



WAYNE STATE  
UNIVERSITY

Center for Urban Studies

## Legislative Oversight in Florida

### Capacity and Usage Assessment

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

### Summary Assessment

Although there are extensive resources available for legislative oversight of the executive branch, the Office of the Auditor General (OAG) and the Joint Legislative Auditing Committee (JLAC) focus much of their attention on auditing local governments, school districts, special districts, boards, and commissions. Quasi-public corporations, private contracts, and outsourcing complicate the task of monitoring government funded programs and services in Florida. In that context, the emphasis placed on monitoring these entities is an important oversight responsibility of the legislative branch. But this focus seems to have distracted Florida's legislature from overseeing executive branch agencies.

### Major Strengths

Florida has one of the best funded OAG in the country, and it uses these resources to produce large numbers of performance audits. Beyond that Florida has several other analytic bureaucracies that support legislative oversight. Chief among these is Office of Program Policy Analysis and Government Accountability (OPPAGA), a support unit specifically tasked with program policy analysis and government accountability. Florida made one of the most extensive efforts among the states to implement performance-based budgeting. Florida is among the few states that allow legislators to play a role, albeit a limited one, in monitoring state contracts. Florida's governor makes hundreds of appointments to boards and commissions in addition to a few agency directors. The Senate must vote affirmatively on each of these to confirm the nomination and has rejected substantial numbers of nominees.

### Challenges

Two decades of one-party government in Florida seem to have drained the vitality of the state's reform agenda. Performance-based budgeting, which motivated performance auditing through OPPAGA, was repealed. The information and time demands of that form of budgeting proved to be too costly. Without the needs for performance assessment—the basis of performance-based budgeting—no one seemed to recognize the general value of assessing executive agency performance. Consequently, OPPAGA was cut to half its size. Requirements for sunset reviews were also repealed. The legislature gave away much of its rule review authority. Many of these changes occur shortly after the adoption of moderately stringent term limits, which increased legislative turnover reducing the knowledge and capacity of legislators. Florida exhibits declining oversight potential.

### Relevant Institutional Characteristics

Florida has the nation's 15<sup>th</sup> most professional state legislature, despite being a hybrid legislature with short sessions, modest salaries (\$29,697 plus a per diem of \$152 for each session day) and term limits (Squire, 2017). Florida's State Constitution<sup>1</sup> specifies that regular legislative sessions, which begin in March, last 60 days annually. The legislature can extend the regular session by a three-fifths vote in each chamber. Additionally either the governor or the Senate president and House speaker, via joint proclamation, may call the legislature into special session. Special sessions are limited to 20 days and must address business specified in a proclamation by the governor or introduced by a two-thirds vote in the legislature. Special sessions may be extended for longer than 20 days by a three-fifths vote in each chamber (Florida State Constitution, Article 3, Section 3). It is, therefore, possible for Florida's legislature to meet about a month longer than the official 60 day legislative session. Difficult budget negotiations triggered extensions in 2017<sup>2</sup> and in 2018.<sup>3</sup>

In addition to these legislative sessions, Florida's legislators meet in county delegation meetings.<sup>4</sup> These consist of legislators from both parties attending a town hall-style meeting in which citizens have an opportunity to voice their concerns about state issues and to make requests directly to state legislators.<sup>5</sup> Moreover, committee sessions begin in September to provide legislators with an opportunity to develop bills that can be passed during the brief regular legislative session. Committee minutes indicate that teleconferencing is used to conduct interim committee meetings when the chamber is not in session and legislators are in their home districts.

Florida has both legislative and gubernatorial term limits. These limits, however, are not lifetime bans, but rather a restriction on the number of consecutive terms of service for these elected officials. Legislators can serve no more than eight consecutive years in the House and eight more consecutive years in the Senate. This means that legislators can run for the same

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<sup>1</sup> <http://www.leg.state.fl.us/statutes/index.cfm?submenu=3#A3S03>, accessed 1/11/2018.

<sup>2</sup> <https://www.naplesnews.com/story/news/politics/2017/05/02/florida-legislative-leaders-consider-extending-session-one-day/101197760/>, accessed 7/1/18.

<sup>3</sup> <https://www.mypalmbeachpost.com/news/state--regional-govt--politics/florida-legislature-oks-billion-budget-end-2018-session/MiQ4tFQODcsljOhYchGoAO/>, accessed 7/1/18.

