiscal Committee.[2369] The JFO has a staff of 12 professionals, several of whom specialize in substantive policy domains such as health care finance, education finance, revenue and tax, and transportation.[2370] Additionally, JFO has a webmaster and an HR administrator.[2371] During 2017 the JFO produced 13 Issue Briefing Reports on a wide range of topics, including Water Quality Financing and the SSDI Program in Vermont: Mental Health and Musculoskeletal Diagnoses.[2372] Additionally, the JFO produced seven legislative briefing reports that primarily

[2365] https://legislature.vermont.gov/statutes/section/32/003/00163, accessed 6/7/18.
[2366] http://auditor.vermont.gov/sites/auditor/files/documents/2017-18%20Strategic%20Plan%20and%20PR%20Final.pdf, accessed 6/7/18.
[2367] http://auditor.vermont.gov/sites/auditor/files/documents/2017-18%20Strategic%20Plan%20and%20PR%20Final.pdf, accessed 6/7/18.
[2368] http://auditor.vermont.gov/sites/auditor/files/documents/2017-18%20Strategic%20Plan%20and%20PR%20Final.pdf, accessed 6/7/18.
[2369] http://www.leg.state.vt.us/jfo/, accessed 7/18/18.
[2370] http://www.leg.state.vt.us/jfo/contact_us.aspx, accessed 7/18/18.
[2371] http://www.leg.state.vt.us/jfo/publications/2017%20Fiscal%20Facts/2017%20Fiscal%20Facts%20--%20Part%201-01%20Cover%20and%20TOC.pdf, p. 3, accessed 7/19/18.
[2372] http://www.leg.state.vt.us/jfo/issue_briefs.aspx, accessed 7/18/18.

provide budget analysis, seven other miscellaneous reports, such as results first reports, tax and revenue reports and basic needs reports. The latter discussed a livable wage for Vermont's citizens. It produces fiscal analysis, called fiscal notes, for bills considered in the two legislative chambers (37 fiscal notes for 2017). These are very brief, one page notes that describe the bill and what it will cost, and or what effects the bill would have on state employees if it were to become law. Finally, it produces a lengthy annual fiscal report of more than 100 pages for the citizens of Vermont, called Fiscal Facts. The report is publicly available on JFO's website.

According to sources familiar with the Vermont legislature, JFO reports can impact legislation and budget appropriations. These reports are sometimes brought up during committee hearings, or used to question agency witnesses during committee hearings (interview notes, 2018). For example, the JFO hired the University of Vermont to conduct a study of special education funding. The university and the legislature collaborated to change how special education is going to be funded (interview notes, 2018). According to this source, the issue was already on the legislative agenda, but the JFO report provided the final push.

When the legislature wants in depth reports, it allocates money to the JFO to request a proposal from outside entities, such as universities, that can conduct an investigation and produce a report. Sometimes, the JFO is able to provide a report for a committee chair or a key legislator, but it "can't do 180 different issue briefs" (interview notes, 2018).

Oversight Through the Appropriations Process

Vermont's governor has limited power to steer the appropriations process, since he/she has no line-item veto power. This means that the governor has the choice to approve the bill, veto it in whole, or not sign it within 10 days of being submitted. If the budget is vetoed, then the legislature takes up the budget again. In the past, the appropriations process has not typically been very controversial, since, as Haider-Markel (2008) points out, Vermont has historically had a tradition of informal cooperation between the executive and legislative branches. Vermont House Speaker Mitzi Johnson (D-South Hero) reiterated that same sentiment when she told the Vermont Press Bureau that Vermont governors typically work with legislators "behind the scenes" on passing a balanced budget, even while they defend their own proposals in public.[2373]

Due to Vermont's current state of divided government, however, this kind of informal cooperation has become less common, and the appropriations process has become more contentious. In 2017, for example, major disagreements over the budget emerged between the Republican governor and the Democratically-controlled legislature. The governor had proposed to cut funding to disability assistance and certain tuition loan repayment programs. Cuts to education funding proposed by the governor have emerged as a major flashpoint between the executive and the legislature. Although he offered no specific policy proposals, the governor, citing the need to control mounting costs (Hirschfeld, 2018e),[2374] called on lawmakers to "do whatever's necessary" to avoid raising property taxes to fund education (Hirschfeld, 2018a).[2375] In a memo sent to legislators, the governor suggested several "ideas" for reducing costs,

[2373] https://www.vermontpressbureau.com/2017/03/15/house-dems-take-off-gloves-in-budget-battle/, accessed 6/7/18.
[2374] http://digital.vpr.net/post/state-state-scott-hints-major-education-spending-overhaul#stream/0, accessed 4/25/18.
[2375] http://digital.vpr.net/post/after-his-budget-address-lawmakers-poised-resume-fight-scott-over-education-spending#stream/0, accessed 4/23/18.

including mandatory staff reductions, reforming special education, and investigating the possibility of closing some schools (Hirschfeld, 2018d).[2376] Legislators largely rejected the memo, with one lawmaker calling the ideas "wrongheaded." Others complained that the governor's ideas were "vague" and violated Vermont's "proud history of letting local voters make financial decisions about what's best for their local schools (2018a)."[2377] Instead, the legislature hopes to make up the education budget shortfall by shifting the burden to income taxes, which, as one source notes, the governor will almost certainly veto. This would prompt an override vote that, given the legislature's partisan makeup, would stand a good chance of passing (McClaughry, 2018).[2378]

Ultimately, the House Appropriations Committee approved a budget, with unanimous support from Democrats, Progressives, and Republicans, that restored funding to the programs (Freese, 2018a).[2379] However, when the full legislature finally approved a budget before adjourning, it proved to be "a contentious end to a contentious session in which an already uneasy relationship between Democratic lawmakers and the Republican governor fell into deeper disrepair" (Hirschfeld, 2018c).[2380] In particular, the governor "[drew] a political line in the sand over the issue of tax increases," and vowed to veto any budget that increased the state's tax burden. A special session, convened to pass a new budget, was touted as a compromise with the governor (Bradley, 2018).[2381] However, Gov. Phil Scott vetoed the budget passed by the general assembly, forcing the legislature to reconsider the budget. Ultimately, the general assembly passed a largely identical budget, which the governor allowed to become law without his signature (Dobbs, 2018).[2382]

The House Ways and Means Committee is responsible for anything that involves state revenue—debt, taxes, and so on. It met regularly from January through May 2016. Meeting minutes indicate that specific legislation organizes the discussions. Each bill includes speakers. These are staff from the JFO, the Office of the Legislative Council, state agency leadership, and lobbyists, and members of other legislative committees. According to informed sources, the Vermont legislature does not have its own staff, so the JFO provides staff for committee hearings. More importantly, the JFO makes budget presentations to the committee, creates the budget bills and keeps track of tax revenue. Votes and "possible vote" are listed after a handful of the bills on a meeting agenda.[2383]

The Joint Fiscal Committee is an interim committee that meets when the legislature is not in session to provide continuity on budget and appropriations and other fiscal issues. It appears to meet four to six times from July through November. Meetings last for an entire day and minutes

[2376] http://digital.vpr.net/post/tax-hike-looms-scott-asks-lawmakers-consider-reductions-school-staff#stream/0, accessed 4/25/18.
[2377] http://digital.vpr.net/post/after-his-budget-address-lawmakers-poised-resume-fight-scott-over-education-spending#stream/0, accessed 4/25/18.
[2378] https://vermontbiz.com/news/2018/april/24/mcclaughry-annual-education-finance-end-game, accessed 4/24/18.
[2379] https://www.sevendaysvt.com/OffMessage/archives/2018/03/23/vermont-house-approves-58-billion-budget-with-broad-support, accessed 4/24/18.
[2380] http://digital.vpr.net/post/lawmakers-close-out-2018-session-scott-vows-budget-veto#stream/0, accessed 6/7/18.
[2381] http://wamc.org/post/second-vermont-budget-bill-passed-despite-veto-threat, accessed 6/7/18.
[2382] https://www.sevendaysvt.com/OffMessage/archives/2018/06/25/vermont-legislature-sends-scott-a-third-budget-proposal, accessed 7/16/18.
[2383] https://legislature.vermont.gov/committee/meeting-detail/2016/21/4189, accessed 7/19/18.

of the meetings indicate lengthy substantive presentations as well as knowledgeable questions from legislators.[2384] The JFO also provides staff for this and other interim committees.

Oversight Through Committees

Minutes for committee meetings are not available for all meetings or, when available, are not detailed. One source in the auditor general's office, however, said that it is "very common for agency heads to be called in for questioning." In one case that was widely reported in the media, senators criticized the Secretary of Vermont's Agency of Natural Resources (ANR) for failing to meet a deadline for the adoption of a regulation dealing with storm water runoff (Polhamus, 2018a).[2385] This prompted an apology from the official, who had previously blocked the regulation with little explanation, and a concession that nothing had in fact prevented her from adopting the rule on time (Polhamus, 2018b).[2386] Noting that another state bureau, the Agency of Agriculture, had also refused to cooperate with lawmakers regarding information about farms' contribution to the state's water pollution problems, some legislators suggested that the ANR's actions appeared to be part of a pattern of intentional flouting of environmental laws by the governor's administration. This incident suggests that there is a certain level of oversight being exercised by some standing committees over executive agencies that fall within their policy domain. One representative from the auditor general's office noted that appropriations committees tend to be particularly interested in matters of oversight and often request data for use in decision-making. However, most substantive standing committees "are more focused on broader policy issues" and tend to avoid "the nuts and bolts" of agency operations, "talk[ing] about proposals to department heads, and not so much about administration."

Vermont has several joint committees that meet when the legislature is not in session. Several of these explicitly include oversight of state programs in their name and their mission statement (e.g., the Health Reform Oversight Committee). The diligence with which these committees carry out their mission appears highly variable. The legislative council (one of these joint committees) has not met since 2016, lists no witnesses, and posts no documents on its webpage.[2387] The Health Reform Oversight Committee does appear more active. It met three times in 2017, but it does not post an agenda for any of these meetings. It does, however, post one or two reports that apparently were considered at these meetings. It posted an agenda for a meeting in November 2016 that lists four witnesses for each of two topics: Psychiatric Nurse Workforce Issues; and Substance Abuse Treatment: waitlists, challenges, opportunities.[2388] Witnesses for each of these topics included state agency leadership and practitioners in the field. There is no evidence that bills on this topic were passed during the 2018 legislative session. The committee also considered a piece of legislation that involved a waiver to the Prescription Drug Act. The legislature passed a bill on this subject that ". . . create[s] an entity to act as a

[2384] http://www.leg.state.vt.us/jfo/jfc/2017/2017_09_14_JFC_Meeting/2017_09_14_JFC_Minutes.pdf, accessed 7/19/18.
[2385] https://vtdigger.org/2018/03/29/facing-legal-censure-natural-resources-secretary-defends-inaction/, accessed 4/23/18.
[2386] https://vtdigger.org/2018/01/05/moore-gives-large-developers-pass-parking-lot-rule/, accessed 4/23/18.
[2387] https://legislature.vermont.gov/committee/search/2016/60, accessed 7/19/18.
[2388] http://www.leg.state.vt.us/jfo/healthcare/Health%20Reform%20Oversight%20Committee/2016_11_14/2016_11_14_HROC_Agenda.pdf, accessed 7/19/18

wholesaler to distribute lower cost drugs to pharmacies and insurance companies" (Johnson, Villamarin-Cutter, & Malone, 2018).[2389]

Oversight Through the Administrative Rules Process

The Vermont Administrative Procedures Act requires "agencies to make filings of every new, amended, or repealed rule at least four times during the rulemaking process."[2390] Vermont also uses a "sunrise" mechanism (Baugus & Bose, 2015) that requires that agencies looking to implement new rules or regulations must perform extensive cost/benefit analysis that support and justify the rule change and present that analysis to the Joint Legislative Committee on Administrative Rules (LCAR). The third stage of this process, which occurs after a public comment period, involves the Legislative Committee on Administrative Rules (LCAR). Within 30 days of being placed on the LCAR's agenda, a majority of the committee can vote to object to the proposed rule and recommend either amending or withdrawing the proposed rule. The agency must then respond within 14 days, whereupon the committee can modify or withdraw its objections (3 V.S.A. § 842). LCAR, however, cannot independently block the adoption of a rule. If the committee objects to the rule on the grounds that it is beyond the purview of the agency, that is contrary to the intent of the legislature, that it is arbitrary, or that there was insufficient public input, it can file a certified objection with the Secretary of State. A certified objection means that "the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule." Henceforth, "[i]f the agency fails to meet its burden of proof, the Court shall declare the whole or portion of the rule objected to invalid" (3 V.S.A. § 842). LCAR can also file objections to existing rules, which remain in effect until repealed or amended (3 V.S.A. § 817). All rules under consideration can be referred to the appropriate standing committees for review.

LCAR met twice during 2017. The agenda for these meetings indicates that on June 8th, 2017 the committee considered four proposed rules, two promulgated rules, and one emergency amendment. On October 23rd, 2017 the committee considered judicial rules, video arraignments, two promulgated rules, and one proposed rule. There do not appear to be minutes available nor are recordings available. Both meetings appear to have focused on rules changes proposed by the Vermont Judicial branch. The Vermont Supreme Court was seeking amendments to the Vermont Rules of Appellate Procedure. The court provided a 100+ page document to the committee. Therefore, we do not know anything else about these proceedings or the decisions that were made.

Oversight Through Advice and Consent

There does not appear to be evidence that gubernatorial appointees are often rejected by the senate, although it does happen occasionally. In April 2018 the senate was considering the appointment of a candidate to the state's Labor Relations Board. Citing the candidate's long

[2389] http://digital.vpr.net/post/5-minute-wrapup-what-got-done-during-5-month-long-legislative-session, accessed 9/19/18.
[2390] https://www.sec.state.vt.us/media/68457/RuleOnRulemaking.pdf, accessed 6/7/18.

career in the corporate sector, public sector unions put substantial public pressure on the senate to refuse to confirm the nominee (Gram, 2018).[2391] The senate did ultimately block the appointment, in what was described as "a highly unusual move." The governor, meanwhile, derided the refusal to confirm the nominee as being motivated by partisan concerns, arguing that it was "difficult to see how politics didn't play into the decision" (Freese, 2018b).[2392] There is indeed evidence that partisan concerns do at times affect the confirmation process. For example, in 2017 Gov. Phil Scott, a Republican, raised questions about an appointee to the Green Mountain Care Board who had been appointed by former-Gov. Peter Shumlin, a Democrat. Shumlin had evidently failed to file the proper paperwork notifying the senate of the appointment, and so Gov. Scott objected that the appointment was "tainted by a clerical error" and could open the door for legal challenges to the decisions of the Green Mountain Care Board. Because of its substantial influence over the state's health care system (Hirschfeld, 2018b),[2393] this board "is one of the most powerful regulatory bodies in Vermont . . . That means there's a lot at stake when it comes to deciding who sits on that five-person board, and Republican Gov. Phil Scott is seeking to oust his Democratic predecessor's most recent appointment" (Hirschfeld, 2017).[2394] Despite Gov. Scott's objections, however, the senate unanimously voted to confirm the appointee.

Although Vermont's governor has the authority to reorganize agencies via executive order, both the house and the senate have 90 days to weigh in on executive orders. If either chamber disapproves, the order does not become effective. Of the 21 executive orders promulgated by the current governor since assuming office in January 2017, two have been rejected by the legislature. Both pertained to agency reorganization: Executive Order 07-17 attempted to merge the Department of Liquor Control and the Lottery Commission, but was blocked by the house. Executive Order 05-17 was intended to create the Agency of Economic Opportunity, but was rejected by the Senate (Ledbetter, 2017).[2395,2396]

Oversight Through Monitoring of State Contracts

Contract oversight in Vermont appears to be handled by the Office of Purchasing and Contracting,[2397] which does not report to the legislature. Purchasing is governed by Bulletin 3.5, which is "the official source for current State procurement and contracting policies and procedures.[2398] While in some cases individual agencies can conclude their own contracts. For example, "[t]he Department of Buildings and General Services . . . works directly with vendors to offer one-to-two-year contracts for statewide fuel commodities."[2399] All contracts for more

[2391] https://vtdigger.org/2018/04/13/state-workers-seek-block-labor-relations-board-appointment/, accessed 5/15/18.
[2392] https://www.sevendaysvt.com/OffMessage/archives/2018/05/12/vermont-senate-votes-down-scotts-labor-board-appointee, accessed 5/15/18.
[2393] http://digital.vpr.net/post/amid-controversy-over-paperwork-vt-senate-approves-shumlin-appointee-robin-lunge#stream/0, accessed 6/7/18.
[2394] http://digital.vpr.net/post/key-shumlin-appointee-danger-losing-job-over-procedural-snafu, accessed 6/7/18.
[2395] http://www.mynbc5.com/article/scott-orders-state-agency-reorganization/8608629, accessed 6/7/18.
[2396] http://governor.vermont.gov/document-types/executive-orders, accessed 6/7/18.
[2397] http://bgs.vermont.gov/purchasing, accessed 7/16/18.
[2398] http://aoa.vermont.gov/bulletins/3point5, accessed 7/16/18.
[2399] http://www.leg.state.vt.us/jfo/issue_briefs_and_memos/Preliminary_Review_of_Bulk_Fuel_Purchasing.pdf, accessed 7/16/18.

than $25,000 must be certified by the Attorney General's Office. In other cases, the Secretary of Administration, the State Chief Information Officer, or the Commissioner of Human Resources must review and approve contracts.[2400] Evidence of legislative hearings on contract monitoring was not found.

The Vermont legislature is able to exert some influence over contracts through the appropriations process by adding caveats to specific appropriations. According to a knowledgeable source, "our oversight over state contracts is mainly part of the budget process" (interview notes, 2018). For example, when the Human Service Agency integrated their eligibility system, there was a major overhaul of the software. They had to work with the legislature because it was millions and millions of dollars, and it also involved federal dollars. IT contracts are more likely to get oversight because it's a line item in the budget—"it's lumpy and not ongoing" (interview notes, 2018).

If a contract goes awry and it becomes a political issue, then the legislature becomes involved. It is likely that problems with a contract would be brought up in a committee hearing, but usually contracts are not discussed in committees (interview notes, 2018).

Oversight Through Automatic Mechanisms

Vermont does not have any standard sunset mechanism. Sunsets are instituted at the discretion of the legislature at the time that the authorizing statute is being amended (Wall, 2016). Reviews triggered by a sunset clause are handled by the legal and policy staff at the Legislative Council, which provides various services, including drafting and technical language assistance, legal research, research and analysis of "policy issues," and support for committees to the legislature. The idea underlying the sunrise mechanism, as opposed to a sunset mechanism, is that it is up to agencies to demonstrate which rules changes will yield positive outcomes.

Methods and Limitations

We interviewed three of the four people we contacted in Vermont. There are no archived recordings of committee hearings. Indeed, with the exception of Delaware, Vermont has the most limited amount of audio or video information available about its legislature.[2401] Committee minutes are cryptic. Therefore, it is very difficult to be confident of the amount of oversight the Vermont legislature exercises.

[2400] http://aoa.vermont.gov/sites/aoa/files/Bulletins/3point5/Bulletin_3.5_FINAL_03-29-18.pdf, accessed 7/16/18.
[2401] http://www.ncsl.org/research/telecommunications-and-information-technology/legislative-webcasts-and-broadcasts.aspx, accessed 1/5/19.

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Legislative Oversight in Virginia

Capacity and Usage Assessment

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

Summary Assessment

Virginia possesses two powerful and active non-partisan analytic agencies--the Auditor of Public Accounts (APA) and the Joint Legislative Audit and Review Commission (JLARC). Both agencies are highly regarded and respected by both sides of the aisle. Both conduct a variety of financial audits and performance audits and are responsive to requests from the legislature to conduct investigations. However, it is unclear whether legislators are using the information produced by the APA and JLARC. These elements taken together suggest that the Virginia General Assembly, while possessing excellent tools to conduct oversight, may not take a comprehensive, proactive approach to oversight.

Major Strengths

Evidence gathering by analytic bureaucracies is the strongest element of legislative oversight in Virginia. To facilitate accountability generally, Virginia has created some innovative methods for managing administrative rules, especially through the Regulatory Townhall website, but this has largely taken place through the executive branch and with no input from the main legislative body responsible for administrative rules review, the Joint Commission on Administrative Rules.

Challenges

The limited legislative engagement on reviewing administrative rules may lead to problems if elements of the regulatory rule-making process breakdown. The lack of comprehensive oversight may be due in part to the institutional structure of the legislature. The relatively short legislative sessions may simply not give legislators enough time to conduct good oversight. The Virginia General Assembly does not appear to make much use of interim committees to conduct oversight. Additionally, many committee hearings conducted during the regular session emphasize reporting out bills enrolled in the committee which may reduce time for oversight.

Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL) classifies the Virginia Legislature as a hybrid: neither fully professional nor part-time but possessing elements of both.[2402] Virginia is a bicameral legislature with an upper chamber, the Senate of Virginia with 40 members, and a lower chamber, the House of Delegates with 100 members. Senators serve a four-year term and receive an $18,000 annual salary, whereas Delegates serve a two-year term and receive a $17,640 annual salary.[2403] Additionally, Senators and Delegates are paid $196 per day which provides them with an extra $5,000 to $10,000 in salary depending on the actual session days, which average 35 to 45 per year (Squire 2017). Legislative sessions alternate annually between 60 days in even numbered years and 30 days in odd numbered years. But, the Governor has the power to call special sessions as he or she deems necessary or when 2/3rds of General Assembly petition him to do so. Since 2011, the Virginia legislature has convened for four special sessions with the longest session in 2012[2404] lasting from March to May to deal with the budget and the shortest occurring in 2015 lasting one day to approve changes in congressional re-districting.[2405] As of 2015, there were 822 total legislative staff members, 533 of whom are permanent staff. This is a higher level of staff than is generally observed in hybrid legislatures. In contrast South Carolina, another mid-Atlantic hybrid legislature, which has comparable legislature membership, has only 332 legislative staff. The Squire Index (2017) ranks Virginia's legislature as the 32nd most professional.

The Virginia governor like many southern states is not as powerful when compared to other governors, and there are some unique restrictions when compared to other states. Ferguson (2015) rates 31 other governors as more powerful than Virginia's. First, the tenure potential is low because Virginia governors are also not eligible to serve consecutive terms.[2406] Virginia is the only state to not allow consecutive terms. Since 1970 when gubernatorial races became more competitive between Republicans and Democrats, no governor has been elected to another non-consecutive term. Therefore, in practice the constitutional prohibition against consecutive terms acts as a de facto limit of one term. Within this arrangement governors tend to be active at the outset of their terms.

Second, as in most states the governor is responsible for assembling and submitting a budget to the General Assembly for their consideration. Virginia operates on a biennial budget cycle and the governor has line-item veto power for appropriation bills only. In addition to a line-item veto on appropriation bills, the governor has a qualified veto on non-spending bills as well. While a 2/3rd majority of the Assembly is necessary to override a veto, unlike most states it only has to be 2/3rd of present legislators to override. Reflecting the increasingly competitive nature of Virginia and the razor-thin majorities Republicans hold in the Senate and House of Delegates, there have been few overrides of the governor's vetoes. In 2018, Governor Northam vetoed 10 bills, and the Republican controlled legislature was unable to override any of them.[2407]

[2402] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 5/11/18

[2403] http://virginiageneralassembly.gov/virginiaLegislature.php?secid=20&activesec=2#!hb=1&mainContentTabs=0, accessed 5/11/18

[2404] http://www.ncsl.org/research/about-state-legislatures/2012-legislative-session-calendar.aspx, accessed 11/30/18

[2405] http://www.ncsl.org/documents/ncsl/sessioncalendar2015.pdf, accessed 11/30/18

[2406] https://law.lis.virginia.gov/constitution/article5/section1/, accessed 5/11/18

[2407] https://pilotonline.com/news/government/virginia/article_d9f6b8d8-433e-11e8-bcc4-c31c50459006.html, accessed 5/13/18

As Virginia has become more Democratic, governors have been increasingly willing to veto bills from a Republican-controlled general assembly. From 2013 to 2017, then Gov. Terry McAuliffe vetoed 91 bills, setting a record for the number of bills vetoed by a Virginia governor.[2408] In 2017 alone the Republican controlled legislature was unable to override any of his 40 vetoes for that year.[2409]

Political Context

Over the past 10 to 15 years, Virginia's political make-up has shifted from a reliably red state at the national and state level to a competitive state in presidential elections and evenly split at state level elections. The most recent election was 2017 in which Democrat Lt. Governor Ralph Northam won a surprisingly easy election with 54% of the vote, in what was expected to be a more competitive race. With the growth of the Washington, D.C. suburbs of Arlington and Fairfax counties, battle for control of the legislature has been increasingly competitive.

