



WAYNE STATE
UNIVERSITY

Center for Urban Studies

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,¹ 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

¹ https://ballotpedia.org/Arizona_State_Legislature, accessed 9/27/18.

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). 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.² 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 audit, financial investigations, performance audits, and school audits. During the fiscal year 2015, the office had a budget of

² https://ballotpedia.org/Party_control_of_Arizona_state_government, accessed 10/23/18.

\$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% of performance audit recommendations within two years.³ 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.

³ https://www.azauditor.gov/sites/default/files/Annual_Report.pdf, accessed 10/23/18.

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 2017).⁴ 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.⁵ 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.^{6,7} 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.⁸ 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

⁴ <https://www.azcentral.com/story/news/politics/arizona-education/2017/05/06/arizona-education-funding-budget-ducey-legislature/308655001/>, accessed 10/23/18.

⁵ <https://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-05-215/html/GAOREPORTS-GAO-05-215.htm>, accessed 10/23/18.

⁶ http://azleg.granicus.com/MediaPlayer.php?view_id=21&clip_id=12834, accessed 10/23/18.

⁷ http://azleg.granicus.com/MediaPlayer.php?view_id=21&clip_id=12835, accessed 10/23/18.

⁸ http://azleg.granicus.com/MediaPlayer.php?view_id=21&clip_id=12857, accessed 10/23/18.

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.⁹ 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 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, "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 partisan.

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

⁹ http://azleg.granicus.com/MediaPlayer.php?view_id=26&clip_id=18230, accessed 9/29/18.

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 as 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.¹⁰ 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

¹⁰ https://www.azleg.gov/sunset_review.pdf, accessed 10/7/18.

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.¹¹

The agenda for a hearing of the Senate and House Education Committee of Reference held November 14, 2016,¹² 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

¹¹ https://www.azleg.gov/sunset_review.pdf, accessed 10/1/18.

¹² http://azleg.granicus.com/MediaPlayer.php?view_id=26&clip_id=18191, accessed 10/7/18.

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 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.¹³ 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).¹⁴ 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

¹³ <https://azgovernor.gov/executive-orders>, accessed 10/1/18.

¹⁴ <https://www.theregreview.org/2014/06/26/26-smith-arizona-should-end-regulatory-moratorium/>, accessed 10/23/18.

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.).

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 quick 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.¹⁵ 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."¹⁶ 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

¹⁵ <https://www.phoenixnewtimes.com/news/phoenix-protestors-call-jeff-flake-cowardly-and-disingenuous-10878735>, accessed 10/1/18.

¹⁶ <https://azgovernor.gov/executive-orders>, accessed 10/4/18.

and that the agency should continue to use these practices in the future.¹⁷ A second example is the 2015 audit of the Arizona Department of Administration.¹⁸ 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.¹⁹ 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.²⁰

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

¹⁷ https://www.azauditor.gov/sites/default/files/10-09_Report_0.pdf, accessed 10/23/18.

¹⁸ https://www.azauditor.gov/sites/default/files/DOA_15-102_0.pdf, accessed 10/23/18.

¹⁹ <https://www.azleg.gov/icommittee/Joint%20Legislative%20Budget%20Committee.pdf>, accessed 9/30/18.

²⁰ https://www.azleg.gov/sunset_review.pdf, accessed 10/1/18.

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 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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