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# State Legislative Oversight: **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

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# Legislative Oversight in Arkansas

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## 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 apprised 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 2/3<sup>rd</sup>s vote of the legislators themselves.<sup>133</sup> 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.<sup>134</sup> 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.<sup>135</sup> Due in part to staff, salary resources, and other considerations the Arkansas General Assembly is ranked as the 24<sup>th</sup> most professional legislature in the country.<sup>136</sup>

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.<sup>137</sup> 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 24<sup>th</sup> most powerful in the country.<sup>138</sup> 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<sup>139</sup>, 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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<sup>133</sup> [https://ballotpedia.org/Arkansas\\_General\\_Assembly](https://ballotpedia.org/Arkansas_General_Assembly), accessed 11/15/18.

<sup>134</sup> <http://www.ncsl.org/research/about-state-legislatures/legislator-compensation-2018.aspx>, accessed 9/3/18.

<sup>135</sup> <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 9/3/18.

<sup>136</sup> Squire, Peverill. 2017. "A Squire Index Update." *State Politics & Policy Quarterly*. 17(4): 361-371.

<sup>137</sup> *The Council of State Governments*. 2014. "The Book of States" Table 4.10

<sup>138</sup> 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.

<sup>139</sup> <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 7<sup>th</sup> least polarized House of Representatives and the 7<sup>th</sup> 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).<sup>140</sup> The fraud and embezzlement scheme diverted millions of state funds to PFH with kickbacks to legislators who helped appropriate funds for PFH.<sup>141</sup> 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.<sup>142</sup> As a result, Senator Hutchinson has recently resigned from office and did not run for re-election.<sup>143</sup> 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.<sup>144</sup>

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.<sup>145</sup> 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.<sup>146</sup> The key to the fraud investigation is the kickbacks

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<sup>140</sup> <https://arknews.org/index.php/2018/08/16/the-saga-of-rusty-cranford/>, accessed 9/3/18.

<sup>141</sup> <https://newsok.com/article/feed/2721656/former-arkansas-lobbyist-pleads-guilty-in-bribery-scheme>, accessed 9/3/18.

<sup>142</sup> Ibid.

<sup>143</sup> [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](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.

<sup>144</sup> <http://www.nwaonline.com/news/2018/aug/23/more-state-lawmakers-targeted-in-corrup/>, accessed 9/4/18.

<sup>145</sup> <https://www.aetn.org/programs/arkansasweek/s36/e33>, accessed 9/4/18.

<sup>146</sup> <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.<sup>147</sup> 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.<sup>148</sup> 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.<sup>149</sup> 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

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<sup>147</sup> <http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/Legislators.aspx?committeecode=905>, accessed 11/17/18.

<sup>148</sup> Interview notes, 11/7/18.

<sup>149</sup> 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.<sup>150</sup>

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.<sup>151</sup> 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.<sup>152</sup> While the BLR has a publications link on its website, most of the information relates to guidebooks for various agencies.<sup>153</sup> 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.<sup>154</sup> 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.<sup>155</sup> 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.<sup>156</sup> To administer these programs the State Auditor was appropriated \$54.2 million for the FY18.<sup>157</sup> 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.<sup>158</sup>

## Oversight Through the Appropriations Process

While Arkansas' budget is technically considered biennial, the general assembly can only appropriate on an annual basis.<sup>159</sup> 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.<sup>160</sup> This compressed schedule focuses solely on fiscal issues and appropriations. This makes conducting oversight of spending problematic.<sup>161</sup> For FY18 the overall state budget was \$31.7 billion.<sup>162</sup>

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<sup>150</sup> Interview notes, 11/7/18.

<sup>151</sup> <http://www.arkleg.state.ar.us/BUREAU/Pages/default.aspx>, accessed 9/4/18.

<sup>152</sup> <https://www.dfa.arkansas.gov/images/uploads/budgetOffice/authorizedAppropriation.pdf>, accessed 9/4/18.

<sup>153</sup> <http://www.arkleg.state.ar.us/bureau/pages/bureauPublications.aspx>, accessed 9/4/18.

<sup>154</sup> Interview notes, 11/7/18.

<sup>155</sup> <https://auditor.ar.gov/about-our-office>, accessed 9/4/18.

<sup>156</sup> <https://auditor.ar.gov/about-our-office>, accessed 9/4/18.

<sup>157</sup> <https://www.dfa.arkansas.gov/images/uploads/budgetOffice/authorizedAppropriation.pdf>, accessed 9/3/18.

<sup>158</sup> Interview notes, 11/7/18.

<sup>159</sup> Interview notes, 8/22/18.

<sup>160</sup> [https://ballotpedia.org/Arkansas\\_Legislative\\_Sessions,\\_Proposed\\_Amendment\\_2\\_\(2008\)](https://ballotpedia.org/Arkansas_Legislative_Sessions,_Proposed_Amendment_2_(2008)), accessed 9/3/18.