While control of the governorship has alternated between Democrats and Republicans since 2000, Republicans have maintained control of the legislature for most of that time. From 2009-2013 control of the General Assembly was split with Democrats controlling the Senate and Republicans the House of Delegates, and from 2015-2018 Republicans controlled both houses. Moreover, Republicans have controlled the House of Delegates since 2000. While this may suggest Republican domination at the state house and senate levels, it would be an error to assume such control. In 2017, Republicans nearly lost control of the Senate and House, when Democrats flipped an astonishing 15 seats in the House, 12 of which were GOP held seats. As a result, the current membership of both houses is comprised of the thinnest of majorities, with Republican controlling the Senate 21-19 and the House 51-49.

Shor and McCarty (2017) ranked the Virginia Senate as the 16th most polarized upper chamber in the nation, and the House of Delegates the 22nd most polarized lower chamber. However, this data does not reflect recent Democratic gains in the legislature. Future analyses may discover substantially different relationships between the two political parties in both chambers.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are two primary analytic bureaucracies that report to and are directed by the general assembly. The first is the Auditor of Public Accounts (APA), which is part of the legislative branch and was established through the Article IV Section 18 of the Virginia Constitution. The APA is well funded, with a state appropriation of $11.3 million for 2015

[2408] https://www.washingtonpost.com/local/virginia-politics/mcauliffe-poised-to-set-the-record-most-vetoes-by-a-virginia-governor/2017/03/22/6141e204-0e6b-11e7-9d5a-a83e627dc120_story.html?utm_term=.b6715fa4d49a, accessed 5/13/18

[2409] http://www.nvdaily.com/news/2017/04/gov-mcauliffe-keeps-a-perfect-veto-record/, accessed 5/13/18

(NASACT 2015), a staff of 120 audit professionals (about a quarter of whom are CPAs), and 12 administrative or clerical staff (NASACT 2015). Its primary responsibility is to conduct oversight of the courts and executive agencies by conducting comprehensive financial and operational audits.[2410] The APA has produced 400+ reports since 2017. These reports concentrate on financial performance covering a range of subjects from circuit court operations, local governance fiscal and operational health, to single statewide audits.[2411] Included in these reports is the Comprehensive Annual Financial Report (CAFR) which details spending, payroll growth, and debt schedules for the entire state.[2412] Unlike some other states, Texas for instance, the Virginia CAFR does not offer any legislative recommendations for areas that may be falling short of their financial and operational responsibilities. Based on summaries of reports listed in its 2018 Annual Report, the APA conducted about 15 reports per on state agencies or programs from 2016 to 2018, but these are financial audits exclusively.

The actions of the APA are directed by the Joint Legislative Audit and Review Commission (JLARC). The commission is comprised of nine members of the House of Delegates, five members of the Senate, and the Auditor of Public Accounts who serves as a non-voting ex officio member. At least five of the members from the House must also serve on the House Appropriations Committee and two of the senate members must serve on the Senate Finance Committee. Membership from the House is determined by the Speaker and from the Senate by the Rules Committee.[2413] JLARC was authorized by statute in 1973, specifically by Code of Virginia Title 30, Chapter 7, and its authority to conduct oversight has been increased thirteen times since 1973.[2414] JLARC was established in large part as a reaction to the lack of executive oversight in Washington, D.C. stemming from Watergate.[2415]

What sets JLARC apart from other states with joint audit committees is that JLARC directs the actions, approves the workplans, and accepts the reports of the APA but has its own staff who are conducting audit reports on behalf of the legislature. Currently, JLARC has 28 staff members who have produced nearly 130 reports between 2010 and 2018, with reports available as far back as 1975 on the JLARC website.[2416] During 2018 JLARC produced 11 reports that are similar to program evaluations or performance audits. Furthermore, JLARC is well funded with its FY 2017-18 budget set at $11 million. In one interview the authority of JLARC was described as broad with a strong nonpartisan reputation. Their reports are frequently critical, blistering, and credible, garnering widespread coverage by state media and, in addition, usually eliciting action from the legislature.[2417]

One such report focused on the Virginia Economic Development Partnership (VEDP), which functions as a quasi-governmental corporation distributing grants and other tax incentives to businesses. In 2016 the general assembly, through a joint resolution, directed JLARC to investigate VEDP's "operational efficiency, performance, and accountability structure."[2418] The resulting report showed that VEDP had little accountability and lacked organizational structures to help it promote Virginia from a marketing perspective and in the job incentive grants it

[2410] http://www.apa.virginia.gov/about_us.aspx, accessed 5/16/18
[2411] http://www.apa.virginia.gov/APA_Reports/Reports.aspx, accessed 5/16/18
[2412] http://www.apa.virginia.gov/reports/ComprehensiveAnnualFinancialReport2017.pdf, accessed 5/16/18
[2413] http://jlarc.virginia.gov/members.asp, accessed 5/16/18
[2414] http://jlarc.virginia.gov/authority.asp, accessed 5/16/18
[2415] Interview notes 5/16/2018
[2416] http://jlarc.virginia.gov/reports.asp, accessed 5/16/18
[2417] Interview notes 5/16/18
[2418] http://jlarc.virginia.gov/pdfs/reports/Rpt488.pdf, accessed 5/16/18

distributed. This investigation found that VEDP failed to meet statutory requirements for monitoring job incentive grants and lacked organizational capacity to monitor the nearly $400 million in grants VEDP had distributed over the past 10 years.[2419] In fact, VEDP had no documented policies in place for critical aspects for grant awards, like conducting due diligence before awarding the grant and verifying jobs created, capital invested, and wages paid.

According to the report, VEDP operated an ad hoc manner where there was little coordination statewide for economic development and growth and a board of directors that failed to provide accountability because of its lack of engagement and expertise. JLARC found that VEDP had no strategic marketing plan in place to promote Virginia despite being statutorily required to "see that there are prepared and carried out effective economic development marketing and promotional programs."[2420]

In the report, JLARC suggested four specific legislative recommendations to address these systematic issues. Some of these recommendations included requiring the board to develop a strategic plan, develop a statewide entity to coordinate development activities, and make future appropriations to VEDP contingent on adopting these recommendations. Unfortunately, the Virginia legislature has no video archive of committee hearings in response to this report, so it is difficult to ascertain how much oversight this report prompted in the appropriate committees. However, HB 2471 was introduced in 2017 after the report was published. This bill codified many of the recommendations set forth in the JLARC report.[2421] The final bill with amendments from the governor was approved in the House 99-0 and in the Senate 40-0, suggesting that JLARC's oversight recommendations were taken seriously by the legislature and acted on promptly in a bipartisan manner. In fact, the new statutory requirements have had an impact already with VEDP attempting to recover $5 million from a grant given to Tranlin Corp. for its failure to develop a $2 billion paper manufacturing plant.[2422]

In addition to the legislative analytic bureaucracies, there is the Office of the State Inspector General (OSIG) who reports to the Governor. The Inspector General is appointed by the governor with the consent of the Senate. The OSIG conducts a variety of reports related to administrative functions, performance audits, and behavioral and mental health. Since 2017, the OSIG has produced 16 reports in these areas. At present there is little evidence of whether or how the general assembly utilizes these reports.

Oversight Through the Appropriations Process

As stated earlier, Virginia operates on a biennial budget where the governor has full budgetary authority over the first budget proposal. Budgets are generally developed and debated in even years and can be amended in odd numbered years.[2423] To provide some budgetary

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[2419] https://www.richmond.com/news/virginia/government-politics/general-assembly/report-finds-disarray-at-va-economic-development-partnership-urges-withholding/article_d70e2737-027f-55ed-a001-d09843997eeb.htm, accessed 5/16/18

[2420] http://jlarc.virginia.gov/pdfs/reports/Rpt488.pdf, accessed 5/16/18

[2421] http://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+HB2471, accessed 5/13/18

[2422] https://www.richmond.com/news/virginia/government-politics/general-assembly/virginia-will-take-legal-action-to-recover-almost-million-from/article_7d58e499-f25e-51f7-ab22-25f8a770fca8.html, accessed 5/13/18

[2423] http://virginiageneralassembly.gov/virginiaStateBudget.php?secid=22&activesec=4#!hb=1&mainContentTabs=0&content=0,includes/contentTemplate.php%3Ftid%3D56%26ctype%3Db%26cid%3D108, accessed 5/14/18

context, the budget for FY 2017-18 was approximately $120 billion, with $59.7 billion for FY17 and $60.3 billion for FY18.[2424]

In recent years the appropriations committee has directly challenged the governor's ability to veto spending bills. The flashpoint for this challenge was Democratic Gov. McAuliffe's efforts to expand Medicaid in Virginia, a policy which is anathema to many Republicans. During the appropriations committee budget sessions, the "Stanley Amendment" was adopted, which would have prevented the governor from accepting federal dollars for Medicaid expansion without the express permission of the general assembly.[2425] As can be expected Gov. McAuliffe promptly vetoed the amendment. In response, the Speaker of the House instructed the clerk not to register the veto in the final enrolled bill. Legislators argued that Gov. McAuliffe improperly used the item veto by only vetoing the language of the bill, while not vetoing the underlying appropriation.[2426]

Only recently has the legislature agreed to start broadcasting and archiving committee hearings.[2427] As a result, the archive is not extensive and does not provide information regarding hearings topics.[2428] However, after a review of the archived videos from the Senate Finance Committee, it is clear that very few full committee hearings are used for oversight purposes during the regular session.[2429] Nearly all of the five hearings of that committee from 1/16/18 to 2/8/18 focused on reporting bills out of the committee to the full Senate.[2430] In their first hearing of 2018, committee staff gave presentations on the governor's budget and forecasting of revenue.[2431] In many other states those types of presentations would be given by the appropriate departmental head. In a subsequent hearing on 1/18/18, the Secretary of Finance gave a detailed presentation on revenues and funding sources for the upcoming amendments to the biennial budget.[2432]

At the house appropriations committee held on 1/22/18 a litany of department heads gave short introductory statements about their agencies and took a few questions from senators, but department heads did not give extensive Powerpoint presentations (the pattern we observed in many states) and legislators did not seem to ask questions that we would construe as oversight.[2433] In contrast, interim meetings of the Senate Finance and House Appropriations Committee appear to more actively pursue oversight of expenditures. This was even more apparent in the interim House Appropriations Committee, which met three times from September to December 2018. These interim hearings, in particular those on 9/17/18 and 10/15/18, focused on testimony from a wide range of agencies and departments with varying levels of questioning by delegates. The most direct questioning came during the 10/15/18 hearing, where the heads of the Department of Medical Assistive Services (DMAS) and the Virginia Department of Social Services (VDSS), which have jurisdiction over the implementation of Medicaid services in

[2424] https://www.datapoint.apa.virginia.gov/index.php, accessed 5/14/18
[2425] https://www.richmond.com/news/virginia/government-politics/general-assembly/mcauliffe-budget-veto-could-open-door-for-medicaid-expansion/article_3e09c99c-1832-52fd-9e3d-30619f790eec.html, accessed 5/14/18
[2426] http://www.dailypress.com/news/politics/dp-nws-medicaid-budget-20160520-story.html, accessed 5/15/18
[2427] https://www.richmond.com/news/virginia/government-politics/virginia-to-broadcast-and-archive-general-assembly-committee-hearings-for/article_18ae5af8-a804-5b26-b9c9-d78c583d76f1.html, accessed 5/18/18
[2428] http://virginia-house.granicus.com/ViewPublisher.php?view_id=3, accessed 5/18/18
[2429] http://virginia-senate.granicus.com/ViewPublisher.php?view_id=3, accessed 1/7/19
[2430] http://virginia-senate.granicus.com/ViewPublisher.php?view_id=3, accessed 1/7/19
[2431] https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=1845, accessed 1/7/19
[2432] https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=1883, accessed 1/7/19
[2433] https://virginiageneralassembly.gov/house/committees/commstream.html, hearing 1/22/18, accessed 1/7/19

Virginia, testified. Questions focused on the progress DMAS has made regarding Medicaid waivers and VDSS's ability to verify eligibility of enrollees and the progress being made to get people off of state medical and welfare services.[2434] Delegates asked direct questions over the progress of coordination of various agencies in terms of sharing information on eligibility and management of Medicaid expansion in the state.

During one joint hearing, the governor addressed the Joint Appropriations and Finance Committee to present his budget amendments to the biennial budget.[2435] This had the flavor of a State of the State address, but in a committee hearing room. The focus, however, was solely on the governor's spending and taxation policies. After the governor's presentation, the Secretary of Finance for the governor described the governor's priorities in greater depth. Senators and delegates then asked pointed and direct questions over where the governor was getting the funds to pay for his priorities and which initiatives were "one-off" items, meaning they were not permanent programs.

It appears that oversight through the appropriations process does take place, but whether this occurs in conjunction with or in response to the actions of JLARC is not clear. In the hearings that we were able to examine, we found no evidence that a report from JLARC was mentioned nor was JLARC staff called to testify. The appropriations and finance committees have the resources, particularly staff, through JLARC and the Division of Legislative Services, which serves as the primary legislative research service, to conduct rigorous oversight. However, we found evidence to suggest that some of their oversight efforts are driven by partisan considerations. Moreover, we found that the "money" committees often focus on other tasks at the expense of oversight.

Oversight Through Committees

Much of the oversight conducted by the legislature flows through the APA and JLARC. This may result in less oversight being conducted by standing committees with responsibility for specific policy areas. Additionally, there are no standing committees, study groups, or joint commissions in the house or senate that specifically mention oversight, except for the Joint Commission on Transportation Accountability, which does not appear to be very active having held only two meetings this year.[2436] Furthermore, Virginia's general assembly appears to make minimal use of interim study committees or interim oversight committees. Compared to other legislatures with similarly short legislative sessions, this suggests that Virginia does not see the interim between sessions as an opportunity to pursue oversight to compensate for the need to pass legislature and budget during the regular legislative session.

Within the last year there have been several high-profile cases where "fire alarm" oversight could have occurred. In 2015 at an independent living facility and elderly woman broke her clavicle while in bed and was unable to move. Because of the nature of independent living facilities, staff check-ins are not conducted as often as it would be in an assisted living facility. The woman in this case was only discovered after her daughter was unable to reach her by phone. When she was found she was weak and dehydrated and died several months later from

[2434] https://virginiageneralassembly.gov/house/committees/commstream.html, hearing 1/22/18, accessed 1/7/19
[2435] https://virginiageneralassembly.gov/house/committees/commstream.html, hearing 12/18/18, accessed 1/7/19
[2436] http://studies.virginiageneralassembly.gov/studies/185, accessed 5/18/18

cancer in part because she was too weak to undergo treatment.[2437] This case highlighted a gap in regulation and oversight of independent living facilities' monitoring procedures and protocols. In Virginia, nursing homes are regulated by VA Department of Health and assisted living facilities are regulated by the VA Department of Social Services (DSS), but independent living facilities apparently were not regulated by any state agency. In March 2018 the general assembly passed a joint bill, HJ 118 that instructed the Department of Social Services to study the regulation of independent living facilities.[2438] As of this writing DSS has yet to complete or publish a report on regulations on independent living facilities.

Another case where we might expect to see oversight is the construction of the Mountain Valley Pipeline. This project was initially approved during Gov. McAuliffe's term. It is a $6.5 billion infrastructure project that extends over 600 miles and is an effort to bring natural gas to the coast from West Virginia and North Carolina.[2439] Environmentalists fought this pipeline project, as did landowners who have lost property through eminent domain. When the project was finally underway, several minor DEQ violations were self-reported by the company, Dominion Resources, which had the effect of reinforcing reservations and objections about the project.[2440] There are currently no hearings or legislation pending regarding oversight of this project, but the legislature is also adjured for the interim session. Some legislators mainly Democrats are calling for a DEQ stream-by-stream impact analysis of the Mountain Valley Pipeline.[2441] Recently, the state attorney general has filed a lawsuit to stop construction of the pipeline in light of the environmental violations, even though they are minor.[2442]

These high-profile issues demonstrate that there is no shortage of policies that need oversight on the part of the legislature. In the case of DSS the lack of archived recordings of committee hearings past 2017 limits our ability to assess oversight by the legislature. In the case of the Mountain Valley Pipeline, a search through available senate and house committee hearings, revealed no hearings or testimony by DEQ staff regarding the environmental violations on the part of the company constructing the pipeline.

Oversight Through the Administrative Rules Process

The Joint Commission on Administrative Rules (JCAR) is the main legislative oversight body dealing with existing and new rules. It is comprised of five senators and seven delegates. JCAR's main purpose is to review existing agency rules and regulations and review the promulgation of new rules.[2443] According to the Book of States, JCAR has no real authority or

[2437] https://www.dailyprogress.com/opinion/opinion-editorial-independent-living-facilities-need-oversight-from-richmond/article_51154b0a-010a-11e7-96a7-4f28a0cc92ad.html, accessed 5/18/18
[2438] http://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+HJ118, accessed 5/18/18
[2439] https://www.newsadvance.com/opinion/editorials/dominion-and-pipeline-oversight/article_f3fab14c-3913-11e8-9ab6-633b3b60472d.html, accessed 5/18/18
[2440] http://www.wdbj7.com/content/news/Lawmakers-speak-out-for-more-pipeline-oversight-480178833.html, accessed 5/18/18
[2441] http://www.wdbj7.com/content/news/Governor-defends-oversight-of-pipeline-projects-480748391.html, accessed 5/18/18
[2442] https://wset.com/news/local/opponents-want-mountain-valley-pipeline-to-stop-work-until-lawsuit-date-is-set, accessed 1/7/19
[2443] http://dls.virginia.gov/commissions/car.htm, accessed 5/18/18

effective means to block or eliminate new rules.[2444] Rather the role of JCAR is partially advisory. JCAR can delay a rule for 21 days but the only method to effectively block promulgation of a new rule is for the general assembly to pass legislation blocking the rule. The only other option for delaying the rule beyond 21 days is if JCAR or the appropriate standing committee postpones the rule until the next legislative session, but this can only be done with the consent of the governor. This essentially gives the governor a veto on JCAR's and the legislature's rule decisions. Schwartz (2010 p.389) describes Virginia's JCAR as "largely inactive"[2445]. Yet, despite the legislature's largely inactive status on administrative rules, he characterizes Virginia's administrative rules review is "consistent and substantive".[2446] However, the report warns that Virginia may be too focused on deregulation and not enough on areas where there are gaps in regulatory structure, as the example of independent living facilities demonstrates. We note that in 2018, JCAR met only four times and according to the posted agendas very few rules were actually reviewed.[2447] As such, it would appear that performance may have declined in the past decade.

The statutory limitations notwithstanding, Virginia has developed some practices that may help provide oversight but not through the legislature. The Regulatory Town Hall website offers an interactive portal for agencies to communicate directly with the Department of Planning and Budget (DPB), which is the main executive agency to which other agencies submit proposed rules for analysis. This portal is available to citizens who wish to have direct input on the benefits or costs of proposed rules.[2448] However, all of this occurs without direct oversight or input from the legislature. In fact, JCAR is a largely inactive commission that meets between 2 and 4 times a year and directs people to the Regulatory Townhall website for more information on administrative rules. Overall, Virginia's administrative rules process is centered around the actions of the governor, attorney general, and the DPB, not the legislature.

Oversight Through Advice and Consent

There have been very few outright rejections of a governor's nominees for agency leadership positions by the general assembly in recent years. The most recent was the Republican legislature's rejection of then Gov. McAuliffe's state Supreme Court nominee. Virginia is unique among the states in its method for judicial selections. In Virginia all judges are elected through the legislature, with supreme court justices serving a 12 year term.[2449] In this latest instance, McAuliffe made an appointment to the court when the legislature was in recess.[2450] As a result, there were competing nominees from the Democratic governor and the Republican legislature. In the end, McAuliffe's nominee Judge Jane Roush served for less than a year as a recess appointment and the Republican's preferred candidate, Judge Rossie Alston,

[2444] The Council of State Governments *The Book of States* (2015)
[2445] Schwartz, Jason A. 2010. *52 Experiments with Regulatory Review: The Political and Economic Inputs into State Rulemaking*. Institute for Public Integrity, New York University School of Law, Report No. 6, November 2010.
[2446]file:///F:/State%20Oversight%20Project/Resources%20for%20Summaries/52_Experiments_with_Regulatory_Review.pdf pg. 389
[2447] http://dls.virginia.gov/commissions/car.htm?x=mtg, accessed 11/30/18
[2448] http://townhall.virginia.gov/, accessed 5/18/18
[2449] http://dls.virginia.gov/judicial.html, accessed 5/18/18
[2450] https://www.fredericksburg.com/news/virginia/republicans-reject-governor-s-pick-for-virginia-supreme-court/article_9759dde4-39f4-11e5-9c70-f74ad2d075a9.html, accessed 5/18/18

failed to gain approval of the Senate when one Republican senator disapproved the partisan manner in which Judge Roush's appointment was handled.[2451] Ultimately, Gov. McAuliffe appointed his preferred candidate twice as a recess appointment but when the general assembly came back into session, she was rejected and a third candidate, Judge Stephen McCullough, was selected.[2452]

In most cases the confirmation process is routine, with a majority vote required by the senate and house for most appointments, and there are few outright rejections. However, there is a history of governors in the final year of their term attempting to push through a large number of plum appointments.[2453] In 2017, Democratic Gov. Terry McAuliffe attempted a similar political maneuver by appointing 55 individuals, many of whom were administration staff or spouses of staff, which led to calls of political patronage by the Republican-controlled general assembly.[2454] This is not just a partisan strategy, however. A similar battled occurred in 2002 when Republican Gov. Jim Gilmore had 17 appointments to various commissions and boards rejected by the Republican controlled general assembly.[2455]

Virginia governors have the statutory power to issue executive orders relating to state emergencies, create advisory commissions and investigative bodies, as well as the ability to reorganize the executive branch agencies.[2456] Since his inauguration in 2018, Gov. Northam has issued 14 executive orders, 6 of which were related to declaring state emergencies or the powers of the governor's staff in emergency situations when the governor is absent or incapacitated.[2457] The legislature has no power to oversee his use of this power other than to pass legislation that supersedes the order.