<sup>4</sup> <https://www.flsenate.gov/Media/PressRelease/Show/2594>, accessed 1/18/2018.

<sup>5</sup> <https://www.ccfj.net/HOAREFBILLEGDEL3.html>, accessed 1/18/2018.

office again after sitting out for two years. Therefore, it is possible that legislators could amass some experience, although it is not typical (DePalo, 2015, p. 83).

The Florida Constitution creates a weak governor, whose institutional powers rank as 34<sup>th</sup> in the nation (Ferguson, 2013). The state is described as having a plural executive. The other three members of this Cabinet, elected separately, are the Attorney General, Agriculture Commissioner, and Chief Financial Officer. Each casts a vote when executive decision making occurs. The governor also casts one vote. In the case of a two-to-two tie, the side on which the governor votes wins. But, if the other three cabinet members are united against the governor, then the governor loses. A recent delay in the decision on hiring the head of the Office of Financial Regulation<sup>6</sup> indicates that, even when the cabinet members all hail from the same political party, they do not always agree on specific actions.

The governor and the three cabinet members who form the plural executive are all elected and all are term-limited. Governors and other cabinet members can serve for two consecutive terms. After sitting out of a specific office for two years, they are eligible to run again for the same office. Despite the constitutional restrictions on gubernatorial power, some observers argue that legislative term limits have strengthened the executive branch, concentrating policy making in the executive branch in recent years (DePalo, 2015). Additionally, effective in 2003, the Cabinet membership shrank from six members to three as the result of a constitutional ballot initiative. Consequently, historical assessments of gubernatorial power in Florida are likely to underestimate the ability of the executive branch to influence policy.

## Political Context

Historically, Democrats controlled the Florida state government. But, with the realignment of southern conservatives from the Democratic to the Republican Party, Republicans now dominate Florida's state politics. Currently, Republicans control both legislative chambers and the executive branch. State Senate membership consists of 15 Democrat and 25 Republicans. Current House membership consists of 41 Democrats and 79 Republicans. Gov. Rick Scott and his three fellow cabinet members are also Republicans. Despite this Republican dominance, Gov. Scott won his most recent election by about a 1% margin of victory. So, the voters of the state are not overwhelmingly Republican. The northern parts of the state are highly conservative while the Miami region and other areas that attract retirees, immigrants, and newcomers from other states tend to be more liberal. These regional political party affiliations mean that legislative districts can be drawn to ensure partisan advantage in the legislature in a state this is closely divided politically in the population at large—a purple state for candidates who run state-wide.

Florida's House is somewhat polarized, ranking 15<sup>th</sup> most polarized lower legislative chamber in the nation. Its Senate is less polarized—24<sup>th</sup> among the 50 states. These rankings are based on differences between median roll call votes for each party in each chamber (Shor and McCarthy, 2015).

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<sup>6</sup> <http://floridapolitics.com/archives/267412-rick-scott-cabinet-ofr-head>, accessed 7/1/18.

# Dimensions of Oversight

## Oversight Through Analytic Bureaucracies

Florida has several analytic bureaucracies that can provide information to the public and to the legislature about government programs. These include the Office of the Auditor General (OAG), the Office of Program Policy Analysis and Government Accountability (OPPAGA), the Office of Economic and Demographic Research (EDR), and to a lesser extent, the Commission on Ethics—which offers opinions on potential conflicts of interest in agency contracts. The EDR and OPPAGA are directed by the majority party leadership. They prioritize and report on matters that they are directed to examine by the leadership or else by statute (Interview Notes, 2018). However, the activity of the OAG is directed by the 13-member Joint Legislative Auditing Committee.<sup>7</sup>

The OAG is constitutionally established in Article III, Sections 2 and 11.42 of Florida's Constitution. Florida provides extensive financial support for its OAG, appropriating \$36 Million in FY 2015 to support their work (NASACT, 2015). The OAG has a staff of 328 employees, of which 188 are CPAs. Only 22 are administrative and clerical support staff.