<sup>161</sup> Interview notes, 8/22/18.

<sup>162</sup> <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). “Pre-session (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.<sup>163</sup> The JBC also has five subcommittees that cover specific budget areas, like claims, personnel, special language, peer review, and administrative rules and regulations.<sup>164</sup> 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.<sup>165</sup> 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<sup>166</sup>, 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.<sup>167</sup> 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.<sup>168</sup> 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.<sup>169</sup>

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.<sup>170</sup>

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<sup>163</sup> <http://www.arkleg.state.ar.us/assembly/2017/2018F/pages/CommitteeDetail.aspx?committeecode=005>, accessed 9/4/18.

<sup>164</sup> <http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/SubCommittees.aspx?committeecode=005>, accessed 9/4/18.

<sup>165</sup> <http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/CommitteeDetail.aspx?committeecode=009>, accessed 9/5/18.

<sup>166</sup> <http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/CommitteeDetail.aspx?committeecode=024>, accessed 9/5/18.

<sup>167</sup> <http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/CommitteeDetail.aspx?committeecode=028>, accessed 9/5/18.

<sup>168</sup> Interview notes, 8/22/18.

<sup>169</sup> Ibid.

<sup>170</sup> 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.<sup>171</sup> 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.<sup>172</sup> 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

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<sup>171</sup> Ibid.

<sup>172</sup> <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.<sup>173</sup> 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.<sup>174</sup> 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.<sup>175</sup> 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.<sup>176</sup> 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,<sup>177</sup> 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.<sup>178</sup> 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.<sup>179</sup> 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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<sup>173</sup> <https://www.npr.org/sections/codeswitch/2014/01/07/260461489/decades-later-desegregation-still-on-the-docket-in-little-rock>, accessed 10/15/18.

<sup>174</sup> <https://www.nytimes.com/2014/01/14/us/judge-approves-desegregation-plan-in-little-rock.html>, accessed 10/15/18.

<sup>175</sup> <https://www.nytimes.com/2014/01/14/us/judge-approves-desegregation-plan-in-little-rock.html>, accessed 10/15/18.

<sup>176</sup> <http://www.arkleg.state.ar.us/assembly/2017/2018F/Pages/PastMeetings.aspx?committeecode=114>, accessed 10/15/18.

<sup>177</sup> <http://www.arkansashouse.org/video-library>, accessed 11/7/18.

<sup>178</sup> [http://sg001-harmony.sliq.net/00284/harmony/en/PowerBrowser/PowerBrowserV2/20160329/-/111282#agenda\\_](http://sg001-harmony.sliq.net/00284/harmony/en/PowerBrowser/PowerBrowserV2/20160329/-/111282#agenda_), accessed 11/8/18.

<sup>179</sup> 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 16<sup>th</sup> 2018 meeting. These were draft minutes for the House and Senate Interim Committees on Judiciary.<sup>180</sup> 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.<sup>181</sup> Furthermore, it was noted that legislation would be necessary to give CLEST the authority to promulgate rules related to body cameras.<sup>182</sup> CLEST is charged with improving the competency and professionalism of law enforcement officers in Arkansas by establishing standards of employment and training.<sup>183</sup> 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 24<sup>th</sup>, 2018 commission meeting<sup>184</sup> 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

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<sup>180</sup><http://www.arkleg.state.ar.us/assembly/Meeting%20Attachments/420/805/10%2022%2018%20Draft%20Minutes.pdf>, accessed 11/17/18.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> <https://www.clest.org/mission-objectives>, accessed 11/17/18.

<sup>184</sup> <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.<sup>185</sup> 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).<sup>186</sup> 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.<sup>187</sup> 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

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<sup>185</sup> The Council of State Governments. 2015. *The Book of the States 2015*. Table 3.26

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

<sup>187</sup> 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.<sup>188</sup>

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.<sup>189</sup> 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.<sup>190</sup> The governor's staff will often reach out to the representing senator *prior* to submitting a nominee for approval.<sup>191</sup> 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.<sup>192</sup> Furthermore the governor can make recess appointments for positions when the legislature is not in session, in consultation with the appropriate senator.

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<sup>188</sup> Ibid.

<sup>189</sup> Interview notes, 10/15/18.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

Arkansas Gov. Asa Hutchinson has only issued 14 executive orders during the first 10 months of 2018.<sup>193</sup> 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.<sup>194</sup> 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.<sup>195</sup> 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.<sup>196</sup> 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)

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<sup>193</sup> <https://governor.arkansas.gov/our-office/executive-orders/executive-orders-archives>, accessed 9/5/18.

<sup>194</sup> <https://transparency.arkansas.gov/>, accessed 9/5/18.

<sup>195</sup> <https://transparency.arkansas.gov/>, accessed 9/5/18.

<sup>196</sup> <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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