Oversight Through Monitoring of State Contracts

Monitoring the performance of contracts in Virginia is a highly decentralized process. Unlike some states, Texas for instance, where agencies report on their contracts to the legislative analytic bureaucracy, in Virginia the agencies themselves monitor performance of their contacts. As a result, there is a great deal of focus on the procurement procedures and few requirements or guidelines for monitoring and enforcement of contracts. In a 2015 JLARC report, JLARC examined 12 contracts worth approximately $1.8 billion. JLARC found that nearly 91% of contracts did not have incentives to allow for contract enforcement and 74% of contracts contained no penalties should the contract recipient fail to provide the service.[2458] Furthermore, JLARC found that the two agencies that have some capacity to provide oversight and monitor

[2451] https://www.fredericksburg.com/news/va_md_dc/virginia-senate-rejects-gop-s-pick-for-state-supreme-court/article_fcb8a0fc-4503-11e5-b17c-bf04cf704e3f.html, accessed 11/30/18
[2452] https://pilotonline.com/news/government/virginia/general-assembly-elects-stephen-mccullough-to-virginia-supreme-court/article_66d0e1db-1739-534d-a838-e62b21007547.html, accessed 11/30/18
[2453] https://www.richmond.com/news/virginia/government-politics/general-assembly/in-final-year-governor-s-board-appointments-face-test-by/article_4e9b2924-f6b8-5877-bbe2-12466bd1c4a0.html, accessed 5/18/18
[2454] https://www.dailypress.com/news/politics/dp-nws-mcauliffe-appointments-20170602-story.html, accessed 11/30/18
[2455] https://www.richmond.com/news/virginia/government-politics/general-assembly/in-final-year-governor-s-board-appointments-face-test-by/article_4e9b2924-f6b8-5877-bbe2-12466bd1c4a0.html, accessed 11/30/18
[2456] http://knowledgecenter.csg.org/kc/system/files/4.5.2017.pdf Book of States (Beyle 2017)
[2457] https://www.governor.virginia.gov/executive-actions/, accessed 5/18/18
[2458] http://jlarc.virginia.gov/pdfs/summary/Rpt482Sum.pdf, accessed 5/18/18

state contracts, the Department of General Services and the Virginia Information Technologies Agency, monitor too few contracts and their abilities are too limited to provide comprehensive contract monitoring. The most troubling finding was that the state lacked any comprehensive information system that monitors contract performance. As of 2017, the general assembly has not acted on the central recommendations of the JLARC report that would fundamentally alter the decentralized nature of Virginia contract monitoring.[2459]

Oversight Through Automatic Mechanisms

Virginia does not have comprehensive sunset laws. Rather, the scope of its sunset provisions is largely selective. The only standard sunset provisions are when a bill creates a new advisory commission or board within the executive branch. Under this provision the new commission expires after three years. While Virginia has not enacted detailed sunset provisions in the manner that Alabama has, it does allow for sunset provisions to be enacted on a case by case, selective basis. In this way Virginia's approach to sunset laws is similar to several other states: Idaho, Michigan, Minnesota, Montana, Nebraska, and Wisconsin.[2460]

Methods and Limitations

We contacted four people to request an interview but were only able to interview one person about legislative oversight in Virginia. Virginia has only recently begun to post and archive video recordings of committee hearings. The lack of more extensive archives makes it difficult to determine what kind of questions, if any, have been asked of problematic agencies, like the investigation of Virginia Economic Development Partnership, an example described above.

[2459] http://jlarc.virginia.gov/pdfs/reports/Rpt496.pdf, accessed 5/18/18
[2460] The Council of State Governments, *The Book of States* (2016).

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Legislative Oversight in Washington State

Capacity and Usage Assessment

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

Summary Assessment

Although it appears that oversight of the executive branch occurs in Washington State, much of this oversight is conducted by non-legislative entities, such as the State Auditor's Office. The legislature's high professionalism and lack of term limits seem to contribute to a fair degree of institutional knowledge, which is evident in the substantial and informed questions posed by legislators to agency representatives during committee meetings where a large proportion of the legislature's oversight of the executive happens. Washington's citizens appear to value oversight and accountability in their state government as well.

Major Strengths

The insistence of citizens, through Initiative 900 in 2005, forces the State Auditor and the legislature to work together and to use audit information in the appropriations process. The existence of two well-funded audit agencies, the OSA and the legislative auditor, provide Washington's legislators with an abundance of information. Bipartisan representation on oversight committees, and notably on the rules review committee, insures that the minority party has a voice in oversight even during periods of one-party government—the current situation.

Challenges

The "money" committees do not seem to use subcommittees to grill state agency officials about their budget requests. Instead, the House Appropriations Committee and the Senate Ways and Means Committee listen to presentations from their own staff about the various departments and public programs. The legislature's lax use of the administrative rule review process dilutes its ability to check executive power. Likewise, it makes little or no use if its sunset and sunrise review powers. Moreover, the legislature's inability to block or rescind executive orders affords the governor a fair degree of unchecked power, which current and past governors seem to have wielded rather frequently.

Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL) classifies Washington's legislature as a hybrid between a fully professional and part-time legislature.[2461] According to Haider-Markel (2009), "[t]he job is demanding . . . and many legislators consider it a full-time, or at least a 'two-thirds-time' position." Squire (2017) ranks Washington at 11th in the country in terms of professionalism. Most legislators receive an annual salary of $47,776, with the House speaker and Senate majority leader each receiving $56,853 per year, and the minority leaders of each chamber receiving $52,314 per year.[2462] Each legislator also receives a $120 per diem. As of 2016, the legislature had 793 total staff members, 536 of whom were permanent.[2463] Washington legislators are not term-limited.[2464] Washington's legislative cycle is two years long, alternating annually between budgetary and non-budgetary sessions. The budgetary sessions are limited to 105 days, but in 2013 the budgetary session lasted only 77 days. The non-budgetary sessions are capped at 60 days, but in 2014 it only ran 44 days. Washington's governor has the power to call special sessions of up to 30 days.[2465]

Ferguson (2013) ranks Washington's governor as the 17th most powerful in the country. Haider-Markel (2009), meanwhile, writes that "Washington governors have more formal powers than the nation's weakest governors (i.e., Alabama and Texas), but less than the strongest governors (i.e., Massachusetts and New York)." His mixed rating is attributed to the fact that Washington's governor possesses less than average power in areas like the "ability to control the entire executive branch, control the budget, and make appointments." The governor's limited ability to control the whole executive branch is derived from the fact that, besides the governor, the state has eight other separately elected executive positions. While this "weakens the governor's ability to assemble a loyal team across the top of the executive branch," the governor can still appoint the heads of major state agencies like transportation, health and human services, education, and natural resources, as well as "about 25 other senior-level administrative positions that make up the cabinet" (Haider-Markel, 2009). Washington's governors make extensive use of executive orders that have the force of law for cabinet-level state agencies, and the legislature has no option to override these orders. Yet, the legislature is able to call itself back into special session if it wants to override a gubernatorial veto. On the other hand, the Washington legislature must muster a two-thirds vote in both chambers to override the governor's veto.

A below average percentage (10.6%) of Washington's population is employed in state or local government, with 5% in the education sector, 1.4% in public safety, 1.6% in welfare, 1.8% in services, and .9% in other sectors (Edwards, 2006). It is the education sector that accounts for most of Washington's lower than average state and local government employment. The national average for percentage of state employment in the education sector is 6.1% of the population.

[2461] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx, accessed 06/15/18.
[2462] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 06/15/18.
[2463] http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf, accessed 06/15/18.
[2464] http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx, accessed 06/15/18.
[2465] http://leg.wa.gov/legislature/Pages/Overview.aspx, accessed 06/15/18.

Political Context

Washington's political culture is heavily influenced by the state's east-west divide, which also correlates with a rural-urban divide (Haider-Markel, 2009). The western part of the state, particularly in the Puget Sound region, tends to be more Democratic, while the more sparsely populated eastern part of the state, as well as other rural areas, typically lean Republican. Nevertheless, for much of the 20th century, Washington was notable for electing centrists from both parties, "a result of a primary election system that allowed independents to participate in any party's primaries" (Haider-Markel, 2009). That system, however, was ruled unconstitutional in 2000 after challenges by the Democratic, Republican, and Libertarian parties.[2466] Subsequently, Washington became the first state in the country to adopt a "top two" primary system, whereby all candidates, regardless of party, appear on the same non-partisan ballot. The top two candidates with the most votes advance to the general election. Some have argued that the system is more fair, noting that "[c]onservative areas . . . are now likely to see two Republicans face off in November, while more liberal areas will find two Democrats on the ballot."[2467] Others argue that the system has, even in politically mixed areas, disenfranchised many voters, particularly third party voters by effectively depriving them of any viable candidates for whom to vote.[2468] Whether or not these electoral changes have contributed to partisan control of Washington's legislative chambers, Democrats have controlled both since 2005.[2469] However, their numerical advantage is small (50-48 in the House and 26-23 in the Senate after a special election in November 2017)[2470] and complicated by the fact that one Democratic senator often caucuses with the Republicans, thus muting the Democrats' dominance in the Senate.[2471] This could be seen as a remnant of Washington's former moderate to independent partisan traditions. Prior to these electoral changes, Republicans occasionally controlled one or the other legislative chamber, for example in 1997-98 and 2003-04 in the Senate and 1995-98 in the House. The governorship, meanwhile, has been controlled by Democrats since 1985, but often there were exceptionally close electoral victories.

Shor and McCarty (2015) rank Washington's legislature as highly polarized. The House is the sixth most polarized in the country, while the Senate is the fifth. This is partly attributable to Washington Democrats being among the most "liberal" in the country, while state Republicans are among the most "conservative." This is a clear departure from Washington's 20th century tradition of moderation.

[2466] https://www.sos.wa.gov/elections/research/history-of-washington-state-primary-systems.aspx, accessed 06/15/18.

[2467] https://www.heraldnet.com/opinion/washington-state-beat-california-to-top-two-primary/, accessed 06/15/18.

[2468] http://www.thestand.org/2015/08/washingtons-top-two-primary-is-limiting-choices-alienating-voters/, accessed 06/15/18.

[2469] http://www.ncsl.org/documents/statevote/legiscontrol_2002_2014.pdf, accessed 06/15/18.

[2470] This election replaced a state Senator who, despite being a Democrat, caucused with Republicans giving that party control of the state Senate. Therefore, much of the information discussed in this report occurred while Republicans were in reality controlling the Senate despite being the minority party in the chamber.

[2471] http://www.ncsl.org/Portals/1/Documents/Elections/Legis_Control_071018_26973.pdf, accessed 7/22/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Washington State has two auditors: the Legislative Auditor, which reports to the Joint Legislative Audit and Review Committee (JLARC) and the State Auditor's Office (SAO), whose director, the state auditor, is a separately elected executive official.[2472] The Legislative Auditor, with a staff of 23 and a budget for 2017 of $8.2 million[2473] conducts performance audits at the request of the legislature through the JLARC and acts as committee staff for the JLARC. The legislative auditor is charged with making 'examinations and reports concerning whether or not appropriations are being expended for the purposes and within the statutory restrictions provided by the legislature . . ." (RCW Section 44.28.080).

The SAO, with a staff of 375, conducts audits of state and local government entities, executing performance, financial, and "accountability" audits, as well as Federal Single Audits, "whistleblower investigations and IT reviews," and oversight of state contracts.[2474] Most of the performance audits pursued by the SAO "have focused on large, state-level programs,"[2475] and all of these are legally mandated or selected by the State Auditor rather than the legislature or governor. The separate Local Government Performance Center focuses on assisting local governments to "solve problems, reduce costs and improve the value of their services to citizens."[2476] Its state appropriation for 2015 is nearly $10 million.

In 2005, Washington's citizens passed ballot initiative I-900, which established the independence of the state auditor to determine which agencies to audit without interference from the legislature. [2477] The initiative earmarks a small percentage of the state's sales tax to pay for the cost of the additional audits and reporting activities. Moreover, the legislature, especially the JLARC but also other relevant committees were required to hold hearing on the results of these audits. The results of SAO performance audits are widely distributed, and citizens can sign up to an e-mail listserv to receive notification of their publication. Audit reports are also presented to the legislature "in public hearings, typically held by the Joint Legislative Audit and Review Committee."[2478] The state auditor is also required, under the I-900 initiative, to submit a report to the legislature annually by July 1 on the compliance of state agencies with audit recommendations. Between May 2017 and May 2018, the SAO completed nine performance audits,[2479] and there are another 10 in progress, with estimated dates of completion between fall 2018 and mid-2019.[2480] According to the SAO's most recent published progress report (2016), the auditor has made "more the 2,100 recommendations to state agencies and local governments," with agencies reporting that an average of 87% of these recommendations have been adopted or are in the process of being followed-up.[2481]

[2472] http://www.sao.wa.gov/Pages/default.aspx, accessed 06/15/18.
[2473] http://fiscal.wa.gov/BudgetACurr, accessed 7/23/18.
[2474] http://www.sao.wa.gov/about/Pages/default.aspx, accessed 06/15/18.
[2475] http://www.sao.wa.gov/state/Pages/Aboutperformanceaudits.aspx, accessed 06/15/18.
[2476] http://www.sao.wa.gov/local/Pages/LGPC.aspx, accessed 06/15/18.
[2477] https://www.sos.wa.gov//elections/initiatives/text/i900.pdf, accessed 06/18/19.
[2478] http://www.sao.wa.gov/state/Pages/Aboutperformanceaudits.aspx, accessed 06/15/18.
[2479] http://www.sao.wa.gov/state/Pages/RecentReports.aspx, accessed 06/15/18.
[2480] http://www.sao.wa.gov/state/Pages/PAWorkInProgress.aspx, accessed 06/15/18.
[2481] http://www.sao.wa.gov/state/Documents/PA_2016_Performance_Audit_progress_report.pdf, accessed 06/15/18.

Although I-900 establishes the independence of the SAO, it requires that the JLARC "must consider the state auditor reports in connection with the legislative appropriations process" and "is required to report on the implementation of any State Auditor recommendations for legislative action."[2482] Meetings at which the JLARC reviews the SAO audit reports are called "I-900 meetings," and since January 2017 video of these meetings is archived online.[2483] These meetings are public and feature testimony from SAO staff regarding the results of investigations carried out by the State Auditor. Typical I-900 meetings last an hour-and-a-half, and like regular JLARC sessions, the meetings consist of testimony and presentations about performance audits conducted by the State Auditor's Office, as well as testimony from agency representatives and public comments. Committee members typically ask questions about the auditor's findings. During an April 2018 hearing on IT security,[2484] for example, legislators requested that the auditors follow up with the agencies reviewed to ensure that they were implementing recommendations in a timely manner. One committee member, noting that the report found that lack of clarity about state IT security standards, asked whether the Office of the Chief Information Officer (OCIO) or the legislature needed to do anything to resolve the issue. Another question pertained to the kinds of IT security information-sharing mechanisms that exist between agencies in the state.

During the same session, the committee also considered two[2485] SAO reports[2486] about the "Alternative Learning Experience" (ALE) program, which "is public education where some or all of the instruction is delivered outside of a regular classroom schedule," including a major online component. In addition to taking testimony from and posing questions to staff from the SAO and the Office of the Superintendent of Public Instruction (OSPI) about certain shortfalls in the ALE program, the committee also engaged in a substantial dialogue with a concerned citizen who was opposed to the ALE program.

I-900 sessions are held separately from other JLARC meetings, which are usually devoted to consideration of the results of audits conducted by the state's Legislative Auditor. JLARC itself "is comprised of an equal number of House and Senate members, Democrats and Republicans . . . [It] conduct[s] performance audits, program evaluations, sunset reviews, and other analyses . . . [and its] authority is established in Chapter 44.28 Revised Code of Washington."[2487] Members are appointed by the Senate president and House speaker, with a maximum of four members from any one party in each chamber.[2488] The chair of the four-member JLARC Executive Committee rotates annually (House Democrats choose the chair one year, Senate Republicans the next year, and so on). The vice chair is appointed by the opposite party/chamber caucus. The Legislative Auditor is selected "from a list of applicants recommended by the executive committee."[2489]

[2482] http://leg.wa.gov/jlarc/I-900/Pages/I-900.aspx, accessed 06/15/18.
[2483] https://www.tvw.org/?option=com_tvwsearch&keywords=Legislative%20Audit, accessed 06/15/18.
[2484] http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1021044&isFinding=false&sp=false, accessed 07/05/18.
[2485] http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1021127&isFinding=false&sp=false, accessed 07/05/18.
[2486] http://www.sao.wa.gov/local/Documents/ALE_Accountability_2016_ar1016301.pdf, accessed 07/05/18.
[2487] http://leg.wa.gov/jlarc/Pages/aboutjlarc.aspx, accessed 06/15/18.
[2488] http://apps.leg.wa.gov/rcw/default.aspx?cite=44.28&full=true, accessed 06/15/18.
[2489] http://leg.wa.gov/jlarc/Documents/RulesOfProcedure.pdf, accessed 06/15/18.
The JLARC executive committee consists of one legislator from each party/chamber caucus, elected by JLARC from among its 16 members.

Future JLARC audits for the next biennium are determined by the JLARC members "[a]t the conclusion of the regular legislative session of each odd-numbered year."[2490] JLARC issued eight reports in 2017, six reports in 2016, five in 2015, and seven in 2014 (JLARC-Audit and Study Reports). It also made 19 recommendations to agencies between 2013 and 2016, all of which were implemented or are in progress.[2491] Its 2015 Annual Report states that, "[b]etween 2011 and 2014, JLARC issued 32 recommendations directly to state agencies. Ninety-four percent of these recommendations have been implemented or are in the process of being implemented."

In 2017, JLARC studies focused on land acquisition and regulation, youth homelessness, construction contracts, and health disparities. "Assignments to conduct studies are made by the Legislature and the Committee itself to reflect top public policy concerns."[2492] The results of JLARC studies and details about their analyses are also made available to other legislative committees and other groups like the Pew Charitable Trusts, the NCSL, and the Evans School of Public Policy at the University of Washington.

Finally, the legislature is assisted in the budget process by the Legislative Evaluation and Accountability Program (LEAP), which is the legislature's "independent source of information and technology for developing budgets, communicating budget decisions, and tracking revenue, expenditure, and staffing activity."[2493] LEAP is comprised of four senators and four representatives, with equal representation from both of the major political parties. Although it is technically a legislative committee, the committee supervises a staff that provides "consulting to legislative committees and staffs, and provides analysis and reporting on special issues at legislative request." The state's fiscal website[2494] is also maintained by LEAP. This committee has a staff of 11 budget professionals, called consultants who perform this work at the direction of the LEAP committee. The state's fiscal website consists of budget bills and documents and interactive maps and reports on topics such as state employment trends, K-12 education funding formulas, in addition to spending and revenue data.

Oversight Through the Appropriations Process

After state agencies submit their proposed biennial budgets, the governor submits a proposed budget to the House Appropriations Committee and the Senate Ways and Means Committee. Each committee examines the governor's proposal and prepares its own version of the biennial state budget. A conference committee then reconciles the two committees' budgets, resulting in a final "legislative budget that is submitted to the full legislature for final passage."

The governor has line-item veto power, and so "may veto all or part of the budget, thereby eliminating funding for certain activities; however, the governor cannot add money for an activity for which the legislature provided no funding."[2495] The legislature can override a

[2490] http://app.leg.wa.gov/RCW/default.aspx?cite=44.28.083, accessed 06/21/18.
[2491] http://leg.wa.gov/jlarc/AnnualReport/2017/default.html, accessed 06/15/18.
[2492] http://leg.wa.gov/jlarc/AnnualReport/2017/print.pdf, accessed 06/15/18.
[2493] http://leap.leg.wa.gov/AboutLEAP.html, accessed 06/21/18.
[2494] http://fiscal.wa.gov, accessed 06/21/18.
[2495] http://leg.wa.gov/Senate/Committees/WM/Documents/Publications/2016/2016%20CGTB_Final_website.pdf, accessed 06/15/18.

gubernatorial veto by a two-thirds vote, and, though this does occur at times,[2496] in practice it "happens rarely."[2497]

With one party control of the legislature, albeit narrow and recent, and the Democrats' continuing control of the governorship, oversight of the executive in the domain of appropriations does not seem particularly robust, with House Democrats often siding with the governor. With one exception, Washington lawmakers have not been able to pass a budget on time since 2010, which has required the governor to repeatedly call special sessions. Much of this is attributable to partisanship when Republicans controlled the senate and Democrats control the house and the governorship, the situation until recently.[2498] In the 2017 budget negotiations, higher education funding proved to be a major flashpoint, with house Democrats and the governor calling for increased taxes to pay for schools. School funding had been especially problematic because of a 2012 State Supreme Court ruling, known as the McCleary ruling, which "found the state had violated its constitution by underfunding K-12 schools and kicked off years of fierce debate in Olympia over school funding and policies."[2499] This ruling "forced lawmakers and Gov. Jay Inslee to pour billions of dollars into the K-12 school system."

The budget that was ultimately passed[2500] "provide[d] state workers and teachers with pay hikes, increase[d] funding for mental health programs, launch[ed] a new paid family leave program and create[ed] a new department focused on children," all funded by "the largest-single increase in the state's property tax in Washington history," with more money coming from "collecting sales taxes on bottled water and online purchases and through tapping reserves."[2501] However, the courts once again ruled that the plan "didn't fully provide for schools by the September 2018 deadline . . . and suggested lawmakers further boost education funding."[2502] A supplemental budget passed in 2018 addressed this, reducing the previously increased property taxes while ensuring that the state continued to meet its K-12 funding obligations.[2503]

The House Appropriations Committee (HAC) and the Senate Ways and Means (SWM) Committee hold hearings on the governor's proposed budget and on agency budget requests. During 2017, the year in which the most recent biennial budget was developed, the HAC met 34 times from January through April. The SWM met 50 times during the same month. Although both committees are extremely active, an examination of their meeting agendas indicates that they spend a lot of time on legislation that is only tangentially related to the state budget. This is especially true for the HAC. For example, one HAC hearing (February 8th, 2017) devoted more than an hour to presentations on numerous bills that protected the rights of vulnerable populations: seniors victimized by financial cons, adult entertainment workers, child sex abuse victims, people with limited cognitive capacity, among others. Although some of these bills had

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[2496] http://nwnewsnetwork.org/post/washington-lawmakers-announce-budget-deal-vote-override-inslees-vetoes, accessed 06/21/18.

[2497] http://leg.wa.gov/legislature/Pages/Overview.aspx, accessed 06/15/18.

[2498] https://www.seattletimes.com/seattle-news/politics/with-deadlock-in-olympia-inslee-calls-special-session/, accessed 06/15/18

[2499] http://www.governing.com/topics/education/tns-washington-school-funding.html, accessed 06/15/18.

[2500] https://app.leg.wa.gov/CMD/Handler.ashx?MethodName=getdocumentcontent&documentId=yD8drZBryOY&att=false, accessed 06/21/18.

[2501] http://www.seattleweekly.com/news/as-midnight-deadline-looms-lawmakers-pore-over-616-page-state-budget/, accessed 06/15/18.

[2502] http://www.governing.com/topics/education/tns-washington-school-funding.html, accessed 06/15/18.

[2503] http://www.spokesman.com/stories/2018/mar/09/washington-lawmakers-send-inslee-12-billion-supple/,

financial implications for the state, they were not part of the debate about the biennial budget. At another HAC hearing, (January 30th, 2017), several agency budgets were presented, but not by people from the agencies or from the governor's office, but rather in Powerpoint presentations by legislative staff. The HAC did, however, have the governor's representative, David Schumacher from the Office of Financial Management (OFM), present the executive budget. But in the HAC, there was less oversight and time spent more legislating on non-budget topics.

The SWM hearings more closely resembled budget-related hearings in other states than did the meeting of the HAC. The governor's office presented the budget to the committee during the January 11th, 2017 hearing, sending David Schumacher from the OFM to provide information and answer questions. There was an extensive discussion of the governor's requests. Legislators asked several pointed questions about the governor's priorities and willingness to fund or cut various items in the two budgets provided—a budget based on existing revenue and a proposed budget that include additional sources of revenue requiring legislative action. Legislators pressed Mr. Schumacher by stating that the things the governor really cared about must be the items in the budget based on existing revenue. He resisted this assertion, saying that the second budget reflected what the governor wanted to do for the state. At a subsequent SWM meeting, held on January 12th, 2017, the committee listened to a presentation on the governor's capital budget given by Jim Crawford of the Office of Financial Management. The committee then heard testimony for numerous citizen groups and other advocates for various portions of the governor's capital budget.