Florida's auditor general is appointed by the Joint Legislative Auditing Committee (JLAC) and confirmed by both legislative chambers<sup>8</sup> and assigned four primary duties: (a) conducting financial audits of state agencies, state universities and colleges, school boards, (b) establishing audit standards for CPAs in the state, (c) conducting audits of and review audits done by local government entities including public schools, charter schools and career centers, and (d) conducting operational and performance audits of public records and information technology systems. From July 2016 to June 2017, the OAG's office conducted slightly more than 200 financial and operational audit reports. Of these, 28 conducted during 2017 were audits of state agencies that appear to address program performance and operations. These are posted on its website under the categories "quality assessment reviews" and "operational audits."<sup>9</sup> The OAG's reports are distributed to the House speaker, president of the Senate, and the JLAC, which is a joint chamber committee.

The composition of the JLAC was originally established by chamber rule in 2014. It is described in the Joint Chamber Rule in 2016-2018<sup>10</sup> in section 4, which describes all of the legislature's Joint Committees. There are seven house members and six senators. The majority party has more members, currently seven Republicans and four Democrats. The committee website reports that there were five meetings in 2017—all in January and February.<sup>11</sup> The

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<sup>7</sup> <http://www.oppaga.state.fl.us/government/storgchart.aspx>, accessed 1/11/2018

<sup>8</sup> <https://flauditor.gov/>, accessed 7/25/17

<sup>9</sup> <https://flauditor.gov/pages/Reports.aspx>, accessed 2/2/19.

<sup>10</sup> <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/JointRules.pdf>, accessed 1/11/2018.

<sup>11</sup> [http://www.leg.state.fl.us/cgi-bin/View\\_Page.pl?File=index\\_css.html&Directory=committees/joint/Jcla/&Tab=committees&CFID=218654492&CF\\_TOKEN=ef103c75c3541542-062DB228-AFB0-F94A-3D3E01F89F7DE078](http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=index_css.html&Directory=committees/joint/Jcla/&Tab=committees&CFID=218654492&CF_TOKEN=ef103c75c3541542-062DB228-AFB0-F94A-3D3E01F89F7DE078), accessed 1/11/2018.

Legislative Auditing Committee (based on meeting information on its website)<sup>12</sup> votes on whether to accept the audit reports or not after a hearing on the audit report.

While the OAG is generally responsible for determining whether agency practices are compliant with statute, and that agencies are appropriately directing program resources, the Office of Economic and Demographic Research (EDR) is responsible for forecasting the future costs and revenues generated by programs. These forecasts include expected demographic changes as well as changes in agency workload. According to comments from senior staff with an appropriations committee, EDR reports are vital for and frequently used by partisan staff and members of the appropriations committees when drafting new appropriations bills as these reports allow the legislature to adjust program budgets to reflect shifting needs (Interview, 2018).

The Office of Program Policy Analysis and Government Accountability (OPPAGA), the state's final "major" analytic bureaucracy, was created in 1994. It derives its authority from a Joint Rule adopted by the Legislature on November 20, 2012.<sup>13</sup> The OPPAGA reports to the legislative chamber leaders directly, but the distribution of its reports includes members of the JLAC. Its staff consists of 42 professionals, primarily legislative analysts.<sup>14</sup> Currently the OPPAGA produces Policy Notes,<sup>15</sup> which is a free weekly newsletter with policy analysis and recommendations, gives presentations to the JLAC (according to the OPPAGA website), provides public access to these reports on its website, and provides podcasts for the public summarizing policy reports. It reports on programs in all areas of state government, focusing on program performance and the agency's general policy mission rather than financial auditing or revenue generation. It produced 14 reports on state agency performance during 2017.<sup>16</sup> Its website lists reports on the activities of state government that were presented to the legislature between December 2016 and April 2017. These presentations at committee meetings correspond to reports produced by the OPPAGA. PowerPoint slides that summarize these presentations are posted on the OPPAGA website.<sup>17</sup>

The OPPAGA was initially created with intention that the agency would, with the assistance of the fiscal committees, annually review and analyze performance data from all of Florida's executive agencies in accordance with the state's "Performance Based Budgeting" (PB2) initiative. The OPPAGA would then determine whether agencies were setting appropriate outcome/output goals, and then report whether agencies were achieving those goals to the legislature. To accomplish this weighty task, the OPPAGA had a relatively large staff of approximately 90 people in 2001 (Liner, et al. 2001). However, despite this capacity, the legislature was soon inundated with complicated data from state agencies, which legislators struggled to comprehend. Additionally, data gathered by agencies was often poorly suited for use as outcome/output measures for budget decisions and was generally gathered by agencies for other internal purposes (Interview, 2018). As a result, legislators quickly became frustrated with the PB2 performance metrics, and just three years after implementing PB2 they amended the law to no longer require direct legislative input on performance metrics. Since then, the legislature has continued to repeal pieces of the PB2 policy. Today, appropriations committees are not

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<sup>12</sup> <http://www.leg.state.fl.us/Data/Committees/Joint/JCLA/Meetingsummaries/022317.pdf>, accessed 1/11/2018.