In a January 31st, 2017 meeting, committee staff presented an overview of budgets for four agencies, all in the general area of natural resources. Then the heads of these agencies presented more detailed budget requests and information about each of their departments. These were the Department of Fish and Wildlife, Parks, Natural Resources, and Ecology. Questions from legislators directed toward the Director Unsworth from the Department of Fish and Wildlife ranged from pointed to hostile. The committee members disputed the department's assessment of the quality of its service, complained personally about how much hunting licenses cost (more than $100 per year for a combined big and small game license), and reminisced about bygone times when there were no restrictions on harvesting razor clams. At the end of his testimony the committee chair chastised him saying, " . . .I understand you have a funding issue and a big challenge to take on I'm happy to help you on that but I will not accept you showing up in misleading this committee thank you for your service and have a good day sir" (in the second hour of the hearing at the 10:57 minute mark).[2504]

These hearings clearly demonstrate that the Senate, which at that time was not controlled by the governor's party, was willing and able to ask tough questions of the executive branch administrators and staff who testified. Some of this may have been motivated by partisanship, but it appeared from the information discussed that there was a genuine disagreement about whether the public was satisfied with the service provided by Department of Fish and Wildlife field staff. Clearly enforcing restrictions on people who might have grown up without limits on the number of fish that could be harvested might provoke citizens, but the department director failed to defend his agency or its requests for increasing fees. That Senators challenged him on the accuracy of the information he presented demonstrates that they can and will exercise oversight when necessary. On the other hand, the House does not appear to pursue this responsibility. Instead it focuses on hearing testimony on legislation and letting staff summarize

[2504] https://www.tvw.org/watch/?eventID=2017011402, accessed 1/20/19.

budget requests. The HAC hearing on the natural resources budget (January 18th, 2017) consisted of a presentation by committee staff rather than presentations by agency personnel.

Oversight Through Committees

Apart from subpoena power, no specific oversight authority is granted through the state constitution or the House or Senate rules. There is, however, evidence that oversight-type activities are conducted by the various standing committees. Archived video from a Senate Transportation Committee meeting on January 9, 2018,[2505] for example, shows committee members listening to a presentation from the Senior Budget Assistant to the governor outlining the governor's proposed 2018 Supplemental Transportation Budget. Committee members then posed questions about proposed fee exemptions for electric vehicles and increased gasoline taxes, with one member noting the potential inequities in a plan that effectively penalized people who did not drive electric vehicles. The committee also asked whether several transportation infrastructure projects that were in the early stages of completion might be impacted by the steep decline in transportation revenues reported by the governor. Representatives from the department replied that those projects were currently on track, but that future projects could be jeopardized. The committee then asked questions of the secretary of the Department of Transportation, including inquiries concerning equity, diversity, and outreach, cost recovery from Amtrak related to the 2017 train derailment near the city of DuPont, whether the Department of Transportation has developed plans to keep the Interstate 5 corridor open during blockages, and how best to keep roadways in a state of good repair given budget constraints.

The Senate State Government, Tribal Relations, and Elections Committee, is another active standing committee that "considers issues related to the processes of state government, including procurement standards, agency rulemaking, and emergency management."[2506] This committee considered a variety of issues in 2018 including automatic voter registration, support services for veterans, and modifications of the duties of the State Auditor--all topics that examine the performance of state agencies and the impacts of agency rules.

The House Business & Financial Services Committee outlined its plan to conduct oversight of insurance, banking, and financial services regulations, as well as the implementation of recent legislation relevant to such sectors, which also involved taking testimony from agency representatives: "Satisfying the committee's oversight responsibility requires conferring with appropriate regulatory agencies regarding new and ongoing issues, implementation of recently enacted legislation, and proposals for new legislation." To this end, on November 16, 2017, the committee held a meeting during which reports were taken from agencies "on the implementation of previously enacted legislation, significant regulatory issues, and legislative priorities for 2018."[2507] The chair opened the meeting saying that the committee wanted, not just to pass bills, but to know how they were implemented. During the course of this meeting, which lasted for nearly two hours, agency representatives made presentations about their activities and took substantive and specific questions about programs and policy from members of the committee.[2508]

[2505] https://www.tvw.org/watch/?eventID=2018011077, accessed 06/18/18.
[2506] http://leg.wa.gov/Senate/Committees/SGTE/Pages/default.aspx, accessed 06/19/18.
[2507] http://leg.wa.gov/House/Committees/Documents/interim2017.pdf, p. 12. Accessed 7/23/18.
[2508] https://www.tvw.org/watch/?eventID=2017111060, accessed 06/19/18.

Although the LEAP committee, described in our discussion of analytic bureaucracies, is a critical conduit of information to the rest of the legislature on financial issues, it only met once during 2017. This meeting, held on January 18th, 2017 covered an agenda item, Interim Projects Update, but there are no documents or minutes that provide information about what these projects were, let along whether legislators were engaged with the information presented. The committee met twice in 2018—once in January and once in June. The documents available for the June 12th, 2018 meeting include a table showing the reporting responsibilities of LEAP Staff.[2509] The chart provided in the committee documents lists specific budget reporting systems followed by a brief explanation of the use of this system and the corresponding legislative committee served by this reporting system. The specific committees listed are the chambers' capital committees, appropriations or ways and means committees, and transportation committees.

The House of Representatives Office of Program Research provides a detailed description of intended committee objectives through its 2017 Interim Plans document. This document summarizes committee plans to conduct oversight of various executive branch agencies. In some cases, committee members' familiarity with reports conducted by state agencies and the analytic bureaucracy is evident. For example, the Appropriations Committee Work Plan on K-12 Public School Funding gives background information on the 2012 McCleary ruling, previous legislation pertaining to the school funding problem, issues remaining to be addressed in that domain, and the committee's plan to deal with them in the upcoming legislative session.

Oversight Through the Administrative Rules Process

The rulemaking process in Washington is governed by the Washington Administrative Procedure Act (RCW Section 34.05.310).[2510] That statute contains explicit provisions for legislative review of proposed and existing rules and establishes a Joint Administrative Rules Review Committee (JARRC) for that purpose. The committee has eight members; two from each party in each chamber, subject to approval by their respective caucuses. "Nonpartisan staff from both Senate Committee Services and House Office of Program Research regularly review all emergency, proposed, and adopted administrative rules as they are filed with the Code Reviser's Office." According to statute, "[a]ny person may petition the rules review committee for a review of a proposed or existing rule or a proposed or existing policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent." The Committee has subpoena power, and witnesses may be compelled to testify before it if necessary. The committee may also "establish ad-hoc advisory boards, including but not limited to ad-hoc economics or science advisory boards to assist the committee in its rules review functions."

After review, the committee "may recommend to the legislature that the original enabling legislation serving as authority for the adoption of any rule reviewed by the committee be amended or repealed." Otherwise, the committee may also find that a rule does not adhere to its legal intent or procedure, or that an agency has implemented a policy without a formal rule. Once such a ruling has been made, agencies have seven days in which to "notify the committee of its

[2509] https://app.leg.wa.gov/committeeschedules/Home/Document/173442#toolbar=0&navpanes=0, accessed 1/19/19
[2510] http://app.leg.wa.gov/rcw/default.aspx?cite=34.05, accessed 06/19/18.

intended action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules." If the agency's response is deemed insufficient, "a majority vote of [committee] members . . . [may] prepare and file a formal objection," or "by a majority vote of its members, recommend suspension of the rule to the Governor."[2511] The JARRC also has the ability to review already existing rules, and the legislature can pass legislation requiring an agency to repeal a rule that is found to be wanting. SB 5055,[2512] which was discussed by the Senate State Government, Tribal Relations, and Elections Committee, sought to modify the review process, with rule suspension occurring at the time in which a majority of the JARRC's members object to an agency rule. That bill, however, has not yet made it out of committee.

The JARRC does not meet during legislative sessions, only during the interim, and its interim meetings are infrequent—fewer than a dozen in the 15 years between 1996 and 2010 (Schwartz, 2010). The committee's website contains no documentation of committee activities since 2013,[2513] and there is no archived audio or video available for the 2017-18 biennium. Prior to that, the committee only met twice in 2016 and twice in 2015.[2514] Despite Swartz's criticism of the JARRC committee efforts as "quite inconsistent and sporadic," he argues that the economic impact analyses done by state agencies in Washington are among the best in the nation.

Despite being "rare"[2515] when hearings do occur, however, they seem to be fairly substantial, and are occasionally politically charged. One meeting, held on June 9, 2016, considered whether or not WAC 162-32-060,[2516] which covers gender-segregated facilities, was adopted by the Washington Human Rights Commission in full accordance with the law, including the Administrative Procedures Act. According to one Republican lawmaker, "[f]or the Human Rights Commission to unilaterally make a [Washington Administrative Code] change — they're not an elected body . . . They're making decisions that widely affect the public although they're not elected and held accountable to the public in the same fashion."[2517] However, after an hour-and-a-half of testimony from the chair of the Human Rights Commission, numerous concerned citizens, business organizations, and social justice activists, a motion to the effect that the rule was not properly adopted failed to pass. Previously, the issue had come before the Senate Commerce and Labor Committee, which voted to send SB 6443[2518] to the full Senate for a vote. The bill, which ultimately failed in a 24-25 vote, would have required the Human Rights Commission to repeal the law and blocked it from ever making a new rule that "involves the subject of gender-segregated facilities."[2519]

[2511] http://leg.wa.gov/JointCommittees/JARRC/Pages/Process.aspx, accessed 06/19/18.
[2512] http://apps2.leg.wa.gov/billsummary?BillNumber=5055&Year=2017&BillNumber=5055&Year=2017, accessed 06/21/18.
[2513] http://leg.wa.gov/JointCommittees/JARRC/Pages/Meetings.aspx, accessed 06/19/18.
[2514] https://www.tvw.org/archives/?term=Joint+Administrative+Rules+Review+Committee&search-archives=1, accessed 06/19/18.
[2515] https://www.heraldnet.com/business/costly-new-state-building-code-impact-unknown/, accessed 07/05/18.
[2516] https://app.leg.wa.gov/wac/default.aspx?cite=162-32-060, accessed 06/19/18.
[2517] https://www.washingtontimes.com/news/2015/dec/31/transgenders-in-washington-state-to-use-restrooms-/, accessed 06/19/18.
[2518] http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/6443%20SBA%20CL%2016.pdf, accessed 06/18/19.
[2519] http://www.spokesman.com/stories/2016/jan/27/hundreds-gather-in-olympia-to-testify-on-bill-addr/#/0, accessed 06/19/18.

It appears that Washington's legislature has the power to monitor executive agency rules, but it appears to infrequently use the tools it possesses. Moreover, when it asserts its prerogatives, it appears that the motivation is sometimes political rather than in the interest of good government.

Oversight Through Advice and Consent

The Washington State Legislature has exceptionally modest powers to check gubernatorial orders or appointments. Part of this involves the limited appointment power of the state governor, but also due to the fact that the governor does not need to seek legislative approval for policy made through executive orders.

Most executive officers in Washington are elected officials, and most agency heads that the governor appoints are not subject to legislative confirmation.[2520] Likewise, Supreme Court and Superior Court judges are elected by popular vote, though the governor may appoint judges when a vacancy occurs; these appointments are effective until the next general election. Washington also has "200-plus boards and commissions to which [the governor] appoints citizen members."[2521] A substantial number of recent appointments to such bodies have required senatorial approval.[2522] The governor also appoints the officials of "educational, reformatory, and penal institutions . . . with the advice and consent of the Senate."[2523] Unlike in many other states, after the appointments are made, nominees serve until the Senate considers them, either rejecting or confirming them. Sometimes, they do not have hearings.[2524] According to one legislator, "There are some of the appointments that members of the Senate are saying: 'Really? That's the right choice?' But it's whether it rises to that standard of defeat, and I don't know of anybody who has risen to that threshold." Votes are occasionally held to reject an appointee, but it happens extremely rarely. Prior to the 2016 rejection of Gov. Inslee's nominee for the Secretary of the Department of Transportation, the last refusal by the Senate to confirm a nominee occurred in 1998.[2525] The appointee had already been in her position for three years when the vote occurred.[2526] Indeed, when the Senate voted to reject the appointment, the governor blasted it as "scurrilous, underhanded, dishonest" and described himself as "deeply disturbed" by what he characterized as an "election-year stunt."[2527]

[2520] https://www.nga.org/files/live/sites/NGA/files/pdf/book-of-the-states/BOSTable4.10.pdf, accessed 06/19/18.
[2521] https://www.governor.wa.gov/boards-commissions, accessed 06/19/18.
[2522] https://www.governor.wa.gov/boards-commissions/boards-and-commissions/recent-appointments, accessed 06/19/18.
[2523] https://law.justia.com/constitution/washington/constitution-13.html, accessed 06/20/18.
[2524] https://www.theolympian.com/news/politics-government/article25317055.html, accessed 07/05/18.
[2525] https://www.washingtonpolicy.org/publications/detail/senate-rejects-confirmation-of-state-transportation-secretary-other-major-department-heads-quit-governor-inslees-administration-as-2016-legislative-session-reaches-halfway-point, accessed 07/05/18.
[2526] https://www.seattletimes.com/seattle-news/transportation/transportation-secretary-lynn-peterson-ousted-by-state-senate/, accessed 07/05/18.
[2527] https://www.seattletimes.com/seattle-news/politics/inslee-gop-should-be-ashamed-for-firing-of-wsdot-chief/, accessed 07/05/18.

In Washington, the governor has the power to issue executive orders carrying the force of law for the state's cabinet agencies. This is established in Washington State statute.[2528] Unlike many states, Washington governors appear to issue executive orders relatively frequently. Gov. Inslee has issued 31 such orders since 2013,[2529] while his predecessor issued 42 executive orders from 2005-2012.[2530] Whereas in many states executive orders often pertain to declaring states of emergency, days of commemoration, and flying flags at half-staff, in Washington, executive orders cover a wide range of topics, including state agency enterprise risk management, efficiency and environmental performance, autonomous vehicles, and the creation of a variety of boards and commissions. The legislature does not have any power to block or rescind such orders (Book of the States). Moreover, in Washington these orders are not governed by an administrative procedures act or by any public filing or publication procedures (Book of the States). This gubernatorial power appears to be quite expansive, although these orders have the "force of law" only for the state's cabinet agencies.

The governor, however, does not have the power to reorganize state agencies.[2531] Agency reorganization must be carried out through legislative action, though governors often work with lawmakers to ensure that bills are introduced, as occurred in 2011 when former-Gov. Christine Gregoire signed a bill that consolidated several state agencies into a new Department of Enterprise Services (DES).[2532]

Oversight Through Monitoring of State Contracts

Washington state law (RCW 39.26.220) requires the state auditor to issue a "report of contract audit and investigative findings, enforcement actions, and the status of agency resolution to the governor and the policy and fiscal committees of the legislature." This report details performance, compliance and accountability, and fraud or whistleblower-related audits carried out by the State Auditor in relation to state contracts.[2533]

The JLARC, through its relationship with the State Auditor, seems to have some ability to monitor state contracts. An April 2018 report, for example, reviewed the costs and savings to the state that accrued as a result of the 2011 government reorganization which created the Department of Enterprise Services. According to the JLARC report,[2534] the law requires DES to "monitor and measure the costs and performance of private sector contracts," but found that "[b]ased on available data, JLARC staff cannot determine the effect that contracting these services had on costs or performance." The legislative auditor therefore recommended that DES improve its performance measures as related to contracting, as well as its documentation

[2528] https://web.archive.org/web/20170205021303/https://www.nga.org/files/live/sites/NGA/files/pdf/BOSTable4.5.pdf, accessed 06/20/18.
[2529] https://www.governor.wa.gov/office-governor/official-actions/executive-orders, accessed 06/20/18.
[2530] https://www.governor.wa.gov/office-governor/official-actions/executive-orders/executive-orders-archive, accessed 06/20/18.
[2531] https://www.seattletimes.com/seattle-news/politics/inslee-takes-up-pen-whens-theres-a-legislative-deadlock/, accessed 06/20/18.
[2532] https://www.washingtonpolicy.org/publications/detail/governor-signs-agency-consolidationcontracting-reform, accessed 06/20/18.
[2533] http://www.sao.wa.gov/resources/Documents/ContractsReport_RCW_39-26_2017.pdf, accessed 06/20/18.
[2534] http://leg.wa.gov/jlarc/reports/2017/DESoFMcontracting/pf/default.html, accessed 06/20/18.

procedures.[2535] Once again, we see that the legislature uses the audit process to insert itself into the state contract monitoring process.

Oversight Through Automatic Mechanisms

Baugus and Bose (2015) classify Washington's use of sunset mechanisms as "discretionary," which "allows the legislature to choose which agencies and statutes to review." In Washington, the JLARC is empowered by statute to review the application of such mechanisms to specific laws. Sunset reviews are conducted according to criteria outlined in RCW 43.131,[2536] which pertain to compliance with legislative intent, performance measures, efficiency, public interest, and other common criteria. Sunsetting does not appear to be very common in Washington; only four reviews seem to have been conducted since 2011, and 18 since 1995.[2537] JLARC's revised Biennial Work Plan lists seven other scheduled sunsets between 2019 and 2028.[2538]

Washington also makes use of sunrise reviews in two domains: health and business professions. This means, for example, that the Department of Health "makes recommendations to the legislature on health profession credentialing proposals and proposals to add new insurance mandates."[2539] In general, a sunrise review is intended to be "an evaluation of a proposal to change the laws regulating health professions in Washington. The legislature's intent, as stated in Chapter 18.120 RCW, is to permit all qualified people to provide health services unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Changes to the scope of practice should benefit the public."[2540]

Moreover, "[t]he legislature further finds that policies and standards set out for regulation of the health professions in chapter 18.120 RCW have equal applicability to other professions. To further the goal of governmental regulation only as necessary to protect the public interest and to promote economic development through employment, the legislature expands the scope of chapter 18.120 RCW to apply to business professions."[2541] For businesses, it is the Department of Licensing that is charged with conducting sunrise reviews.[2542]

[2535] http://leg.wa.gov/jlarc/AuditAndStudyReports/Documents/DES_PF_Presentation.pdf, accessed 06/20/18.
[2536] http://app.leg.wa.gov/RCW/default.aspx?cite=43.131, accessed 06/20/18.
[2537] http://leg.wa.gov/jlarc/AuditAndStudyReports/Pages/default.aspx, accessed 06/20/18.
[2538] http://leg.wa.gov/jlarc/Documents/2017-19%20work%20plan%20approved%204.8.18.pdf, accessed 06/20/18.
[2539] https://www.doh.wa.gov/AboutUs/ProgramsandServices/HealthSystemsQualityAssurance/SunriseReviews, 06/20/18.
[2540] https://www.doh.wa.gov/portals/1/Documents/Pubs/631009.pdf, accessed 06/20/18.
[2541] http://app.leg.wa.gov/RCW/default.aspx?cite=18.118.005, accessed 06/20/18.
[2542] http://www.dol.wa.gov/about/sunrise.html, accessed 06/20/18.

Methods and Limitations

Of the five people we contacted in Washington to request information about legislative oversight, we were able to interview two of them. Archival recordings of hearings are available along with a machine-generated transcript of the hearing. Occasionally there are links to relevant documents.

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Legislative Oversight in West Virginia

Capacity and Usage Assessment

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

Summary Assessment

West Virginia's legislative auditor seems effective, not just in terms of the number and scope of the performance audits it conducts, but also in generating legislative action on the basis of those audits. The action taken in response to the performance audits discussed in this summary indicates serious efforts to improve government accountability. Finally, the state is unusual in that it has both sunrise and sunset laws, both of which increase the accountability of agencies and the regulatory regime. The legislature is also seemingly capable of extracting concessions from the governor through its advice and consent powers vis-à-vis gubernatorial appointments.

Despite these positive institutional features, evidence does not indicate that West Virginia is among the strongest examples of effective oversight of the executive by the legislature, largely because the executive branch is so powerful, especially with respect to the state's budget. Although there are instances, like the 2017 budget battle, in which the legislature has successfully prevailed over the governor, the governor typically seems to exert a great deal of influence over state politics. The legislature has no real role in oversight of state contracts, which are in the hands of a separately elected executive.

Major Strengths

All audits in West Virginia must, by law, be filed as public record, so information is widely available. Generally, West Virginia's legislature responds to its oversight agencies with substantive action. The Senate Finance Committee's Post Audits Subcommittee's investigation into misuse of public funds by the state Supreme Court produced action by the legislature. Statewide crises, such as the 2018 teacher's strike, have led to action from the West Virginia legislature to increase teacher's pay, an example of successful fire alarm oversight.

Challenges

A relatively small staff at the Legislative Auditor's Office means that the West Virginia legislature performs audits by prioritizing problematic agencies and agencies that have not been recently audited -- a fire alarm approach. The legislature's lack of committees specifically tasked to monitor state contracts is a weakness of West Virginia's oversight capabilities, leaving the responsibility instead to the State Auditor's Office in the executive branch.

Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL) classifies West Virginia's legislature as a part-time body with low pay, though it is ranked as more professionalized than a pure citizen legislature.[2543] Squire, meanwhile, ranked West Virginia's legislature as 38th out of 50 in terms of legislative professionalism (2017). This means that the West Virginia legislature has a "limited ability to research policy alternatives independently from the executive" (Haider-Markel, 2009). Legislative work is not full-time, and the pay typically requires a second job; legislators' salary is $20,000, plus a daily $131 per diem set by the compensation commission while the legislature is in session.[2544] The legislature has a total staff size of 352 members, 201 of whom are permanent.[2545] House members serve two year terms, while senators serve four year terms. There are no limits on the number of terms, consecutive or otherwise. However, there tends to be a great deal of turnover among lawmakers (Haider-Markel, 2009). Legislative sessions last for 60 calendar days, with the limit being set by the constitution.[2546] West Virginia's legislature is not especially polarized, with the house ranking 40th out of 50 states and the senate ranking 42nd (Shor & McCarty, 2015).

West Virginia's governor has been ranked by some as being one of the most powerful in the country, though there is some disagreement among authors. "In the legislative arena, the governor is influential because of controls over discretionary funding and access carried out by the eight-member cabinet of 'supersecretaries,'[2547] and because of the institutional capacity offered by the bureaucracy" (Haider-Markel, 2009). Much of this assessment is based upon the substantial budgetary powers that are granted to the governor, as West Virginia is one of seventeen states that give the governor the full responsibility for creating the budget. The governor can also call the legislature into special sessions and choose a successor for any legislator who leaves office before the end of their term, though the replacement must be of the same party as the outgoing lawmaker.

According to Haider-Markel (2009), West Virginia's governor's influence "is moderated only by five separately elected executive positions: the secretary of state, commissioner of

[2543] http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#side_by_side, accessed 4/27/18.
[2544] http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx, accessed 4/27/18.
[2545] http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx, accessed 5/8/18.
[2546] http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx , accessed 5/8/18.
[2547] "Supersecretaries" are the "heads of cabinet departments such as commerce, education and the arts, and public safety" (Haider-Markel, 2009).

agriculture, attorney general, auditor, and treasurer." Unlike the governor, who is limited to two four-year terms, these other executive positions are not term-limited. By the end of the 1960s, "West Virginia had jumped from 45th in the nation in terms of relative strength of the governor to a position where no state was ahead of this one in veto or budgetary powers."[2548] By contrast, Ferguson (2013), who does not give as much weight to budgetary powers as Haider-Markel, ranks West Virginia at only 33rd in terms of gubernatorial power. Some of the difference in scores might also be attributed to the absence of gubernatorial power for government reorganization. The explanation for this difference also appears to involve the emphasis Ferguson (2015) places on the governor's control over the political party.

An above-average percentage of West Virginia's population, 13%, is employed in the state or local government, with a disproportionate share of that number, 7.1%, in the education sector. By contrast, the public safety, welfare, social services, and other sectors each account for less than 2% (Edwards, 2006).

Political Context

Historically, West Virginia has been characterized as "politically radical but socially conservative" (Haider-Markel, 2009), and in the last 30 years, Democrats have controlled the state's legislature.[2549] However, "West Virginia seems to have turned a corner from being a Democratic-dominated state to a Republican one. The switch started years ago, when Republican presidential candidates were able to win the state by appealing to its socially conservative voters, regardless of their party affiliation."[2550] As a result, the Democrats' control over state politics was broken in the 2014 elections, when Republicans took control of both the house and the senate. Currently, the House of Delegates contains 36 Democrats and 64 Republicans, while the senate has 12 Democrats and 22 Republicans.

The period of Democratic control over the legislature also coincided with that party's domination of the governorship. There have been three exceptions to this trend: from 1985-1989, from 1997-2001, and during the current administration of Gov. Jim Justice.[2551] Interestingly, Gov. Justice was elected as a Democrat in January 2017, but switched his party affiliation to Republican seven months after taking office. He announced his decision at a rally for President Trump and switched parties the next day. As a result of Justice's defection from the Democratic Party, Republicans gained a trifecta in West Virginia for the first time since 1930.[2552]

[2548] https://www.wvencyclopedia.org/articles/2218, accessed 5/2/18.
[2549] http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx#Timelines, accessed 5/8/18.
[2550] https://www.nytimes.com/2014/11/25/upshot/election-was-rough-for-democrats-it-was-worse-for-west-virginia-democrats.html?_r=2&abt=0002&abg=1, accessed 4/27/18.
[2551] https://www.nga.org/cms/home/governors/past-governors-bios/page_west_virginia.html, accessed 4/27/18.
[2552] http://time.com/4886765/west-virginia-rally-jim-justice-republican-trump/, accessed 4/27/18.

Oversight Through Analytic Bureaucracies

West Virginia's legislative auditor is appointed by the Joint Committee on Government and Finance (WV Code §4-2-3) and is "solely responsible to the legislature." The legislative auditor oversees the work of about 60 employees in two divisions: the Performance Evaluation and Research Division (PERD) and the Post Audit Division (PAD). Between these divisions, three types of audits are conducted: full performance evaluations, financial post audits, and preliminary performance reviews, the latter of which exist "to determine for an agency whether or not the agency is performing in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency" (WV Code §4-2-2). The decision to audit a particular agency is made by the legislative auditor, the president of the senate, and the speaker of the house.

PAD conducts financial post audits and "also performs audits or reviews at the direction of the legislative auditor of the disbursement of state grant funds to volunteer fire departments."[2553] PAD reports its findings and recommendations to the Legislative Post Audit Subcommittee of the Joint Committee on Government and Finance. According to the legislative auditor, most of the issues that are identified by PAD are "the result of poor judgment rather than outright malfeasance."[2554] PAD appears to produce about 15 post-audits per year.

The Performance Evaluation and Research Division (PERD), created in 1994, has a staff of 18. Its role is to provide useful information to the legislature, to hold government accountable by measuring key performance indicators (outputs, outcomes, compliance, and impact in relation to purpose), to determine whether there still exists a need for an agency, and to measure the impact of agencies on the citizens of the state.[2555] Under the authority of West Virginia Code §4-2-5, PERD conducts performance audits and agency and board reviews. NCSL survey data indicate that PERD dedicates 90% of their activity to performance audits, program evaluations, and policy analyses while the remaining 10% is dedicated to best practice review and 5% to short-term policy research for members and committees.[2556] Since its inception, PERD has produced 607 reports. PERD appears to produce about 10 program evaluations per year. Not all of these focus on state agencies; some appear to be sunset reviews of boards and commissions. PERD's website also contains very short "letter reports," such as one addressed to the Joint Committee on Government and Finance detailing the Division of Labor's lack of compliance with the West Virginia Jobs Act.[2557] Despite being only a three page letter, the report offers a short analysis of the Division of Labor's failure to comply with the Jobs Act and recommendations to the legislature to address the issue. PERD audits are typically presented to the Joint Committee on Government Operations and the Joint Committee on Government

[2553] http://www.wvlegislature.gov/Joint/postaudit.cfm, accessed 4/30/18.
[2554] http://www.register-herald.com/news/state_and_region/west-virginia-legislative-auditor-is-state-watchdog/article_93e04f91-3bce-514c-9ea6-663ba0c3a2f6.html, accessed 5/4/18.
[2555] www.legis.state.wv.us/joint/PERD/perd.cfm, accessed 4/30/18.
[2556] In this case, the numbers add up to 105%. This anomaly exists in the NCSL data, but it is unclear from whence it derives.
[2557] http://www.wvlegislature.gov/legisdocs/reports/perd/Labor_January_2018.pdf, accessed 4/30/18.

Organization. A review of posted agendas reveals that presentations of these reports consume a fair amount of these committees' time.[2558]

The decision by the legislative auditor and the leaders of the two legislative chambers to audit an agency or division is made in accordance with the Performance Review Act (WV Code §4-10). According to the law, at least once every seven years, "an agency review shall be performed on one or more agencies under the purview of each department." In 2017, this included agencies under the Department of Revenue and the Department of Commerce, in 2018 the Department of Environmental Protection and the Department of Military Affairs and Public Safety, in 2019 the Department of Health and Human Resources, including the Bureau of Senior Services, and so forth (WV Code §4-10-8). Regulatory boards are reviewed once every 12 years, with some boards scheduled for 2017, others for 2018 and 2019, etc. However, the legislative auditor noted in 2010 that "without a large staff . . . West Virginia's office was unable to respond if someone called about serious problems in another agency that wasn't up for regular review." Consequently, the West Virginia legislature decided instead "to focus on acute problems, which meant that audits became shorter and more focused."[2559] According to a representative from the Legislative Auditor's Office, what this means in practice is that when departments come up for their seven-year review, not every agency within that department will necessarily be subject to audit in a given cycle. Rather, potentially problematic agencies and agencies that have not been recently audited will be subject to review. Meanwhile, legislative leadership and the Joint Standing Committee on Government Organization may request an agency or board review at any time, but currently West Virginia code (WV Code §3-4-3) establishes the Joint Committee on Government and Finance as the overarching entity responsible for supervising the legislative auditor in order to provide continuity during interim sessions. Thus, recordings of the Joint Committee on Government and Finance include presentation of audit reports.

The results of all audits must be filed as public record (WV Code §4-2-4). There is evidence, moreover, that audits do sometimes form the basis for legislative action. For example, Senate Bill 2003, which was passed in October 2017, refers specifically to an audit performed on the Division of Highways. This audit was performed by an independent firm, Deloitte, as required by WV Code §17-2A-6a. One of the issues identified in the audit was that many construction and maintenance positions were going unfilled due to a complex hiring process. Senate Bill 2003 sought to address this problem by streamlining the hiring process and directing the commissioner of highways to "implement special employment procedures," including making it easier to evaluate applicants and providing more discretion for determining compensation, in order to facilitate hiring and retention. The bill also addressed similar staffing issues in the Tax Division of the Department of Revenue.

West Virginia also has an elected state auditor, separate from the legislative auditor. The state auditor is "the chief inspector and supervisor of local government offices." The state auditor performs financial compliance audits, provides training for county officials, reviews budgets, approves levy rates, and other such duties for West Virginia's counties, boards of education, municipalities, boards, commissions, and other such entities (WV Code §6-9-11). The state auditor is part of the executive branch of West Virginia's government, but does not report to the governor. Rather, this is an independently elected member of the executive branch of

[2558] No audio transcript or other minutes are posted on the committee website. http://www.wvlegislature.gov/committees/interims/agenda.cfm?recordid=3480&abb=GOVORG, accessed 6/4/18.
[2559] http://www.register-herald.com/news/state_and_region/west-virginia-legislative-auditor-is-state-watchdog/article_93e04f91-3bce-514c-9ea6-663ba0c3a2f6.html, accessed 5/8/18.

government, along with the agriculture commissioner, the attorney general, secretary of state, and the treasurer—none of whom report to the governor and all of whom are elected independently. Moreover, the state auditor, during a January 15, 2018, Senate Finance Committee hearing, objected to a budget line item in the governor's proposed budget labeled "salary enhancement" providing raises for his staff saying that those increases should come from the state auditor's office budget "not as a line item in the governor's budget."[2560] In his opinion, this preserves the independence of his office and the state government's system of checks and balances.

Oversight Through the Appropriations Process

The 1968 Modern Budget Amendment gave West Virginia's governor extensive power over the budget, which had previously been lacking: "Starting in 1969 . . . [t]he governor as chief executive decided how much tax revenue to put in the fiscal year estimate, and then recommended how it was to be spent. The legislature could disagree on the expenditures but could not alter the estimates of revenue made by the governor."[2561]

The governor does have a line-item veto power, but in 2017, he vetoed the legislature's budget outright. Blaming what he described as extremely deep budget cuts and lawmakers' refusal to raise taxes to increase revenues, he said, "I'm not going to put my name on this mess."[2562] Instead, he publicly rebuked the legislature by holding a press conference, during which he uncovered a silver platter containing a copy of the budget covered in cow manure.[2563] In the wake of the veto, lawmakers were forced to deplete the state's "Rainy Day Fund" and "squeeze cash out of state agencies" to cover more than $100 million budget shortfall. Although they were able to pass a budget, it nevertheless still contained an $11 million funding gap.[2564] The governor ultimately declined to veto this second budget on the grounds that he wished to avoid a government shutdown.[2565] At the same time, he also refused to sign it, calling it a "travesty" and stating "I can't sign this. I can't possibly sign this."[2566]

Despite such controversies, however, the fact that the West Virginia legislature was able to pass a budget over the governor's strident objections stands as evidence of its ability to prevail over the executive in the domain of appropriations. The audio recordings of budget hearings held by the joint committee show multiple government officials and others present at hearings, a committee that works systematically through bills related to items in the budget and testimony given by other government officials, such as the legal counsel's office.[2567] As a part of the showdown between the governor and the legislature the senate and house both voted on

[2560] http://sg001-harmony.sliq.net/00289/Harmony/en/PowerBrowser/PowerBrowserV2/20180115/-1/17747, minute 3:23 of the video tape, accessed 6/5/18.
[2561] https://www.wvencyclopedia.org/articles/2218, accessed 5/2/18.
[2562] https://www.usnews.com/news/best-states/west-virginia/articles/2017-06-21/west-virginia-governor-wont-sign-budget-amid-tax-impasse, accessed 5/1/18.
[2563] http://wvmetronews.com/2017/04/13/justice-vetoes-budget-by-unveiling-bull-manure/, accessed 5/1/18.
[2564] https://www.reuters.com/article/us-west-virginia-budget/west-virginia-starts-fiscal-2018-with-11-million-budget-gap-idUSKBN19X324, accessed 5/1/18.
[2565] http://www.governing.com/topics/finance/tns-justice-west-virginia-budget.html, accessed 5/1/18.
[2566] http://wvpublic.org/post/2018-budget-will-become-law-without-justices-signature#stream/0, accessed 5/1/18.
[2567] http://sg001-harmony.sliq.net/00289/Harmony/en/PowerBrowser/PowerBrowserV2/20180109/-1/17730, accessed 6/4/18.

legislation to increase teacher pay in response to this public protest. Given that this action by the legislature was precipitated by a teacher walk-out,[2568] it could be interpreted as the Senate Finance Committee responding to a crisis--fire alarm oversight.

The Senate Finance Committee's Post Audits Subcommittee responded to another "fire alarm" during its May 20 meeting. This subcommittee used this meeting to investigate alleged evidence of fraud and misuse of public funds by state Supreme Court justices, who were using court vehicles for personal use and other abnormalities. The PERD published a four-part evaluation of the court. Another matter involved misuse of gift cards for drug court participants. This report was presented by staff from the legislative auditor's office. These issues appear to have been triggered by an IRS investigation. The chief justice of the Supreme Court testified and brought her court administrator with her, who also spoke at the hearing. The audit manager of the Post Audit Division (PAD), one of the analytic bureaucracies described earlier in this discussion, made an extensive presentation on the State Fleet Commuting Audit. He pointed out the lack of available data and weak reporting on the use of state vehicles. His report included a series of recommendations for improving reporting requirements and limiting misuse of vehicles. Committee members expressed a desire to have violators reimburse the state for the thousands of dollars that were misused. The committee mentioned the need to tweak a fleet management bill that passed the previous year, but the committee adjourned without taking any further action. The existence of the earlier bill improving vehicle fleet management indicates that the committee does take action based on evidence of government mismanagement.

Oversight Through Committees

There is some ambiguity about which legislative committees are working most closely with the legislative auditor's office. Minutes and transcripts for senate committee meetings are available, and include joint chamber committees such as the Joint Committee on Government and Finance. There are some recordings of the meetings of the Senate Government Organization Committee, but the agendas for this committee concentrate on bills from the legislative chambers rather than audit reports. Yet, published agendas indicate that oversight committees do meet to consider proposed legislation and performance audit reports. Recordings of the Joint Committee on Government and Finance feature audit report presentations. This further demonstrates that this committee is the relevant agent with respect to legislative oversight. What is clear is that standing committees in general are actively engaged in oversight.

When audit reports are submitted to standing committees (which is required by statue), agencies are asked to respond. While these responses may appear in writing as part of the final audit report, it is often typical for agency representatives to give testimony before the substantive standing committee that oversees the agency's policy domain in order to address any specific questions or concerns that members of that committee may have. This was the case with the vehicle fleet management audit hearings described above.

One example of effective oversight by standing committees pertains to the existence of West Virginia's eight Regional Education Service Agencies (RESAs). According to a representative from PERD, when West Virginia Senator Joe Manchin was governor of the state, he had attempted to have the RESAs de-funded on several occasions, and they had been audited

[2568] https://www.nytimes.com/2018/03/06/us/west-virginia-teachers-strike-deal.html, accessed 5/30/18.

multiple times going as far back as 2006. However, in his words, previous audits "did not hit the nail on the head," since they sought ways of fixing the RESAs (interview notes, 2018). However, a 2016 PERD audit[2569] that was requested by legislative leadership had a different charge: to determine whether the RESAs were even necessary in the first place. The audit found that the RESAs were wasteful and unnecessary, since their staffs were already working closely with the Department of Education, while their directors were drawing large salaries while mostly tending to day-to-day operations. The legislative auditor, therefore, recommended stripping them of their autonomy and placing them fully under the Department of Education.[2570] This recommendation resulted in two separate bills being introduced containing language that would dissolve the agencies.[2571] The bills were referred to the House and Senate Education Committees, and, although progress was slow,[2572] a bill was eventually passed that abolished the RESAs and would replace them with "Educational Service Cooperatives between county school systems."[2573] The end result was a savings of approximately $3.7 million, $1.5 million of which consisted of salaries for the directors and their executive staff, and a streamlining of the state educational bureaucracy.

The coordination between PERD and the legislature points to a reasonable degree of oversight being exercised by standing committees in West Virginia. This is confirmed by interviews with a source familiar with the Legislative Auditor's Office, who noted that substantive standing committees often specify particular questions or concerns that they hoped that PERD would address during the auditing process (interview notes, 2018). As in the case of the RESAs, the results of these investigations then inform the legislative process.

Oversight Through the Administrative Rules Process

When an agency determines the need for a new rule, the new regulation must first undergo a public comment period, after which the agency may approve or amend the rule. After an agency approves the regulation, the proposed rule is submitted to the Legislative Rule-Making Review Committee (LRMRC), which is composed of six members each from the house and the senate. The LRMRC's purpose "is to review all legislative rules proposed by state agencies, boards and commissions and to make recommendations regarding the proposed rules to the legislature, which has the authority to approve or disapprove the promulgation of the proposed rules."[2574]

Once a rule has been filed with the LRMRC, the committee may opt to hold public hearings on the rule and also evaluates criteria like the scope of a rule, its complexity, its conformity with legislative intent, its impact on "the convenience of the general public" (WV Code §29A-3-11). The committee can then recommend that the legislature (a) authorize the rule;

[2569] https://www.documentcloud.org/documents/3232197-RESA.html, accessed 5/1/18.
[2570] https://www.wvgazettemail.com/news/education/audit-recommends-shifting-authority-of-resas-to-state/article_ce53e5b6-9c02-51a8-9c1b-3d70861e438f.html, accessed 5/1/18.
[2571] http://www.theintelligencer.net/news/top-headlines/2017/03/west-virginia-legislature-yet-to%E2%80%88consider-resa%E2%80%88bill/, accessed 5/1/18.
[2572] http://www.theintelligencer.net/news/top-headlines/2017/03/west-virginia-legislature-yet-to%E2%80%88consider-resa%E2%80%88bill/, accessed 5/1/18.
[2573] http://wvmetronews.com/2018/01/17/paine-elimination-of-resas-performance-audits-has-slashed-jobs/, accessed 5/1/18.
[2574] http://www.wvlegislature.gov/Joint/rule_making.cfm, accessed 5/2/18.

(b) authorize part of the rule; (c) authorize the rule with amendments; or (d) recommend that the proposed rule be withdrawn. Whether or not the LRMRC recommends the adoption of a rule, or part of it, committee staff or the Office of Legislative Services will then prepare a draft bill authorizing the result and submit it to the whole legislature. If a recommendation is made that a rule be withdrawn, then a recommendation to that effect is submitted along with the draft bill. The legislature must then "pass a bill in order to bar adoption of a rule after (a) Supreme Court's decision, which found that there was a separation of powers issue if this was done in any other manner" (Tharp, 2001). The governor may then sign or veto the legislation. Per WV Code §29A-3-16, existing rules may also be reviewed by the committee, which may then issue recommendations to the legislature or the appropriate agency.

Schwartz (2010) criticizes the resulting rule review process as highly politicized and subject to undue influence by interest groups. The legislature on the other hand, claims that the control elected legislators exert over the process is preferable to allowing state agency bureaucrats, who have never been elected by the voters, to make law through the rule-making process. He bases this assessment on the comments of the West Virginia Senate Judiciary Committee General Counsel, Rita Pauley, who states that "[t] Legislature is a political creature not a scientific peer review group."[2575] Schwartz (2010) provides a list of several carefully crafted administrative rules that were based on a compromise between science and industry interests that were replaced by the legislature with rules that favored industry over the safety of West Virginia's citizens—for example a rule on water purity crafted by the agency, environmental groups, and industry that was replaced by the legislature with a rule drafted by the Chamber of Commerce and the West Virginia Coal Association.

Oversight Through Advice and Consent

The ability of West Virginia's governor to issue executive orders with the force of law is established in Article VII, Section 5 of the West Virginia Constitution.[2576] A source in the West Virginia Senate noted that executive orders are not used in the same way as they often are at the federal level—that is, to circumvent the legislature (interview notes, 2018). Instead, they are typically used to declare days of commemoration when flags will fly at half-staff or to declare emergencies. Since taking office in January 2017, Gov. Justice has promulgated 23 executive orders. The West Virginia legislature does not have any ability to block or rescind executive orders. However, if an executive order would require appropriations, the legislature would be called into special session in order to authorize that spending.

West Virginia's governor has the power to appoint "executive agency heads, members of boards, commissions, task forces and councils, positions authorized by the legislature for specific reasons, and persons to fill vacancies in certain federal, state, legislative and judicial offices." At the beginning of the governor's term, seven "super-secretaries," which are cabinet-level positions, are appointed and answer only to the governor. These agency heads "work with the

[2575] http://www.wvlegislature.gov/Joint/Bill_Drafting/seminar/LEGISLATIVE%20RULEMAKING%20WHERE%20ARE%20WE%20NOW%20.pdf, accessed 1/6/19.
[2576] https://sos.wv.gov/public-services/execrecords/Pages/ExecutiveOrdersandProclamations.aspx , accessed 5/2/18.

governor to select division directors and commissioners and their deputies or assistants who will manage the ongoing operations."[2577]

According to a member of the West Virginia Senate, the governor does have the power to reorganize state agencies; however, in many cases governors choose to do so through the legislative process (interview notes, 2018). A recent example is when the legislature was called into special session in early 2018 by the governor in order to pass legislation that would disband the Department of Education and the Arts and reorganize it into the Division of Culture, History, and Arts.

For most of the past 20 years, gubernatorial appointments have not been contentious, being described by one member of the senate as a "rubber stamp" process: "if that's who the government wants, then we'll go ahead and give it to him." Even after current Gov. Justice took office (but before he changed party affiliation), the senate confirmed 81 out of 83 of the proposed appointees, with the remaining two being withdrawn by the governor. After the vote, the governor signed a piece of legislation that exempted certain hospitals from particular administrative procedures. News reports suggested that "[s]ome political observers had said the senate might not confirm Justice's DHHR secretary pick . . . if Justice didn't sign the certificate of need measure."[2578] So while appointments may not always be controversial, confirmation has occasionally been used as political leverage to extract concessions from the executive.
In the past year, however, senatorial confirmations have become much more contentious, with the Republican capture of the legislature after 83 years. According to a member of the senate, once this happened, the previous "rubber stamp" confirmation process was abandoned and a more serious look was taken at appointees. However, this was not a strictly partisan development, as many senate Democrats also supported the changes (interview notes, 2018). Nominations happen on an ongoing basis, even when the legislature is not in session. One of the problems that has been addressed is that when the senate receives a nominee, they are required to act on that nomination the next time they are in regular or special session. Since nominees were required to fill out a survey about their qualifications and background, and since many nominees did not fill out these surveys in a timely fashion, it became problematic when the governor submitted several nominees and then called the senate into special session for confirmation on the next day. With the changes to the process, much of the work of researching nominees has been placed in the executive branch, which is now required to submit the nominees' information prior to confirmation. Marking a change from previous practices, in the past year several nominees have been rejected as being unqualified, either statutorily or according to the rules of the board to which they were being nominated.

The West Virginia legislature has also advanced a constitutional amendment that would make seats on the state's Board of Education elected positions. Currently, they are appointed by the governor. The activities of the board, moreover, would be further subordinated to the legislature, which would henceforth have to approve any policies proposed by the Education Board.[2579] Such a move would be fairly momentous, since "the board is the chief (education) policy maker for the state. Whatever policy passes has the effect of law, unless the legislature changes it." This has led some to characterize Education Board members as "some of the most

[2577] https://sos.wv.gov/public-services/execrecords/appointments/Pages/default.aspx, accessed 5/4/18.
[2578] http://wvpress.org/breaking-news/senate-approves-nearly-justices-appointments-justice-pledges-sign-hospital-bill/, accessed 5/4/18.
[2579] https://www.wvnews.com/news/wvnews/west-virginia-could-join-minority-of-states-to-elect-state/article_48d31038-d57c-5992-88f7-5ebb64c67025.html, accessed 5/4/18.

influential people in state government."[2580] While the House passed the amendment, a corresponding senate bill, which would have subordinated the Board of Education to the legislature, did not make it out of committee.[2581] Nevertheless, these efforts to control the Board of Education indicate an attempt to increase legislative oversight of an important state board.

Oversight Through Monitoring of State Contracts

Contracts in West Virginia are monitored by the State Auditor's Office. The state auditor is an executive position that is elected separately from the governor. The Contract Audit section of the Auditing Division of the State Auditor's office "is responsible for processing payments against contracts requiring encumbrance through the State Purchasing Division or West Virginia Code and approval by the attorney general as to form. These contracts and any change orders thereto are reviewed for compliance with State Purchasing and Higher Education guidelines; as well as the attorney general's approval, if applicable."[2582] The legislature does not have any committees specifically devoted to contract review, and the finance committees do not seem to exercise any oversight in this domain either.