<sup>13</sup> <http://www.oppaga.state.fl.us/>, accessed 1/11/2018.

<sup>14</sup> <http://www.oppaga.state.fl.us/shell.aspx?pagepath=staff/alpha.htm>, accessed 1/11/2018.

<sup>15</sup> <http://www.oppaga.state.fl.us/shell.aspx?pagepath=PolicyNotes/PolicyNotes.htm>, accessed 1/11/2018.

<sup>16</sup> <http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=29>, accessed 2/2/19

<sup>17</sup> <http://www.oppaga.state.fl.us/Presentations.aspx>, accessed 1/11/2018.

required to give performance measures any consideration at all, although the OPPAGA reports and performance metrics are occasionally, but not commonly, cited by legislators in appropriations committees (Interview, 2018). Additionally, comments from appropriations staff suggest that appropriations committees tend to rely predominantly on reports from the EDR rather than the OPPAGA, in part because of the relevance of EDR to the appropriations committees but also in part because these committees have a strong relationship with the EDR, particularly the EDR bureau chief who is well respected by committee staff (Interview, 2018).

The OPPAGA has continued to shift its own agency focus since the gradual rollback of PB2. Prior to the elimination in 2011 of the sunset review process, the OPPAGA also produced reports to support the legislature's efforts on this front.<sup>18</sup> Prior to 2014, the OPPAGA reviewed county school districts and provided reports describing the "Best Financial Management Practices" of school districts.<sup>19</sup> These reports were distributed to key members of the legislature, (i.e., the president of the Senate, the speaker of the House and the members of the JLAC), as well as the governor, commissioner of education, and the State Board of Education. However, the Florida legislature repealed the relevant statutes in both cases effectively terminating both the school district best practices reports and the sunset reviews. This change in the OPPAGA's jurisdiction underscores the potential impact of constitutional versus statutory authority with respect to oversight.

Today, the OPPAGA continues to act under the direction of legislative leadership to evaluate the five-year plans created by executive agencies, which are required to include broad performance outcome goals, and which are required to be in line with and reference the state-wide plan. Additionally, the OPPAGA performs ad-hoc evaluations of different programs when directed to by the legislature. These ad-hoc policy evaluations often require the OPPAGA to work closely and in concert with the other legislative support agencies, the OAG and the EDR, as was the case in 2018 when the OPPAGA completed reviews of the state lottery and the state's economic development initiatives (Interview, 2018). In 2017, the OPPAGA published 14 such reports. The OPPAGA's increasingly diminished role has meant that since 2001, the agency has had more than a 50% reduction in staff, from over 90 to a 42. It is interesting to note that in Liner et al. (2001), the authors argue that the then exceptional institutional capacity of the OPPAGA meant that Florida was better positioned to implement a highly effective PB2 program. That capacity no longer exists.

Lastly, the Florida Commission on Ethics, created in the 1974 constitutional reform, is an independent commission that also provides information to the legislature on financial disclosure laws, ethics laws, and executive branch lobbyists' registration, among other topics.<sup>20</sup> This commission oversees state contracts as well as monitors ethical conduct of public employees, such as following financial disclosure laws and the rules governing gifts, honoraria, and reporting and registration requirements for executive branch lobbyists.

The commission is a nine-member board of private citizens empowered to interpret and apply Florida's ethics laws. The governor appoints five of the nine members, with no more than three chosen from the same political party. The speaker of the House and the president of the Senate each appoint two members, one from each political party. None of the members can hold any public office, although one member must be a former local government official. Terms last

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<sup>18</sup> <http://www.oppaga.state.fl.us/shell.aspx?pagepath=sunset.htm>, accessed 1/11/2018.

<sup>19</sup> <http://www.oppaga.state.fl.us/districtreviews.aspx>, accessed 1/11/2018.

<sup>20</sup> <http://www.ethics.state.fl.us/AboutUs/History.aspx>, accessed 1/11/2018.

two years, and no member can serve succeeding terms. A 25-person staff of professionals assists the commission with its duties.

During 2016, the commission handled 220 complaints, determining that 132 of these complaints warranted investigations. The commission reports annually to the legislature. As part of this report,<sup>21</sup> the commission recommends legislative action to clarify and improve ethics laws in the state. For example, the commission recommended in 2016 that the legislature extend conflict of interest laws to employees and officers of private or non-profit organizations performing public functions, such as foster care services or community mental health services.

## Oversight Through the Appropriations Process

The appropriations process in the Florida Legislature includes a standing joint committee, the Florida Budget Commission and an appropriations committee in each chamber, with subcommittees attached. The state is required, as are most states to pass a balanced budget, which is called the General Appropriations Act (GAA). The governor initiates the process by presenting a budget to the legislature 30 days prior to the beginning of the legislative session. Appropriations committees meet during the interim to prepare for the budget process. During these interim hearings, agencies testify about their budget requests. Some budget hearings do not illustrate strong oversight, however.

The Senate Subcommittee Health & Human Services 12/12/18 held a one-hour hearing on December 12<sup>th</sup>, 2018,<sup>22</sup> in preparation for the governor's budget, which would be presented to the legislature in February. This subcommittee hearing appeared to be primarily a way to provide information to senators new to the subcommittee. All of the key agency heads of the departments under the jurisdiction of the committee presented reports on what they do. The chairman of the committee specifically referred to the oversight role the committee has and how the committee conducts that oversight. With over 42% of the state budget falling under the jurisdiction of the committee, Health & Human Services, he pointed out that oversight is a huge responsibility for the committee. The presentations encompassed things as simple as the agency's previous budget and changes the legislature had made to their programs and services. Senators throughout the hearing asked specific and pointed questions of agency heads regarding those changes. In particular the head of the state's Medicaid program was asked several questions about reimbursement rates and the overall growth and sustainability of the program. Senators were engaged and asking questions beyond the simplistic "What does your agency do?" type questions. Overall the hearing was an interesting "introductory course" to what the subcommittee does, with new and experienced senators asking insightful and penetrating questions of the all the key agency heads under the subcommittee's purview. Based on this committee hearing, it appears that Florida's senators recognize the need for them to conduct oversight through the appropriations process via subcommittee hearings.

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<sup>21</sup> <http://www.ethics.state.fl.us/Documents/Publications/2016%20Annual%20Report.pdf?cp=2018111>, accessed 1/11/2018.

<sup>22</sup> <https://thefloridachannel.org/videos/12-12-18-senate-appropriations-subcommittee-on-health-and-human-services/>, accessed 1/1/19

Another example of oversight activity in hearings is the Agriculture and Natural Resources Appropriations Subcommittee hearing on October 11<sup>th</sup>, 2017, in which staff from the Florida Fish and Wildlife Conservation Commission (FWCC) were asked by legislators about their nuisance gator bounties (1 hour 13 minute mark).<sup>23</sup> A bounty of \$30 has been paid by FWCC to contractors responding to citizen's nuisance gator complaints. There were approximately 9000 bounties paid in 2016. Legislators wanted to know whether the bounty was appropriate given the price a gator's skin and meat could fetch on the market and they wanted to know where the money came from to pay the bounties, since only enough was appropriated for 7000 of the 9000 total bounties. Staff answered that they did not know the answer to either question, but would create a report showing the sizes of the nuisance gators, which would give an indication of the gators value, and provide the accounting for the paid bounties.

The Florida Budget Commission, which consists of 14 legislators—seven from each chamber, meets during the interim to make any necessary adjustments to the state's budget. Party affiliation of the members reflects the proportion of seats each political party holds in the chamber. A list of prior commission meetings indicates that there are typically two meetings per year, generally during the summer.

At the July 19<sup>th</sup>, 2018<sup>24</sup> meeting, the commission approved 12 budget amendments for eight state agencies. The commission has the support of four staff members, who prepare 2 to 3 page fiscal summaries of the agencies' requests for additional funds. These documents for this meeting indicated that the governor recommended approval of all the requests. All the requests were approved by the commission. We did not find an archived recording of the commission, so it is not possible to determine the level of oversight exercised by the commission, but it appears that there is some interest in witnesses testifying and it does not appear that the commission merely rubber stamps these requests. The list of witnesses testifying includes primarily state agency staff and a few lobbyists—a total of 10, eight of whom appeared at the request of the chair of the commission.