Oversight Through Automatic Mechanisms

West Virginia has both sunrise and sunset laws. Section §30-1A of the West Virginia Code deals with sunrise reviews. Such reviews are conducted by the Joint Standing Committee on Government Organization, which evaluates whether lack of regulation "clearly harms or endangers the health, safety or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument," whether regulation is necessary because of the need for specialized training, whether more cost-effective means of protecting the public exist, and whether the professional group applying for regulation should be regulated at all. The committee may also conduct public hearings regarding the proposed regulation.

Baugus and Bose (2015) characterize West Virginia as having selective sunset review laws, which only reviews certain agencies and regulatory boards. Section §4-10-1 of the West Virginia Code governs sunsetting. According to this law, new rules expire after five years unless they are reauthorized. However, "expiration dates do not apply to rules enacted before April 1, 2016, unless those rules are modified in the future, meaning old rules won't receive the same level of scrutiny as new rules."[2583] West Virginia's sunsetting rules also exempted the Department of Environmental Protection. Agencies terminate rules, pending either a preliminary or full review, depending on the agency, on dates specified in statute. Regulatory boards must be evaluated at least once every 12 years, or otherwise cease operation. If an agency or board

[2580] http://www.wvea.org/content/west-virginia-board-education-doesn%E2%80%99t-get-much-attention-its-members-are-some-most, accessed 5/4/18.
[2581] https://www.wvgazettemail.com/news/legislative_session/bills-to-elect-state-school-board-members-let-lawmakers-reject/article_c742a8fb-81e9-55eb-84b6-74ce186f5a71.html, accessed 5/8/18.
[2582] https://www.wvsao.gov/Auditing/Default, accessed 5/4/18.
[2583] https://www.mercatus.org/publications/regulatory-landscape-west-virginia, accessed 5/4/18.

terminates, it ceases to exist on July 1 of the following year. Any agency not terminated can be continued by the legislature for no more than six years.

Methods and Limitations

In West Virginia, we conducted a total of 3 interviews. West Virginia's legislature also provides public and online access to audio and video, minutes, and agendas for its committee meetings. Overall, the West Virginia legislature provides access to many archived recordings, as well as agency reports, post audits, and other publications.

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Legislative Oversight in Wisconsin

Capacity and Usage Assessment

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

Summary Assessment

The Wisconsin Legislature possesses a number of tools to effectively engage in oversight of the executive branch and in fact does engage in oversight. While much of the oversight is well intentioned bipartisan investigations, increased polarization of the legislature has led to calls for oversight that are motivated by partisan considerations, as the Foxconn deal demonstrates. The legislative support agencies are extensive and active and work closely with the pertinent committees. Furthermore, legislators appear to value oversight, and the members of the key oversight committees are knowledgeable of the issues and use the information the legislative analytic bureaucracies produce. In sum, legislative oversight in Wisconsin is supported by strong institutional resources, notwithstanding some problems that appear to reflect partisan polarization.

Major Strengths

First, the presence of powerful joint committees in key areas of oversight is critical. For most of the past 50 years, the two chambers were controlled by different political parties. Thus, joint committees encouraged bipartisan oversight. These are the Joint Committee on Finance, the Joint Legislative Audit Committee, and the Joint Committee for Review of Administrative Rules. In most cases, these joint committees supersede the respective substantive committees in each chamber when investigating various state agencies. Furthermore, the way these joint committees, especially the finance and audit committees, use the primary analytic bureaucracies can provide a useful model for other states to emulate. Second, the Wisconsin Legislature appears to be protective of its legislative prerogatives and to zealously guard them from encroachments of executive power, often despite party loyalties, as the curtailing of gubernatorial veto powers demonstrates. Third, the fact that Wisconsin is not a term-limited state allows legislators to acquire enough knowledge and expertise in a specific committee's jurisdiction to engage in oversight. Finally, the ability of legislative support agencies (both audit and fiscal staff) to gather information about state contracts expands the oversight role of Wisconsin's legislators.

Challenges

Wisconsin's governors have been willing to use, or perhaps abuse, the veto power to remove individual words from bills, individual letters from words, and digits from dollar amounts in appropriations bills—the so-called "Frankenstein" veto. The courts have facilitated this use of the veto, which means that legislative intent is regularly undermined by the executive branch. Recently, one-party control of the legislature (and the executive branch) has undermined the capacity of joint committees to facilitate bipartisan legislative oversight. The increased polarization of the legislature as well as the closely divided electorate and the competitive elections they produce provide incentives to conduct partisan based oversight to damage or embarrass members of the other party for electoral gain or advantages.

Relevant Institutional Characteristics

Wisconsin possesses a legislature that can be considered among the most professional in the nation. Squire (2017) ranks it as the 10th most professional. This means that being a legislator in Wisconsin is the equivalent of a full-time job with ample compensation (approximately $51,000/year), and the legislature itself has a decent number of supporting staff members (roughly 650 staff during session) (NCSL, 2009; NCSL, 2017a; NCSL, 2017b). These supporting staff members include personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies such as the Legislative Audit Bureau, Legislative Council, Legislative Fiscal Bureau, Legislative Reference Bureau, and Legislative Technology Services Bureau. The bulk of the legislative staff resides within each legislator's office. Based on examining the legislator's website, rank-and-file senators have three to four staffers, while chairs of committees or those in leadership positions employ five to seven staffers. In the assembly, representatives have two staffers per office, with those in leadership positions having anywhere from three to six staffers.

Also, the Wisconsin Legislature essentially has an unlimited session length, which gives legislators the ability to convene year-round for lawmaking purposes and oversight activities (NCSL, 2010). The Wisconsin Legislature may also hold special (sometimes known as extraordinary) sessions, which may be called by the governor or the legislature. In order for the legislature to call a special session, either a majority of the elected members of each house must submit a written request to the presiding officer of each house of the legislature, or the presiding officers of each house may jointly call a special session, but only for the purpose of resolving a challenge or a dispute regarding the determination of the presidential electors (NCSL, 2009). Despite the Wisconsin Legislature's unlimited session length, the Wisconsin Legislature convenes for special sessions up to twice a year on a regular basis. Since 2009, seven special sessions have been convened (LegiScan, 2017). Wisconsin utilizes a biennial budget, which for 2017-2019 was approximately $76 billion.

Wisconsin does not have term limits for legislators (NCSL, 2015) or the governor. Senators serve four-year terms and Representatives two-year terms. Thus, it is quite possible for legislators in Wisconsin to have the time to learn the more complex parts of their jobs, including exercising oversight by monitoring state agencies.

In 2015, the Wisconsin Office of the Governor was assessed as fairly weak, ranking 39th nationally (Ferguson, 2015). Although the Wisconsin governor is not term-limited and has

extensive budgetary powers, including the line-item veto, there are many separately elected executive-branch officials, and the governor has fewer appointment opportunities than most other governors do. For example, the state treasurer and the state superintendent of public instruction are both separately elected, in addition to elections for the state's attorney general and secretary of state. Moreover, Ferguson rates gubernatorial veto power in Wisconsin as only moderate, possibly reflecting a battle over some controversial uses of the line-item (or individual letters and digits) veto by former Governor Thompson, which we discuss below.

In 1930, Wisconsin voters approved a constitutional amendment granting the governor the ability veto items in appropriations bills by a margin of 62% to 37%. This amended Article V, Sec.10 of the Wisconsin Constitution so that "appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law."[2584] The vague language used to describe the line-item veto power over time resulted in the expansion of gubernatorial power through the creative interpretation of what constitutes a "part" of an appropriations bill. In contrast, most other states that allow a line-item veto have more specific and clear language when defining what the power entails. In comparison, the Michigan Constitution states that in Article V, §19 that the "governor may disapprove any distinct item or items appropriating moneys in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void . . ."[2585]

Since 1990, there have been several successful attempts to limit the governor's ability to use a line-item veto on appropriation bills. The efforts on the part of the legislature can be construed as "institutional oversight," but citizens and the courts have also played a role. Currently, the governor possesses a "partial" line-item veto. Past and current governors have used the line-item veto to change individual letters and numbers, called the "Vanna White" veto, which was used extensively by Gov. Tommy Thompson. Voters in 1990 approved a constitutional amendment passed by the legislature to eliminate this practice.[2586] This amendment was passed by a margin of 60% to 39%[2587] and amended Art. V, Sec.10 (1)(c) that "in approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill."[2588] The intent was to clarify the scope of the line-item veto and limit the ability of governors to form new words. However, this amendment left open the possibility of governors to change legislative intent by vetoing words to create new sentences altogether.

[2584] http://docs.legis.wisconsin.gov/constitution/wi/000230/000013, accessed 9/14/18.

[2585] http://www.legislature.mi.gov/documents/mcl/pdf/mcl-chap1.pdf, accessed 9/14/18.

[2586] This occurred after Gov. Thompson had radically altered a section of a passed appropriations bill that originally created a "complex mechanism for determining the tax credit that municipalities would receive for state school properties" (Weitzer 1993 p. 628). In this instance, Gov. Thompson vetoed words, letters, and numerical digits to turn a 100+ worded section into a seven-word sentence that had eliminated the tax credit's linkage to property altogether.[2586] In another instance Gov. Thompson changed the function and role of the Finance Committee through the creative use of the "Vanna White" veto. Prior to the 1991-1993 biennial budget, the governor was required by law to submit any spending proposals that pertained to the Milwaukee School District to the Joint Finance Committee for approval or modification. After Gov. Thompson's veto, the Joint Finance Committee was required to approve the governor's spending requests within 30 days, thereby turning an opportunity for legislative oversight of executive spending into a legally required rubber stamp of the governor's spending priorities as it pertained to the largest school district in the state.

[2587] https://ballotpedia.org/Wisconsin_Governor_Partial_Veto_Authority_Amendment,_Question_1_(April_1990), accessed 9/14/18.

[2588] http://docs.legis.wisconsin.gov/constitution/wi/000230/000013, accessed 9/14/18.

Gov. Scott Walker has also vetoed words to create new sentences and meanings in bills, called the "Frankenstein" veto. Unlike the "Vanna White" veto, where governors could veto single letters, digits, or punctuation, the "Frankenstein" veto allowed governors to veto words and numbers to "stitch" together new sentences and funding amounts that clearly altered the intent and meaning of bills. Again, voters in 2008 rejected the use of the line-item veto in this manner but some say Walker still attempts to change the meaning or alter the intent of passed legislation through the creative use of the veto (Wisconsin State Journal, 2018). Voters approved another constitutional amendment to curtail the veto power that passed by an overwhelming margin of 70.6% to 29.3%.[2589] This amendment added another subsection to Art. V Sec. 10(1)(c) stating the governor "may not create a new sentence by combining parts of two or more sentences of the enrolled bill."[2590]

Two of the most aggressive uses of the "Frankenstein" veto were in 2003, when Democratic Governor Jim Doyle altered how much local municipalities would receive from the state from $125 million to $703 million by vetoing whole sections and words to link municipal funds to a larger source of funding unrelated to local governance. Then, in the same spending bill, the legislature changed the bonding authority the governor could exercise relating to transportation projects from $140 million to $100 million. In response, the governor surgically used the veto to change the bonding authority from $100 million to $1 billion.[2591] In this instance, the governor vetoed the number "4," "1," and a "$," to create a bonding authority of one billion dollars. The legislature objected and a compromise number of $500 million was established.[2592] However, despite the passage of constitutional amendments in 1990, forbidding the veto of individual letters, numbers, and punctuation, and 2008, forbidding the veto of individual words to create new sentences, governors still utilize elements of the "Frankenstein" veto today. In 2018, Republican Gov. Scott Walker vetoed the word "Saturday" and "2-day" from a bill that created a sales tax holiday on the purchase of school supplies, thereby turning an intended two-day holiday passed by the legislature into a five-day tax holiday (Wisconsin State Journal, 2018).

While these attempts to expand executive power by altering legislative intent are to be expected in separated power type systems, these examples show a legislature that is fully engaged in checking excessive executive power at an institutional level. Clearly, there is a history of governors in Wisconsin using the line-item veto in creative and perhaps undemocratic ways, however, there is also a history of legislative and popular reactions to governors that go too far.

[2589] https://ballotpedia.org/Wisconsin_Partial_Veto,_Question_1_(2008), accessed 9/14/18.

[2590] http://docs.legis.wisconsin.gov/constitution/wi/000230/000013, accessed 9/14/18.

[2591] SECTION 683D. 20.866 (2) (uum) of the statutes is amended to read:

20.866 (2) (uum) *Transportation; major highway and rehabilitation projects.* From the capital improvement fund, a sum sufficient for the department of transportation to fund major highway and rehabilitation projects, as provided under s. 84.555. The state may contract public debt in an amount not to exceed ~~$140,000,000~~ $100,000,000 for this purpose.

The line-strike portion is the dollar amount the legislature repealed and the underlined amount is the new amended amount. So, in this instance, the veto of the line-strike figure keeps the "$," "1," & "0," whereas in the underlined proposed amount, it rejects the "$1" portion of the amended figure, resulting in a new bonding authority of $1,000,000,000.

[2592] For a detailed discussion of the history of the "Frankenstein Veto" see Attorney Fred Wade's PBS presentation. https://www.pbs.org/video/university-place-the-frankenstein-veto-the-story-of-wisconsins-partial/, accessed 6/12/18.

Political Context

Over the last 50 years, Republicans have rarely controlled both of Wisconsin's legislative chambers. From 1978-2000, both chambers were either controlled by the Democratic Party or split between the Republican and Democratic Parties. This changed in 2002, when the Republican Party captured both chambers from 2002-2006 and from 2012-present (NCSL, 2017c).[2593]

Despite the Democratic Party's relative dominance of the Wisconsin Legislature over the last 50 years, the governorship of Wisconsin has tended to alternate between the Republican and Democratic Parties. Overall, divided government has tended to be the norm. However, instances of one-party control occurred from 1983-1987 (Democrats), briefly from 2002-2003 (Republicans), and more recently from 2011-present (Republicans) (NGA, 2017).

The popularity of the Tea Party Movement in recent years increased polarization among legislators in Wisconsin. Recent evidence suggests that both chambers of the Wisconsin Legislature are highly polarized along party lines (Shor & McCarty, 2015). Wisconsin's house has been ranked as the 10th most polarized lower legislative chamber, while Wisconsin's senate has been ranked as the 11th most polarized upper chamber, based on differences between median roll call votes for each party in each chamber. Adding to this polarized environment was the recall election of Gov. Scott Walker in 2012 and the flight of 14 Democratic senators to Illinois to prevent a quorum from being present when Gov. Walker curtailed the collective bargaining rights of state workers in 2011. The political impact of an aggressive Republican governor, controversial gerrymandering, a highly publicized protest by state senators, a politically motivated recall election, and President Trump's electoral win in 2016 have made Wisconsin a highly charged and polarized political environment. Currently, Republicans hold an 18 to 14 majority over Democrats in the senate, with one vacancy and a 63-35 majority in the assembly, with one vacancy.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Effective and efficient legislative oversight by the Wisconsin Legislature could not be achieved without the Legislative Audit Bureau (LAB), a key nonpartisan legislative service agency (Wisconsin LAB, 2017b). The Legislative Audit Bureau receives its authority from s. 13.94, Wis. Stats., which grants them the power to "conduct post audits of the accounts and other financial records of departments." In conjunction with these post audits, the bureau may also "review the performance and program accomplishments of the department." Furthermore, the statute "grants the bureau access to financial records and other documents relating to certain state

[2593] Republicans retain their majorities in both chambers through controversial gerrymandering processes. The U.S. Supreme Court recently ruled on *Gill v. Whitford* where Democrats claimed the currently drawn state representative and state senate districts constitute an "unconstitutional partisan gerrymander." The Supreme Court's unanimous decision remanded the case back to a lower court to determine if the plaintiffs had standing to sue, avoiding the larger question of the constitutionality of partisan gerrymandering and establishing a judicial standard as to what constitutes a gerrymandered legislative district.

and local entities, including records and documents that are confidential by law" (Wisconsin LAB, 2017a). Unlike other states, the state auditor does not serve a fixed term but is considered an "at-will" employee of the legislature. This unique connection may strengthen the responsiveness of the state auditor and the LAB overall to legislative requests and investigations (NASACT, 2015).

The Legislative Audit Bureau is directed by the state auditor, who is appointed by the Joint Committee on Legislative Organization (JCLO) based on a recommendation from the Joint Legislative Audit Committee (JLAC). The LAB currently is authorized to employ approximately 87 staff and has filled 73 positions. Operating with an approximate budget of $6.2 million, plus an additional $2.1 million in program revenue from audit contracts, these staffers conduct financial audits and performance audits of state agencies.[2594] The LAB has the authority to obtain information from agencies and has the power to issue subpoenas (NASACT, 2015).

Between 2013-2017, the LAB conducted roughly 15-35 financial audits and program evaluations, averaging 20 reports per year.[2595] The audit reports appear to be of high quality as indicated by the outside recognition of their policy impact by the National Conference of State Legislatures' (NCSL) National Legislative Program Evaluation Society. Specifically, the NCSL recognized two of the LAB's audit evaluations for their role in changing policy: Report 13-12, Supervised Release Placements and Expenditures; Report 14-14, Government Accountability Board.[2596]

Unlike some other states with high quality legislative oversight, Wisconsin does not balance the partisan representation on its oversight committees, instead providing opportunities for the chamber majority to overrule minority party concerns. The JLAC has advisory responsibilities for the LAB. It may direct the Bureau to conduct audits and evaluations, and it receives and reviews issued reports. The audit committee approved five audit requests and held seven public hearings in 2015 and 2016. The 10-member audit committee consists of the co-chairs of the Joint Committee on Finance, two majority and two minority party senators, and two majority and two minority party representatives.[2597] Unlike some other states where the composition of joint audit committees is bi-partisan, the Wisconsin Joint Legislative Audit Committee has a Republican majority of six-four (Wisconsin State Legislature, 2017b).

Most of the reports published by LAB appear to be required yearly audits of various Wisconsin programs, like the Wisconsin Lottery, Overall State Audit, and the Wisconsin Retirement Fund, and they can be either financial audits or performance audits. However, the LAB does conduct investigative audits that lead to increased legislative oversight and action. One such report focused on the Wisconsin Veterans Home at King where $55 million in unauthorized transfers were made by the Wisconsin Department of Veterans Affairs (WDVA) over the course of a decade. This report was ordered at the request of the JLAC and contained specific recommendations on the accountability and transparency of the WDVA's actions.[2598] There appeared to be chronic understaffing issues and deteriorating facility conditions at the state's largest veteran's home (Ferral, 2017a). According to the LAB's audit, the Veterans Home at King transferred $55 million to other Veterans Affairs projects while requesting more funding from the State Department of Administration for projects at King. This is after the state had

[2594] https://legis.wisconsin.gov/lab/media/2586/17-1full.pdf, accessed 6/12/18.
[2595] https://legis.wisconsin.gov/lab/media/2586/17-1full.pdf, accessed 6/12/18.
[2596] https://legis.wisconsin.gov/lab/media/2586/17-1full.pdf, accessed 6/12/18.
[2597] http://legis.wisconsin.gov/lab/joint-legislative-audit-committee/about-the-committee/, accessed 6/4/18.
[2598] https://legis.wisconsin.gov/lab/media/2622/17-8full.pdf, accessed 6/4/2018.

invested approximately $118 million over the last decade to improve the level of care and facilities at King.

As a result of the LAB's report on the Veterans Home at King, the Joint Finance Committee unanimously reinstated a measure requiring more oversight of the Wisconsin Veterans Trust Fund (VTF). The VTF is in the Wisconsin Department of Veterans Affairs and is used to provide an array of programs and services to Wisconsin's veterans. Programs range from tuition reimbursement, housing grants, to burial services.[2599] The VTF in recent years has had structural deficits and funding issues to the point of near insolvency (Ferral, 2016). In essence, the WDVA has been borrowing money from veteran's homes like the Veterans Home at King to keep the VTF stable and solvent. This in turn leads those veteran's homes to delay projects or ask for additional funds to maintain substandard services. The oversight measure would require the WDVA to seek approval from the appropriate committee "prior to making any money transfers from the state veterans nursing home to the Veterans Trust Fund" (Ferral, 2017b).

Another important component of the analytic bureaucracy in Wisconsin is the Legislative Fiscal Bureau. According to the Wisconsin Legislature's website, the Legislative Fiscal Bureau (LFB) "prepares a variety of papers to assist the Joint Committee on Finance during its deliberations on the state's budget, other legislation that the Committee addresses and requests under s. 13.10 and s. 16.505/.515 (passive review) of the statutes" (Wisconsin State Legislature, 2017a). So far during the 2017-2019 biennium, the LFB has produced 200+ budget papers.[2600]

In some instances, the LAB and the LFB work in tandem on oversight issues. These efforts are not directly coordinated but are oversight processes that are working parallel to each other. One of the most highly publicized oversight efforts by the LAB and LFB are the reports they produced regarding the Foxconn economic development project. This project is an effort by the Wisconsin Economic Development Corporation (WEDC) and the governor to bring Taiwanese electronics manufacturer Foxconn to Wisconsin to produce liquid crystal television and computer screens. This is an example of the state competing for businesses through tax credits and incentives. In this case, Foxconn was awarded nearly $3 billion in tax credits and state subsidies. A key component of the agreement between Foxconn and the WEDC is $1.5 billion in payroll tax credits in exchange for creating up to 13,000 jobs (McKinney, 2017).

Both the LAB and LFB have questioned whether Foxconn can meet the stated employment requirements of 13,000 new jobs and whether the 13,000 new jobs is an actual requirement to maintain the tax credits or merely suggested employment goals.[2601] Additionally, the LFB reported that WEDC failed to verify the job growth numbers, which supported the previous report by the LAB citing systematic job growth reporting failures within WEDC for all its programs and not just as it relates to Foxconn. Director Joe Chrisman of the LAB pointed to larger problems with WEDC's jobs verification process for all its development programs by stating directly that "WEDC cannot be certain about the numbers of jobs created or retained as a result of its awards."[2602] An interviewee stated that there have been ongoing issues with

[2599] https://dva.wi.gov/Documents/newsMediaDocuments/8.24.16%20-%20VTF%20condition.pdf, accessed 6/4/18.
[2600] https://docs.legis.wisconsin.gov/misc/lfb/budget/2017_19_biennal_budget/050_budget_papers, accessed 6/15/18.
[2601] http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0001_2017_wisconsin_act_58_foxconn_fiserv_10_4_17.pdf, accessed 6/15/18;
https://docs.legis.wisconsin.gov/2017/committees/Joint/1691/100_october_24_2017/020_17_9full, accessed 6/15/18.
[2602] https://docs.legis.wisconsin.gov/2017/committees/Joint/1691/100_october_24_2017/020_17_9full, accessed 10/11/18.

WEDC's reporting of job growth and overall transparency of its contract since its creation in 2011. While there have been very few legislative changes to WEDC's reporting and transparency over the years, the scrutiny and high turnover in the top positions have forced the agency to make changes on its own (interview notes, 2018). A review of WEDC's website shows a wealth of information regarding contracts, loans, and other incentives it has given to businesses to spur economic growth.[2603]

Further complicating the Foxconn agreement is the LFB's analysis that Wisconsin may not see the benefits of the tax awards and incentives to Foxconn for nearly 25 years, if at all. Some legislators have raised concerns over what share of the $3 billion in incentives Foxconn is obligated to pay back through job creation. The LFB report states that Foxconn will benefit from close to $1.45 billion in construction credits, tax exemptions, and other infrastructure improvements regardless of how many jobs it creates.