Florida famously used a performance-based program budgeting system called PB2 that was adopted in 1994 through the Government Performance and Accountability Act. PB2, in its original form, required that requests for executive agency budgets by the governor include performance measures and standards. Approval of the output and outcome measures provides the legislature with an opportunity to exercise oversight through the budget process. Executive agencies are responsible for identifying reasonable performance measurements which the legislature can use to aid budget decisions. In addition to the strategies and objectives laid out in the agencies strategic plan these should include general performance measures, financial measures, program outputs, and program outcome measures (§216.0235). Currently, state agencies notify the governor and the legislature annually by the end of September that they have posted their long-range (five year) strategic plans on their website. Plans are required to include the program or agency's purpose, its strategy, its goals and objectives, and to link back to the state-wide strategic plan. Officially, this plan is the basis for the agency's budget request.

However, since PB2 was initially implemented, legislative approval of outcome measures is no longer required, and outcome/output measures utilized in the five-year strategic

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<sup>23</sup> [http://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804\\_2017101102](http://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2017101102) accessed 10/17/18

<sup>24</sup> <http://www.leg.state.fl.us/Data/Committees/Joint/JLBC/Actions/071918.pdf>, accessed 1/6/19

plans are generally broad. They are not specific enough to bind an agency or to foment partisan controversy (Interview, 2018). Additionally, in 2006, the Legislature created §216.1827 of the Florida Statutes, which separated budget appropriations and legislative approval of performance measures and standards. As such, legislators today tend to not fight over specific performance measures like they did when PB2 was first implemented between 1994 and 1997. Today, the legislature still utilizes a base-budget approach to appropriations where particularly salient programs or new programs are more likely to receive substantial appropriation increases regardless of performance metrics or long-term strategic plans (Interview, 2018). Expertise is crucial during appropriations committee meetings as the appropriation committee tends to be comprised of the senior members most of whom serve in key position on the standing committees (interview, 2018). But with term limits, legislators' expertise is not as extensive as it once was.

### Oversight Through Committees

The Florida Constitution empowers all legislative committees conducting an investigation to compel witnesses to testify and produce any requested documents (Florida State Constitution, Article 3, Section 5). Penalties for subpoenaed individuals who fail to comply include jail time. Despite dramatic media coverage<sup>25</sup> of a court battle regarding a legislative subpoena served to a TV personality who was alleged to have misused state tourism funds, a search of committee hearings did not uncover any legislative intervention. Comments from committee staff suggest that standing committees are involved in oversight, in that committee members develop significant substantive expertise during a long tenure on a committee (Interview, 2018). However, we have found no specific references to oversight in the substantive committee meeting minutes that we have examined.

On the other hand, the Senate Appropriations Committee is a standing committee, and it appears to conduct oversight outside of the appropriations process. The following hearing of the full Senate Appropriations Committee, held on January 18<sup>th</sup>, 2018,<sup>26</sup> demonstrates senators' willingness to engage in oversight. This hearing lasted nearly 2 hours and discussed the progress of the South Florida Water Management District's (SFWMD) on an Everglades restoration project. The project goals are to build canals and a 240,000 acre-feet of water in a southern reservoir to help manage discharge from Lake Okeechobee, prevent toxic algae blooms, move water through the drying Everglades, and build a water treatment plant to help remove nutrients from northern estuaries that help feed the algae blooms.<sup>27</sup> This project is estimated to cost \$1.6 billion. This project is enormously complex, expensive, and involves cooperation between state agencies like the SFWMD, and Department of Environmental Quality and federal agencies like the EPA & Army Corps of Engineers. The appropriations committee was actively overseeing the SFWMD's progress. In particular, the Senate committee heard testimony from the director of the

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<sup>25</sup> [http://www.nwitimes.com/news/national/emeril-tv-producer-fighting-subpoena-from-florida-house/article\\_413272e5-2133-571b-892f-b609346edd50.html](http://www.nwitimes.com/news/national/emeril-tv-producer-fighting-subpoena-from-florida-house/article_413272e5-2133-571b-892f-b609346edd50.html), accessed 1/18/2018.