Legislators, specifically members of the Democratic minority, have raised serious concerns over the agreement. In a series of town hall style meetings, legislators have used the LFB and LAB reports to highlight the hidden costs of building the Foxconn plant. Specifically, Representative Gordon Hintz argued that local municipalities have awarded additional incentives that were never a part of the agreement or approved by the legislature.[2604] Racine County and the Village of Mt. Pleasant have provided over $764 million in incentives as well as igniting a new debate over local use of eminent domain by designating new retirement homes as "blighted" (Pomplun, 2018). Not surprisingly, this has led to several lawsuits challenging the blighted designation by the affected residents due to Wisconsin's vague eminent domain laws (Torres, 2018; Beck, 2018). For WEDC to begin negotiations with Foxconn, the legislature needed to pass legislation giving WEDC the ability to offer the tax incentives on the scale needed to attract Foxconn. The enabling legislation had a group of fiscally conservative Republicans opposed to such a large taxpayer commitment while Democrats from the Racine and Kenosha area, where the plant is to be located, voted in favor of the bill on the promise of economic development and jobs (interview notes, 2018). At this point, there are serious reservations whether Wisconsin will ever break even on its investment and if reporting procedures at WEDC are adequate to monitor $3 billion in taxpayer investments.

Oversight Through the Appropriations Process

Legislative oversight during the appropriations process is largely conducted by the Joint Committee on Finance (JCF). Statutory references to the JCF can be found in s. 13.09-13.11, 16.47, 16.505, 16.515, and 20.865 (4), Wis. Stats. Essentially, these statutes allow the JCF to examine all legislation that deals with state income and spending, including legislation that appropriates money, provides for revenue, or relates to taxation. Furthermore, the joint committee must give final approval to a wide variety of state payments and assessments. The JCF consists of eight senators on the Senate Finance Committee and eight representatives on the Assembly Finance Committee. These members belong to both the majority and minority party in each house. However, the makeup of the committee reflects the majority control of the

[2603] https://wedc.org/, accessed 6/15/18.
[2604] http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/12360, accessed 6/15/18.

Republicans. On the 16-member committee, 12 members are Republican and four are Democrats. Oversight is typically conducted through public hearings and executive sessions.

The previously discussed Legislative Fiscal Bureau (LFB) is the oversight tool the Joint Committee on Finance uses to conduct oversight. The joint committee uses the LFB as its primary source of information and legislative recommendations when dealing with issues of oversight. Records available on the Wisconsin Legislature's website indicate that since February 2017, the Joint Committee on Finance has held 13 public hearings and 26 executive sessions. During public hearings that were held earlier this year, agencies made presentations of their budget proposals and no public testimony was taken during the briefings. In most hearings and executive sessions, LFB staff members were called as witnesses and gave presentations on a variety of budget topics. While the LFB and joint committee websites do not have any televised or audio archives of hearings, some are available at the Wisconsin Eye.[2605] These hearings show legislators who are engaged and concerned over issues of oversight and specifically, spending issues.[2606] While the LFB is the key legislative agency for compiling the biennial budget, it is also the key agency for monitoring state agencies and how they spend appropriated funds.

Oversight Through Committees

In Wisconsin, the substantive committee, or "standing" committee, with jurisdiction over an agency is the authority for actively conducting oversight hearings. However, this oversight is primarily the jurisdiction of two important committees that were described previously: The Joint Legislative Audit Committee and the Joint Committee on Finance.

The authority of the Joint Legislative Audit Committee (JLAC) is defined in s. 13.53, Wis. Stats., which grants the committee advisory responsibilities for the Legislative Audit Bureau. Their involvement in the appointment of the state auditor is explained in the previous section on the analytic bureaucracy. Essentially, the JLAC may "direct the state auditor to undertake specific audits and review requests for special audits from the individual legislators or standing committees." However, "no legislator or standing committee may interfere with the auditor in the conduct of an audit" (s. 13.53, Wis. Stats.). After conferring with the state auditor, other standing committees, and agencies on the findings of the Legislative Audit Bureau, the JLAC is empowered to pursue several different courses of action including holding public hearings, relaying information to the standing committees or the legislature if legislative action is necessary, and introducing legislation themselves. The JLAC consists of the co-chairpersons of the Joint Committee on Finance, plus two majority and two minority party members from each house of the legislature. Although this tilts the committee membership toward the majority party in the chambers, it provides for some representation of minority party views in the oversight process, especially if one political party has a supermajority in both chambers.

The JLAC is the primary channel through which oversight is done, and the Legislative Audit Bureau (LAB) is the primary tool it uses to investigate state agencies. As stated above in the analytic bureaucracy section, the LAB conducts a wide range of audits and produces reports for legislators with recommendations for legislative action. The LAB website provides all the reports that are statutorily required or have been requested by JLAC. Audio of the JLAC

[2605] http://www.wiseye.org/, accessed 6/13/18.
[2606] http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/12345, accessed 6/14/18.

hearings are available at the LAB's website. These hearings demonstrate that legislators are actively engaged in oversight and using the non-partisan expertise of the LAB to address serious issues across the policy spectrum.[2607]

Records available on the Wisconsin Legislature's website indicate that just about every committee in the Wisconsin Legislature has held public hearings this year. The number of hours varies depending on the committee, however, each committee has held between three to seven public hearings and executive sessions, on average. Wisconsin Eye has a variety of different hearings from the JLAC as well as the Joint Committee for Review of Administrative Rules (JCRAR). In one hearing of the JCRAR, a variety of subjects was covered. Subjects ranging from emergency vehicles licensure, rules and procedures for a pilot sobriety testing program, and the requirement for pharmacists to display their license were explored in depth by six Republicans and four Democrats.[2608] In most instances, the committee members appear to be well informed of the issues surrounding the various subjects and ask pertinent questions of the witnesses.

In the case of Wisconsin, unlike other states, oversight is more systematic and less reactive due in part to the integrated use of the LFB and LAB by the respective joint committees. These legislative agencies are the essential tools to conduct oversight. The joint nature of these committees ensures that the legislature as an institution will approach oversight issues from a more unified posture, thus, eliminating many intra-legislative branch conflicts that often arise in legislatures where joint committee actions are de-emphasized.

In contrast to the activities of the LFB, LAB, and their associated joint committees, other standing committee oversight efforts appear to be sporadic and influenced by partisan differences. An example of this is the decreased presence of Department of Natural Resources staff at standing committee hearings, specifically, the Committee on Sporting Heritage, Mining and Forestry. Since 2011, the DNR has stopped providing information and expertise to the Committee on Sporting Heritage, Mining and Forestry on issues relating to water and resource management (Verburg, 2016) and on the effects of Chronic Wasting Disease (CWD) on the state's deer population (Murphy, 2017). While legislation moved through the committee to address CWD and was signed by the governor,[2609] at the committee level, there appears to be little to no input from the state agency on the impact of the bill or how it would fit with current policy. The frustration with a lack of DNR response was summed up best by Sen. Kathleen Vinehout, who lamented her inability to get any information from the agency (Murphy, 2017). A LAB audit found that there was high turnover of staff, a significant decrease in the enforcement of wastewater violations for municipal and industrial sites from 2005 to 2014, and a significant lack of enforcement of its own policies regarding issuing notice of violations.[2610] However, despite the lack of oversight by the appropriate standing committees in the senate and assembly, it was the Joint Legislative Audit Committee authorized the audit report that brought many of the DNR's issues to light.

[2607] http://legis.wisconsin.gov/lab/joint-legislative-audit-committee/hearings/, accessed 6/12/18.
[2608] http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/12449, accessed 6/12/18.
[2609] https://docs.legis.wisconsin.gov/2017/proposals/sb68, accessed 9/18/18.
[2610] http://legis.wisconsin.gov/lab/reports/16-6full.pdf, accessed 6/28/18.

Oversight Through the Administrative Rules Process

The Joint Committee for Review of Administrative Rules' involvement in the administrative rules process serves as an important check on executive branch agencies. Statutory references to the Joint Committee for Review of Administrative Rules (JCRAR) can be found in s. 13.56, 227.19, 227.24, 227.26, 227.40 (5), and 806.04 (11), Wis. Stats. These statutes establish JCRAR's authority to prevent proposed rules from being promulgated and to suspend rules that have already been promulgated (confirmed by the Council of State Governments) (Wall, 2016). The JCRAR consists of five senators and five representatives, and the membership from each chamber must include representatives of both majority and minority parties; the balance for the 2017-18 session was six-four in favor of Republicans.

Regarding the administrative rules process, the process may initially begin with an agency proposing a rule to the legislature. After the Legislative Council Administrative Rules Clearinghouse staff review the rule for statutory authority to promulgate the rule and the legal language, it is then assigned to an appropriate standing committee for review.[2611] The rule must then be referred to the JCRAR regardless of whether the standing committee has objections to the rule or not. The JCRAR has thirty days to review the rule, which may be extended for an additional thirty days if necessary, and during this time the JCRAR may decide to either uphold or reverse the standing committee's action. The JCRAR may also object to a proposed rule or portion of a rule on its own accord. If the JCRAR objects or concurs with the objection of a standing committee, then JCRAR can introduce bills concurrently in both houses to prevent promulgation of the rule. If in either house the bill is enacted, the agency may not adopt the rule unless specifically authorized to do so by subsequent legislative action. Alternatively, if the JCRAR disagrees with a standing committee's objection, the JCRAR may overrule the standing committee and allow the agency to adopt the rule. The JCRAR may also request the agency to modify a proposed rule (Wisconsin State Legislature, 2016).

In the instance where the JCRAR wishes to suspend a promulgated rule, the JCRAR must first hold a public hearing. The suspension of the promulgated rule must be based on one or more of the following reasons: absence of statutory authority; an emergency related to public health or welfare; failure to comply with legislative intent; conflict with existing state law; a change in circumstances since passage of the law that authorized the rule; a rule that is arbitrary or capricious or imposes undue hardship, or; a rule affecting the construction of a dwelling that would increase the cost of construction by more than $1,000. Within thirty days following the suspension, the committee must introduce bills concurrently in both houses to repeal the suspended rule. If either house bill is enacted, the rule is repealed, and the agency may not promulgate it again unless authorized by the legislature. If a bill in either house fails to pass, the rule remains in effect and may not be suspended again except for the rules increasing the construction of a dwelling by more than $1,000; these are suspended until specific legislation authorizing them is enacted (Wisconsin State Legislature, 2016).

The complexity of the administrative rulemaking process that has been described suggests that partisanship can affect legislative oversight rather drastically. For example, if each chamber of the legislature is controlled by a different party, it may be relatively difficult for the JCRAR to block or suspend a rule. However, if each chamber of the legislature is controlled by the same party and the governorship is controlled by the other party, then the JCRAR may have

[2611] http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch05_admrules.pdf, accessed 9/18/18.

ample ability to block or suspend a rule. In short, both chambers must agree to block the new rule. Additionally, economic impact assessments (EIA) are conducted on all germane rules prior to submission to the Legislative Council staff.[2612] If an EIA indicates over $20 million in compliance costs or impact on local governments and business, the agency must submit the rule to Department of Administration (DOA) for review and for the DOA to conduct a report. In this instance, the agency may not submit the rule to the legislature until the DOA has issued its report to the relevant agency.[2613] This excludes the Department of Public Instruction, which reports all scope statements and EIAs to the Superintendent of Public Instruction.

Some of the JCRAR hearings are available at the Wisconsin Eye website. Based on these recordings, JCRAR does appear to play an active oversight role. The JCRAR website indicates that the JCRAR has held seven public hearings and seven executive sessions so far this year. During public hearings that were held this year, the JCRAR discussed anywhere between one-five administrative rules or bills per hearing.

In Wisconsin's recent 2017-18 session, several attempts were made by the Republican controlled legislature to significantly alter the administrative rule-making process which would make it significantly harder for state agencies to promulgate new rules. Had these measures passed, it would have made new rule promulgation more difficult and made the elimination of existing rules easier. Assembly Bill 384 and Senate Bill 295 would have required every administrative rule to sunset automatically after nine years, unless renewed by the agency with the approval of the legislature (AP Wire Service, 2017). Assembly Bill 384 was passed by the assembly, but the bill was not passed by the senate before the legislative session ended, effectively killing the bill for the rest of the 2017-2018 session.

In another instance, the senate passed a bill that would have required any administrative rule that costs businesses over $10 million over two years to be approved by the legislature or it would be automatically rejected (Associated Press, 2017). This bill also was not acted upon by the assembly before adjournment, which effectively killed the bill. In both instances, conservative free market interest groups and research firms had made these two changes key elements of their 2017-18 legislative agenda and have aggressively challenged the constitutional authority agencies have to promulgate new rules (WisPolitics, n.d.; Wigderson, 2017).[2614] The drive to constrain rule-making achieved some success in the latest session through the passage of SB-015. This bill changed the process by which state agencies can make scope statements prior to gaining approval to make a new rule. Under the old law, agencies issued a scope statement that had to be approved by the governor prior to drafting the new rule. Currently, before gubernatorial approval, the agency must first submit any scope statement to the Department of Administration to determine if the agency has the legal authority to promulgate the rule as stated in the scope statement. Only after that determination is made can the governor approve or reject the statement.[2615] These efforts on the part of the Republican majority and supporting interest groups are part of an effort to limit the ability of state agencies to make rules without legislative or gubernatorial input. The partnering of the governor and the legislature on these bills suggests that this is less a legislative check on the executive branch than it is an effort to limit government regulation overall.

[2612] http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch05_admrules.pdf, accessed 9/18/18.
[2613] http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch05_admrules.pdf, accessed 9/18/18.
[2614] https://www.wmc.org/wp-content/uploads/WMC_LegAgenda_2017-18_FINAL_lo.pdf, accessed 6/27/18.
[2615] https://docs.legis.wisconsin.gov/2017/related/fe/sb15/sb15_DOA.pdf, accessed 6/27/18.

Oversight Through Advice and Consent

The advice and consent power of the Wisconsin Senate allows the legislature to block executive appointments (see Rule 22 of the Rules of the Wisconsin Senate). However, records of nominations do not provide any evidence of a recent nominee being blocked by the Wisconsin Senate. Rather, there appears to be an informal avenue where the governor withdraws nominations that meet resistance from the senate, usually after they have been referred to the appropriate standing committee. So far during the 2017-2018 regular session, the governor has submitted 174 total nominations, of which 83 are in committee, seven are available for scheduling, 18 have been withdrawn by the governor, and 66 have been confirmed (Wisconsin State Legislature, 2017c). The number of nominations withdrawn indicates that the legislature oversees these appointments even though the process is handled informally rather than through a public vote.

On the other hand, not all battles over appointees are handled discreetly, and it appears that the confirmation power of the senate has recently been used in clearly partisan ways. In response to the highly contentious and partisan nature of the recall of Gov. Scott Walker in 2012, the Republican legislature abolished the Government Accountability Board (GAB), which oversaw campaign finances in the state. After the election, the GAB investigated whether the Walker campaign illegally coordinated campaign expenditures and efforts with outside groups. In response, the legislature dissolved the GAB and the Wisconsin Elections Commission and the Wisconsin Ethics Commission. Unlike the GAB, which monitored both election and ethics issues, the new Ethics Commission and Elections Commission are separate entities. Then earlier this year, the Wisconsin Senate voted to remove two holdover staffers from the GAB that were the respective directors of the Elections Commission and Ethics Commission. While Republicans stated that the move was necessary to expunge any remaining partisanship from the GAB and eliminate those who were associated with bad practices of the GAB (Greenblatt, 2018),[2616] Democrats claimed it was a political reprisal by Republicans.[2617]

Wisconsin's governor is not empowered to reorganize state government or create government agencies using executive orders; this power belongs to the legislature. Annual lists of legislation include numerous bills that reorganize various state agencies.

Gov. Scott Walker issued dozens of executive orders annually—319 total during his eight years in office. Most of these are unremarkable—flying the state flag at half-staff to honor various state and national heroes, to remember Pearl Harbor, to authorize the state's National Guard to aid other state's experiencing disasters. The legislature has no authority to oversee

[2616] http://www.governing.com/topics/politics/gov-wisconsin-republicans-ethics-election-officials.html, accessed 1/10/18.

[2617] In another instance, the Senate confirmed an attorney with deep ties to the Republican Party as the primary legal counsel for the DNR. Further complicating the appointment is the fact that the attorney has no background or experience in legal areas that pertain to natural resource management and regulations associated with environmental protections. This appointment was the result of reforms made in 2011 that changed the classification of some civil service jobs to political appointments. This appointment is part of larger efforts to constrain the policy and rule-making power of the DNR that was previously discussed in oversight by standing committees sections. While many of these actions can be construed as blatantly partisan, it is important to note that it is only within the last decade that Republicans have experienced unified control of Wisconsin's government and that some changes to how previously established agencies and commissions functioned is to be expected with the corresponding Democratic opposition to such measures.

executive orders other than to pass legislation. A small sample of these orders indicates that they are not the sort of orders that legislators would find objectionable.

Oversight Through Monitoring of State Contracts

The monitoring of state contracts and spending falls under the purview of both the Legislative Audit Bureau (LAB) and the Legislative Fiscal Bureau (LFB). For example, the LAB produces an annual report that reviews the state's financial statements and spending compiled by the Department of Administration.[2618] However, the main burden for monitoring state contracts is done by the Department of Administration (DOA). The DOA is an executive agency that supports the governor by developing and implementing the state budget. In addition to those efforts, the DOA supports state agencies with procurement and financial management.[2619] A relatively new program, the State Transforming Agency Resource (STAR), is the state's centralized contract and procurement database. It was designed to increase consistency in agency procurement and reporting. Implemented in 2015, the system is fully on-line and legislators and other audit agencies are now increasingly able to see how agencies are or are not reporting contracts. In the recent LAB investigation and hearing on the State Fair Park's failure to report its contracting and procurement practices, the STAR system was mentioned repeatedly as a solution to help mitigate the State Fair Park's uneven reporting.[2620] However, since the system is relatively new and was implemented in phases, it is unable to help legislators or auditors identify long term or systematic reporting problems with state agencies. STAR does hold promise as useful tool for future oversight and from observed hearings legislators appear to be optimistic about the program's usefulness.

Although the executive branch Department of Administration takes the lead in contract monitoring, the legislative support bureaucracies (audit and fiscal staffs) have some authority to investigate contracting problems directly. The new computer tracking system, STAR, provides more information and greater access to information for the legislative staff, which enhances legislative oversight of state contracts.

In addition to the STAR program, the State Controller's Office, located within the DOA, publishes the Comprehensive Annual Financial Report (CAFR). The CAFR reports the state's financial activity and provides accurate measures of the state's financial position.[2621] While the report is easily defined as oversight and originates within the executive branch, the comprehensive nature of the report and the adherence of the report to acceptable accounting practices makes the report a valuable resource for other auditing agencies like the LAB and LFB.

Oversight Through Automatic Mechanisms

Wisconsin allows its legislature to add sunset provisions to pieces of legislation, but it is not required nor is it a common addition to Wisconsin's laws (Baugus & Bose, 2015).

[2618] http://legis.wisconsin.gov/lab/media/2720/18-3full.pdf, accessed 6/15/18.
[2619] https://doa.wi.gov/Pages/home.aspx, accessed 6/28/18.
[2620] http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/12351, accessed 6/28/18.
[2621] https://doa.wi.gov/DEBFCapitalFinance/2017/2017_CAFR_Linked.pdf, accessed 6/28/18.

Methods and Limitations

For Wisconsin, out of the six people we contacted, three people were interviewed. There are archives for assembly, senate, and joint agendas[2622] as well as minutes.[2623] According to an interviewee, the Wisconsin Eye provides the only archived video and audio of committee hearings (interview notes, 2018), although, the Joint Legislative Audit Committee also provides audio for their committee hearings.[2624] The Wisconsin Eye provides joint committee hearings, however, there is no indication that they provide standing committee hearings for the separate chambers. Transcripts are unavailable for assembly and senate committee hearings (interview notes, 2018), and there is no indication that transcripts are available for joint committee hearings, either. This limited availability of archival material makes it difficult to be fully confident of our assessment of Wisconsin's legislative oversight practices.

[2622] https://docs.legis.wisconsin.gov/2017/related/hearings, accessed 12/27/18.
[2623] https://docs.legis.wisconsin.gov/2017/related/records, accessed 12/27/18.
[2624] http://docs.legis.wisconsin.gov/2017/committees/joint/1691, accessed 12/28/18.

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Legislative Oversight in Wyoming

Capacity and Usage Assessment

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

Summary Assessment

The Wyoming legislature appears to have relatively few effective tools for oversight and little support from an analytic staff agency. There are no sunset provisions, administrative rule review is advisory only, and an extremely short legislative session means that part-time legislators on standing committees are unlikely to be able to monitor the work of the much more powerful executive branch. The LSO produces high quality reports, but only a few of them given its resource constraints. The Joint Appropriations Committee is diligent about overseeing the budget and the interim oversight committees. These committees, the Management Council and the Management Audit Committee hold hearings that demonstrate the policy knowledge held by their members. Therefore, Wyoming does manage to exercise more legislative oversight than its resources warrant.

Major Strengths

Wyoming's analytic bureaucracy, the LSO, uses its scarce resources well, and is therefore especially important in the oversight process. The audits and program evaluations conducted by the LSO appear to be of good quality, although relatively small in number. The Joint Appropriations Committee also has significant discretion to alter the governor's budget, which does serve as a brake on the executive. Interim committees hold hearings that demonstrate a commitment to overseeing the performance of government agencies.

Challenges

Legislative oversight prerogatives are somewhat limited, and they rely heavily on the power of the purse. But the governor is very strong relative to the legislature. The job of legislator is poorly paid and clearly part-time. The legislature has brief sessions. The LSO has a small staff that is not able to provide analytic support needed for even the few prerogatives that the Wyoming legislature has. All of this in combination with the presence of a fairly powerful governorship contributes to an environment in which strong oversight would be difficult.

Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL, 2017) classifies Wyoming's legislature as "part-time, low pay, small staff," one of the very lowest-paid and least professionalized legislatures in the country. According to Squire (2017), Wyoming's legislature ranks 49th out of 50 in terms of professionalization. Legislators are paid $150 per day during the legislative session, plus a $109 vouchered per diem for travel to the capital, Cheyenne, for those living outside the area. In 2015 the legislature had 109 total staff members, 36 of whom are permanent (NCSL, 2017). Even though this is double the 18 permanent staff in 1996, it is still the smallest staff for any legislature in the country—slightly smaller than South Dakota's. There are no term limits for Wyoming legislators (NCSL, 2017). Although in 1992, voters passed a statute restricting legislative tenure in office to 12 years in each chamber, it was declared unconstitutional in 2004 by the Wyoming Supreme Court. Per the Wyoming Constitution, the "general" legislative session's duration in even-numbered years is limited to 60 days, with up to 40-day "budget sessions" in odd-numbered years (Wyoming Constitution).

According to the Council of State Governments' (2015) Governors' Institutional Powers Index (GIPI), the office of the Wyoming governor has a relatively high level of institutional powers—tied for 13th among the 50 states. Ferguson (2015) ranks the Wyoming governor's powers similarly (14th of the 50 states). This is surprising given that Wyoming also has four other elected state officials "with their own independent authority in state affairs and . . . responsible only to the citizens of the state: the treasurer, the secretary of state, the auditor, and the superintendent of public instruction (Haider-Markel, 2009). Moreover, the governor shares budget-making powers with the legislature. But the Wyoming governor proposes the budget and may use a line-item veto on appropriations bills, with a two-thirds majority vote of legislators required to override such veto (Council of State Governments, 2017; Table 4-4). However, Wyoming's legislature often overrides gubernatorial vetoes (interview notes, 2018). Although a weak legislature tends to strengthen gubernatorial power, part of Wyoming's gubernatorial strength arises from extensive appointment powers and strong control over the dominant party in a one-party state (Ferguson, 2015).