<sup>26</sup> <https://thefloridachannel.org/videos/1-18-18-senate-appropriations-committee/> accessed 1/2/19

<sup>27</sup> <http://www.wlrn.org/post/preparations-begin-new-everglades-reservoir-project>, accessed 1/2/19

SFWMD, Ernie Marks about the progress towards establishing reservoirs to handle the water flow through the Everglades.

The hearing focused on issues related to the efforts to acquire the necessary land to construct the reservoir and the timeline for construction. Senators asked fairly detailed questions about the models and the science behind those models the SFWMD used when constructing their reservoir plans. Also, issues of the time needed to get all the interconnected plans into place were raised. Director Marks lamented that he had been unable to engage the federal government, specifically the Army Corps of Engineers, when constructing the plans for the restoration, prior to the statutorily required review period by the Corps. While this would not delay the implementation of the plans, earlier involvement by the Corps could prevent delays further down the line when the Corps reviews and either approves the plans or demands changes to the plans, resulting in further delays. Senators asked several questions about the potential to speed up the process, since Florida has been working on restoration of the Everglades for nearly 2 decades. Senators expressed concerns over the project potentially taking over a decade to complete and many wanted to see the process implemented sooner.

This reservoir project is enormously complex and expensive and most senators asked questions beyond the “explain this to me” type line of questioning. Interestingly, there was no mention or questions relating to the cost of the project. Since this was an appropriations committee hearing, one might have assumed that the fiscal costs of this project would be raised. But the actions of the committee can be termed as oversight of a previously funded project. The focus was on monitoring the management and implementation of the project in all components, not just the fiscal components. This hearing occurred during the interim and indicates that the appropriations committee engages in oversight of state projects, not just hearings to produce a budget bill.

The JLAC considers audit reports and findings as well as receiving information about non-compliance with audit recommendations. The report on entities that did not comply with audit recommendations consists entirely of school districts, special districts, local governments, and boards. The report lists actions that the JLAC can take if it is not satisfied that the entity is trying to comply with the recommendations, including the power to “[d]irect the Department of Financial Services and the Department of Revenue to withhold selected state revenue.”<sup>28</sup> The OAG also provided the committee with the number of repeat audit findings for each of these entities to aid the committee in its decision about taking action. JLAC meetings also include approval of requests for audits from members of the legislature and assignments given by the committee to the OPPAGA to examine the performance of public entities. The most interesting feature of these committee meeting summaries<sup>29</sup> is the extent to which oversight and monitoring are directed toward local governments, special districts, boards, commissions, and other entities rather than state executive branch agencies. So, although the JLAC appears to be actively monitoring the finances and performance of state government writ large, its efforts to overseeing the executive branch appear limited.

An example of this type of local government oversight occurred during the December 7<sup>th</sup>, 2017 JLAC hearing in which legislators adopted a motion to further monitor the town of

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<sup>28</sup> [http://www.leg.state.fl.us/cgi-bin/View\\_Page.pl?File=AuditsNot.cfm&Directory=committees/joint/Jcla/&Tab=committees](http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=AuditsNot.cfm&Directory=committees/joint/Jcla/&Tab=committees), accessed 7/1/18.

<sup>29</sup> <http://www.leg.state.fl.us/Data/Committees/Joint/JCLA/Meetingsummaries/120717.pdf>, accessed 7/1/18.

Caryville for non-compliance in failing to provide financial records (44 minute mark).<sup>30</sup> The town of 293 people and a yearly budget of approximately \$150,000 has been non-compliant repeatedly and has already lost \$38,000 in state funds as a result. The town is severely distressed, having moved after being destroyed by a 1994 hurricane and subsequently been investigated by FEMA for misallocation of funds. Legislators debated next steps, including loaning money to the town to pay for the creation of the financial report, providing the town with more assistance, or dissolving the town. Audit staff answered legislators questions about what would help ensure compliance and also informed the process procedurally, in particular stating that it was out of the JLAC's scope to pass a motion dissolving the town. No one from the town attended the hearing. Ultimately the motion to further monitor the town with deadlines to produce the financial reports passed with 8 ayes and 3 nays.