Political Context

State government in Wyoming is dominated by the Republican Party. Republicans currently hold a 51-9 advantage in the state house, with a 27-3 advantage in the senate (Ballotpedia). The house has had a Republican majority since 1964; the senate has been Republican-controlled since 1936 (Walker, 2017). The current governor, Matt Mead, is a Republican who has held the office since 2011, though a conservative Democrat held the governorship for the eight years prior. Governors are limited to two four-year terms during any sixteen-year period (Ballotpedia).

According to Shor and McCarthy's (2015) criteria, Wyoming has the 12th least politically polarized state senate in the country, and the 15th-least polarized state house. Wyoming senate and house republicans are less conservative than about two thirds of the other Republican caucuses in the country, while its Democrats are moderate. Senate and house Democrats are fairly moderate, ranking as the 21st and 23rd most "liberal," respectively (Shor and McCarthy, 2015). However, due to its dominance, factionalism in the Republican Party is magnified,

sometimes leading to disagreements between social conservative, libertarian, and moderate wings of the party (Rosenfeld, 2018).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Wyoming's analytic bureaucracies are especially important in the oversight process because the Wyoming legislature is only in session for a brief period. This means that "it tends to rely heavily on executive branch agencies (which operate year-round) for information" (Management Audit Committee Handbook, 2017). Moreover, Wyoming legislators do not have individual staff. Instead, the Legislative Service Office (LSO) is a permanent, non-partisan central staff office that supports the legislature. This office reports to the Management Council, which consists of 13 legislators who collectively employ and supervise the LSA director. These legislators consist primarily of the leadership of the majority party and a small contingent of legislators from the minority caucus.[2625] According to the website of the Wyoming legislature, the roughly 40 LSO staff members "prepare administrative rules reviews and reports, conduct oversight evaluations of executive agency programs, conduct fiscal studies and budget analyses, coordinate legislative activities related to school finance, and provide general research and information services to the legislature.[2626] The LSO is composed of several divisions, including a Budget and Fiscal Section, a Program Evaluation Section, and a Legal Services Division, among others. The organization chart for the LSO lists one administrator, two analysts, and two vacancies in the Program Evaluation and Research Division. The Budget and Fiscal Division is larger, with a total of nine staff members, which includes seven analysts. The entire LSO budget for 2018 was just slightly more than $16 million.[2627]

The LSO conducts program evaluations at the direction of the Management Audit Committee, a joint interim committee, created by statute. This eleven-member committee, which includes at least one minority party member from each chamber, determines which evaluations the LSO conducts. From 2015 through 2018, however, the LSO has only produced six "Final Reports" and ten "Scoping Papers." Scoping is a relatively brief process, lasting only one to two months, and scoping papers are not an auditing standards-based research product." Instead, they are intended to "to provide the Management Audit Committee with a summary of a potential evaluation topic.[2628] A full audit takes six to nine months. The reports and papers produced by the LSO are substantive and thorough, and are occasionally enhanced with follow-up evaluations.[2629] Reports also include updates on legislative actions and agency responses that were prompted by the results of the evaluation.

After concluding an evaluation, the Management Audit Committee may "choose to stay in touch with the [evaluated] program informally, request a follow-up, or sponsor legislation related to the report's findings and recommendations." After approximately two years, the

[2625] http://wyoleg.gov/docs/AnnualReport2017.pdf, accessed 8/5/18.
[2626] https://legisweb.state.wy.us/LSOWEB/LegislativeServiceOffice.aspx, accessed 07/20/18.
[2627] http://wyoleg.gov/WYGovTransparency/2018CH0024.pdf, accessed 8/5/18.
[2628] https://legisweb.state.wy.us/LSOWEB/ProgramEval/ProgramEval.aspx, accessed 07/20/18.
[2629] http://www.wyoleg.gov/progeval/REPORTS/2018/EIEPP2-2-9-2018.pdf, accessed 07/09/18.

committee may also request a follow-up in order to determine the extent to which its recommendations were acted upon (Management Audit Committee Website, 2017).[2630] Based on the results of this follow-up, members of the committee may then take a number of remedial actions, including requesting draft legislation, continual evaluation, or further audits. It is unclear whether the Program Evaluation Section of the LSO will continue to be funded. Faced with state budget cuts, the director of the LSO proposed taking a break in the audit function so that the LSO can help the legislature review "the audit process, audit products and schedule . . ."[2631]

In 1983, Wyoming created the Consensus Revenue Estimating Group (CREG) "by a mutual informal agreement between the executive and legislative branches." The leadership of CREG consists of the head of the Economic Analysis Division and the Budget & Fiscal Manager from the Legislative Service Office, with other members drawn from different state agencies (Consensus Revenue Estimating Group Website). CREG produces yearly reports containing projections regarding various aspects of state finances. These reports are reviewed by the Joint Appropriations Interim Committee between legislative sessions.

Wyoming also has a state auditor, an elected executive position that conducts a variety of auditing functions (Wyoming State Auditor's Office Wyoming Annual Report, 2015). The Auditor's Office has five branches, including the Comprehensive Annual Financial Report (CAFR) Division, the Quality Assurance Division, and the Technology Division. In addition to serving as Wyoming's primary comptroller and maintaining the state's online accounting system, the auditor is tasked with producing the state's Comprehensive Annual Financial Report, which is Wyoming's main way for reporting the state's financial activities and which is required by law. The CAFR is produced under the supervision of a private contracted CPA firm, McGee, Hearne, & Paiz, LLP. The same private firm conducts the annual statewide federal single audit (WY State Auditor's Office Website).[2632]

There is also a separate Department of Audit (DOA), with a director appointed by a majority vote by the governor, the secretary of state, and the state treasurer, with the advice and consent of the senate. The Department of Audit, which was created in 1989, and is "authorized to conduct audits for the collection of federal and state mineral royalties and for collection of taxes imposed under Title 39, Wyoming Statutes" (WY Stat § 9-2-2003). These duties were previously under the purview of the state auditor and the Department of Revenue and Taxation. Additionally, the DOA has the authority to audit any state agency or local government in Wyoming. To support its work, the DOA employs 20 staff members, three of whom conduct performance audits and six of whom audit local governments. In 2015 the DOA received a state appropriation of $2.8 million (NASACT, 2015). The director of the DOA is required to issue an annual report to the joint revenue interim committee and the joint minerals, business and economic development interim committee on the details of any investigations it has carried out. According to a representative from the DOA, contact with legislators is quite limited. Because the department has a small staff, its activities are focused on areas of particular concern. The results of audits, moreover, are "rarely used for legislative action" (interview notes, 2018).

[2630] http://www.wyoleg.gov/Committees/2018/SMA, accessed 07/20/18.
[2631] https://www.wyoleg.gov/InterimCommittee/2018/SMA-20180123SMA-0123APPENDIXC.pdf, accessed 8-5-18.
[2632] http://sao.wyo.gov/, accessed 07/20/18.

Oversight Through the Appropriations Process

A biennial budget is prepared by the governor, and is subject to legislative approval by a simple majority. Supplementary budget items may be added in non-budget years. W.S. 9-2-1005(b) of the Wyoming Constitution authorizes the governor to "authorize revisions, changes, redistributions or increases to amounts authorized for expenditure by legislative appropriation acts from non-general fund sources" after notifying the legislature. A balanced budget is required by law (WY SAO-2015 Comprehensive Annual Financial Report).

The Wyoming legislature has "unlimited power to make revisions" to the governor's budget. Interim committees allow legislators from both chambers to address issues that arise between legislative sessions. The Joint Appropriations Committee (JAC) "is charged with carefully reviewing the governor's budget request, the various state agency requests and reports, and budget proposals from various legislators. It typically reviews the annual report by CREG for the purposes of identifying budget surpluses or shortfalls and assisting in the preparation of legislation. Indeed, it is difficult to overstate the influence of the JAC on state fiscal matters and, thus, on the trajectory of state policy" (Haider-Markel, 2009).

Despite the overwhelming dominance of the Republican Party in Wyoming, factionalism within the party sometimes complicates the budget process (Rosenfeld, 2018). For example, the 2018 legislative session has seen major disagreement on education budget, even among Republican legislators. The speaker of the Wyoming house, for example, has suggested that the state's seeming budget woes are the results of an "appearance of scarcity" driven by an unwillingness to use mineral revenues to fund schools. At the same time, one member of the Legislature's Revenue Committee has likened diverting those revenues away from savings accounts into education to "robbing future generations"[2633,2634] (Martin, 2018; Klamann, 2018). After 10 months of investigations and a review by an external consultant, the Select Committee on School Finance Recalibration rejected new funding model that would have cost the state an extra $71 million for education (Mohr, 2018). A senate proposal to instead make cuts in education spending later failed to pass in the house (Watson, 2018). Meanwhile, the Republican-dominated Senate Education Committee "stripped" proposals to use a sales tax on online purchases to address the shortfall from another bill. This was a move that "frustrated" the House Speaker and the House Education Chairman, both of whom are Republicans (Beck, 2018). Ultimately, the governor signed a bill that cut education spending by $27 million for the state's two-year budget.[2635]

In 2017, Wyoming's Joint Interim Appropriations Committee consisted of 10 Republicans and two Democrats. In both 2016 and 2017, the committee met for a total of three days. Meetings included budget-related testimony by the governor, agency heads, and LSO officials (Joint Interim Appropriations Committee website). Media reports reveal public

[2633] https://kemmerergazette.com/article/solving-wyomings-education-budget-crisis-the-simple-way , accessed 8/5/18.

[2634] http://trib.com/news/state-and-regional/govt-and-politics/education/lawmakers-propose-three-different-constitutional-amendments-to-address-school-funding/article_2e715aef-0fdb-5956-ae6e-2c3f4a8df8c0.html, accessed 8/5/18.

[2635] https://www.wyomingnews.com/news/local_news/wyoming-governor-to-sign-bill-to-cut-k--education/article_06e94966-3186-11e8-b241-7bdd81c74ffd.html, accessed 8/7/18.

controversy over budget cuts,[2636] but little effective legislative pushback against the governor's budgetary preferences.

The Joint Appropriations Committee established five priorities for itself in 2017: (a) Wyoming Department of Corrections Facilities and Operations "[r]eceive and review the penal facility peer review study . . ."; 2) Enterprise Technology Services Consolidation, Hardware and Software ". . . review the status, benefits, and opportunities for re-structuring or continued consolidation . . ."; 3) State Employee Benefits review; 4) Department of Family Services Title IV-E Reimbursements find ways to increase federal reimbursement rates in order to conserve state resources; and 5) Water and State Lands Funding Trends.[2637] To pursue these priorities, the JAC met twice during the interim. Its first meeting, which lasted two days, featured testimony from a relevant state agency director and another relevant agency's deputy director on the Title IV-E Fostercare reimbursement, a review of state benefits led by the LSO Budget and Fiscal Administrator included testimony from relevant state agency staff about open positions and benefits as well as testimony about the state's retirement system from the executive director and other senior staff, a discussion of the Enterprise Technology Services restructuring or consolidation led by the LSO Budget and Fiscal Administrator with presentations from executives in the state's Department of Enterprise Technology Services. Following a recess, the committee toured the Wyoming State Penitentiary. The remainder of the day and most of the next day were spent discussing structural and operational issues with the state's prison system.[2638] A subsequent meeting held in October 2017 addressed the remaining committee priority—Water and State Lands Funding Trends.[2639] Minutes of these meeting suggest that these are policy focused, substantive meetings. Without access to archival recordings of the actual hearing, it is impossible to tell how insightful or probing the questions from legislators were. The presentations, however, appear to have been substantively rigorous.

Oversight Through Committees

As noted earlier, Joint Interim Committees allow the legislative chambers to collaborate on legislative tasks between sessions. As in other domains, oversight through committees depends on the work of the Legislative Service Office. The Management Council, which is a joint interim committee, supervises and regulates the activities of the LSO, (Management Council & Legislative Service Office, 2016). In 2016, the Management Council implemented changes that resulted in committee chairs henceforth serving as "gatekeepers" between committee members and the LSO. This decision was ostensibly made in order to reduce the workload being placed on LSO staff by committees, but was criticized as marginalizing minority-party members as reducing their ability to independently request information from the LSO without approval by committee chairs (Chilton, 2016).

The Management Council met three times during the first eight months of 2018. Its first meeting, on Feb. 10, was well attended. All thirteen council members were present as well as six other state legislators, the director of the LSO and six LSO staff. The meeting sign-in sheet lists 21 other non-legislative attendees. This is a handwritten sheet that is often hard to decipher and

[2636] http://www.wyomingpublicmedia.org/post/survey-gauges-public-opinion-state-budget, accessed 8/5/18.
[2637] http://wyoleg.gov/docs/AnnualReport2017.pdf, p. 45, accessed 8/5/18.
[2638] http://wyoleg.gov/InterimCommittee/2017/02MIN0717.pdf, accessed 8/5/18.
[2639] http://wyoleg.gov/InterimCommittee/2017/02MIN1027.pdf, accessed 8/5/18.

lists the organization the attendees represented using acronyms.[2640] Therefore, it is hard to tally the categories of attendees precisely. The governor's office and treasurer's offices were represented, as was the League of Women Voters and Wyoming PBS. Corporations represented include Andarko and AT&T, as well as several attendees who identified themselves as consultants. Many of these outside actors are likely to have been interested in the topics of legislation considered at this meeting: ". . . Government Efficiency Commission, Public Purpose Investments, ENDOW and Statewide Lodging Tax for the 2018 Budget Session . . . livestreaming and archiving of legislative committee meetings and . . . changes to the legislature's anti-discrimination and sexual harassment policy and trainings."[2641] The meeting began at 7:32 a.m. and adjourned at 3:30 p.m. The minutes describe a busy eight hours with testimony from government actors such as LSO staff, executive branch officials, and other legislators, comments from non-governmental attendees, discussion and debate on some of the legislation, and a few votes taken. Comments and discussion reported in the meeting minutes indicate knowledge of the issues on the part of committee members.

The other two meetings of the Management Council were similarly well attended. One lasted five hours and the other lasted 12 hours. Both continued to address the topics introduced during the first meeting on the Management Council if the issue had not been resolved previously.

The other committee that works closely with the audit support staff in Wyoming is the Management Audit Committee. On January 23 and January 24, 2018 "[it] met for one and a half days in Cheyenne to discuss the Early Intervention and Education Program (EIEP), Phase 2 evaluation and supplement, the ongoing State Procurement and Leasing Programs evaluation, a scoping paper on the Aquatic Invasive Species Program, and a follow-up report on the 2016 Wyoming Water Development Commission program evaluation. The committee also discussed the reorganization of the section and current workloads. The committee voted to release the EIEP evaluation and Aquatic Invasive Species Program scoping paper on February 9, 2018."[2642] The audit and scoping paper presentations did not seem to elicit any questions or involvement from the committee members. According to information provided in the minutes, these were simply presentations that informed the committee members about the problems. There are two other meetings listed for the first eight months for 2018, but one appears to have lasted less than an hour and just involved a decision about what topic to choose for the next LSO scoping paper. The other meeting appears to have been a telephone conference based on information on the agenda and the absence of any minutes.[2643]

Other standing committees appear to follow a similar scheduling pattern and similar mixture of presentations with only a limited amount of presentation and discussion. For example, the Joint Travel, Recreation, Wildlife and Cultural Resources Committee held a one and a half day meeting May 10 and May 11, 2018 that included a tour of the Fort Laramie National Historic Site and Camp Guernsey as well as a presentation from the Wyoming Game and Fish Department, the Office of Tourism, the Department of State Parks and Cultural Resources, and the Department of Transportation to discuss ways to increase non-resident fishing in order to raise more money from fees and to increase efficiencies through shared marketing. Public

[2640] https://www.wyoleg.gov/InterimCommittee/2018/SMC-20180210Sign-inSheet.PDF, accessed 8/7/18.
[2641] http://wyoleg.gov/InterimCommittee/2018/SMC-20180210MeetingMinutes.pdf, accessed 8/7/18.
[2642] http://wyoleg.gov/InterimCommittee/2018/SMA-20180123MeetingMinutes.pdf, accessed 8/7/18.
[2643] http://www.wyoleg.gov/Committees/2018/SMA, accessed 8/7/18.

comments were occasionally added. But there does not appear to be much oversight in this committee meeting.

The other multi-day meeting of this committee, which lasted for two full days, has archived audio coverage rather than written minutes. It begins with about one and a half hours of information provided by federal officials: the state's congressional delegation, the US Bureau of Land Management, and the US Forest Service. The remainder of the meeting consisted of presentations from various state agencies, such as the state's geologist from the Wyoming Geological Survey, the Livestock Board, the State Engineer, the Wyoming Water Development Commission, and the Wyoming Weather Modification Program, among others with public comments from groups like the Family Farm Alliance.[2644] Although there were not many questions asked, the questions that thes committee members did ask demonstrated knowledge of the various water compacts and other technically complex issues.[2645] On the other hand, this is primarily a hearing designed to inform legislators of information about issues affecting the state rather than an opportunity to exercise oversight of the executive branch.

Oversight Through the Administrative Rules Process

In 1977, Wyoming passed the Administrative Regulation Review Act, which Schwartz (2010, p. 412) describes as "the nation's first joint executive-legislative rule review procedure." Agencies notify the LSO of their intent to promulgate a new administrative rule, but the legislative review process only begins after the agency formally adopts the rule. So it is common for rules to take effect before legislative review (Schwartz, 2010). The LSO reviews all administrative rules for adherence to "statutory authority" and "legislative intent" (Management Council & Legislative Service Office, 2012; p. 18). The LSO transmits its judgment along with any comments it has received from other legislators to the Management Council, the governor, the attorney general, and the agency. There is no requirement for environmental or economic impact statements from the agencies to assess the benefits and costs of new rules. Agencies have five days after adopting a new rule to issue a report to the Management Council and the governor. If the LSO does not identify problems with the rules, the default position is that the rule is approved. But council members can always object to a rule. If the legislature is not in session, the council has a vote by mail option that its members can use to propose changes to the rule or to postpone action until the next council meeting. The council itself cannot suspend rules, as its authority in this domain is purely advisory. Both the governor and Supreme Court, however, may suspend rules (MC & LSO, 2012), but they must do so within 15 days of receiving notice of proposed changes. When the council objects to a rule, the governor has three options for action: (a) use his line item veto to delete the problematic parts before approving the rule; (b) direct the agency to make changes or rescind the rule; and (c) send written objections to the council.

If the governor does not act to produce the changes the council wants, then the legislature can pass a law to nullify the rule—but the governor would have to sign this legislation. Thus, the governor has the final word on administrative rules.

[2644] http://www.wyoleg.gov/Committees/2018/J05, accessed 8/7/18.

[2645] http://www.wyoleg.gov/InterimCommittee/2018/Agriculture-Select%20Water-June%2014,%202018-AM-1.mp3, accessed 8/7/18.

There is no formal review process for existing rules, although the Management Council can choose to review any existing rules any time it wants to. But the limitation of LSO's small staff means that in practice legislative oversight of administrative rules is limited, and it is unlikely that existing rules would become a top priority for the use of these scarce staff resources.

The governor may veto proposed rules in whole or in line-item fashion. While a 45-day public commentary period is required for proposed rules, the decision of whether to hold actual public hearings is at the discretion of the promulgating agency[2646] (WY Secretary of State Website). According to the Council of State Governments (2016), an existing rule may be suspended by vote of both chambers of the legislature (Table 3.26). Although the legislature rarely uses of its power to suspend administrative rules, the potential for this outcome encourages agencies to work informally with the LSO, the governor, and the Management Council (Schwartz, 2010). On the other hand, the minor role played by the legislature means that administrative rule review is dominated by the governor and the executive branch.

Oversight Through Advice and Consent

Various gubernatorial appointments, including the director of the Department of Audit, require approval by the senate (Council of State Governments, 2017; Table 4.10). This process does not appear to be particularly contentious. In 2013, two of the governor's nominees for the state's Public Service Commission were rejected by the senate. Prior to this, however, "[i]t [had] been many years since the senate rejected a governor's nominee" (Barron, 2013).

Wyoming's governor has general authority to issue executive orders (Council of State Government, 2017, Table 4.5). In practice, the governor does occasionally enact executive orders,[2647] but according to one source familiar with the process, in the past eight years there have been "maybe a time or two . . . where the legislature considered legislation that would have affected executive orders." But none of that legislation was ultimately passed (interview notes 2018). No prior restrictions, however, exist to check executive orders.

Although Wyoming's governor has the power to reorganize state government, according to WY Statute § 9-2-1707 agency reorganization requires legislative approval. The governor must submit a reorganization plan on or before October 15 to specified interim committees and to the legislature not later than Dec. 1 of the year in which a state department will be created. This process is subject to public hearings conducted by at least two interim committees prior to the next legislative session. One person familiar with the process noted that the governor uses the power to reorganize executive agencies "sparingly." When reorganizations occur, departments must inform the legislature.

Demonstrating how rare reorganization is, in the past eight years, there have been only two major executive agency reorganizations. The first involved the Departments of Employment and Workforce Services and the other involved the Department of Enterprise Technology Services. In both cases, the legislature was involved only insofar as it was necessary to create budget lines for the new entities. In some cases, agencies will initiate internal reorganizations "to

[2646] http://soswy.state.wy.us, accessed 07/20/18.
[2647] http://governor.wyo.gov/documents/executive-orders., accessed 07/20/18.

create a new office within the current structure of the department that could allow personnel to be repurposed to the new office, but without seeking new money or personnel."

In one recent case, the State Construction Department announced to legislators that it was planning an internal department reorganization. This announcement apparently "surprised" legislators, since the reorganization would not have affected the budget.[2648,2649] The move, moreover, was presented to legislators as a fait accompli. According to one legislator, "My understanding is that you've already done this. It's happened." However, because state law only "provided two divisions for the department," and since the department wished to create a third division that was not provided for in statute, legislative action was required.[2650] It appears that the legislature's power of the purse is the primary method it can use to assert its oversight prerogatives with respect to government reorganization.

Oversight Through Monitoring of State Contracts

The Fiscal Management Division of the executive branch State Auditor's Office disburses payment to state contractors. W.S. 9-2-1016(k) states that each elected state official must submit an annual report to the joint appropriations interim committee consisting of a list of "all contracts entered into by the elected state official during the previous fiscal year for supplies or services" if competitive bidding was not used. Other than receiving a list of contracts, it is unclear what other forms of oversight of state contracts occur.

Oversight Through Automatic Mechanisms

Wyoming repealed its sunset laws in 1988. Currently, the Council of State Governments (2016) classifies Wyoming's sunset rules as discretionary, noting that "[t]he program evaluation process evolved out of the sunset process, but Wyoming currently does not have a scheduled sunset of programs" (Council of State Governments, 2016; Table 3.27, p. 133). There is evidence of periodic votes, on a case-by-case basis, to extend or repeal sunset clauses attached to particular pieces of legislation.[2651] Baugus and Bose (2015) concur with this assessment.

[2648] https://www.wyomingnews.com/news/local_news/wyoming-construction-department-explains-reorganization-to-legislators/article_4ff19f12-e232-11e7-802e-2b723a82fe9b.html, accessed 02/18/18

[2649] https://www.wyomingnews.com/news/local_news/wyoming-construction-department-explains-reorganization-to-legislators/article_4ff19f12-e232-11e7-802e-2b723a82fe9b.html, accessed 2-18-2018.

[2650] https://thelanderjournal.com/story.php?id=30763&headline=state-construction-department-plans-revamp-from-two-divisions-to-three, accessed 07/18/18.

[2651] http://legisweb.state.wy.us, accessed on 07/20/18.

Methods and Limitations

A total of four people were interviewed about oversight in Wyoming. The legislature's website does not provide regularly archival recordings of committee meetings, but there are often detailed minutes and agendas for committee meetings available online. We found one audio recording of a committee meeting which we listened to.

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