Although JLAC is contributing to general accountability in the State of Florida by monitoring these local entities, it does not appear that the committee focuses as much attention on the performance of state agencies. Additionally, the substantive standing committees have no direct control over any legislative analytic bureaucracies, or agencies in general, and so are prevented from acquiring audits of state agencies under their jurisdiction without first coordinating with the chamber leaders or the JLAC. As such, the substantive standing committees in Florida do not appear to engage in oversight beyond their regular bill-passing authority. An inspection of the expanded agenda for 10 meetings of the Senate Committee on Governmental Oversight and Accountability for the 2017-18 session found no evidence that this committee used, mentioned, or discussed any audit reports or reports from other analytic support agencies. Most of the oversight we found for standing committees appears to involve the appropriations committees' work outside the budget process. These committees appear to do more than just pass a budget, and they appear to play an important role in legislative oversight.

## Oversight Through the Administrative Rules Process

Florida uses a single legislative oversight process to oversee both the promulgation of new rules as well as the continued review of existing rules. The task of reviewing agency rules and procedures falls to the Joint Administrative Procedures Committee (JAPC). The primary focus is to prevent executive branch agencies from exceeding the authority delegated to them by the legislature. The JAPC is a joint standing committee of the legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature<sup>31</sup> that implement Chapter 12 of the Florida Statutes, the Administrative Procedures Act. To maintain consistency between laws and administrative rules, the JAPC is charged with "the continuous review of agency rules." In keeping with this mission, the JAPC performs an annual review of all changes in legislation and determines what rules may be affected by said changes. In this capacity, the JAPC is tasked with regularly consulting with, and making recommendations to, the standing legislative committees with jurisdiction over the rules proposed by executive branch agencies. The JAPC may object to an existing agency rule as a result of new legislation, or to a new rule that is not compliant with an existing statute.

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<sup>30</sup> <https://thefloridachannel.org/videos/12-7-17-joint-legislative-auditing-committee/> accessed 10/17/18

<sup>31</sup> <http://www.flsenate.gov/Session/Bill/2016O/0002O/BillText/er/PDF>.

Additionally, individual citizens have the power to initiate a formal challenge to a rule. The Administrative Procedures Act specifies that “[t]he Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section.”<sup>32</sup> Although this seems like it enhances government responsiveness, the opportunities for objections from individual citizens could serve as a mechanism for special interests to apply continued pressure against regulation through regular challenges; not just to the promulgation of new rules, but even long existing rules in addition to providing uncommon opportunities for special interests to intervene in rulemaking

If the JAPC objects to an agency rule, the agency must modify or withdraw the rule. If it does not, the JAPC can, through the President of the Senate and the House speaker, submit legislation to resolve its objection to the rule. Additionally, with consent from the president of the Senate and the House speaker, the JAPC can request judicial review of an administration rule. The constraints on agency rulemaking are extensive and provide JAPC with many opportunities to object to a rule. For example, agencies are required to demonstrate that their rules and proposed rules do not unduly burden small businesses, small cities, and small counties. Moreover, the cost of regulatory rules on business competitiveness and economic development must be assessed. If these costs are too high, the agency must modify or rescind the rule.

The majority Republican legislature recently sided with Gov. Rick Scott in his effort to “sign executive orders to freeze job-killing regulations,” and effectively sided against the State Supreme Court, which ruled in *Whiley v. Scott* that the governor could not unilaterally “suspend” existing rules and procedures that have been previously approved by the state legislature, thus protecting the legislatures institutional interests. This odd concession of institutional power came in 2010 when, in an attempt to fulfill a popular campaign promise, newly-elected Gov. Scott issued executive orders which temporarily prevented any executive agencies from enacting any new rules and formed the Office of Fiscal Accountability and Regulatory Reform (OFARR). The OFARR was then tasked with approving all new rule changes and with suspending existing “job killing regulations” (with a specific emphasis on the campaign trail on insurance regulations). However, the State Supreme Court, in *Whiley v. Scott*, dealt a blow to the governor by ruling that he and OFARR could not suspend existing regulations. It may not be in the legislature’s interests not to have rules it has previously approved unceremoniously stricken from the books in favor of rules which have not yet received legislative approval. Yet, the majority Republican legislature sided with the Republican governor in the wake of *Whiley* by passing HB 7055 in 2012, which effectively rewrote chapter law, further centralizing rulemaking authority around the governor and allowing for the unilateral suspension of agency rules.<sup>33</sup>

## Oversight Through Advice and Consent

Florida requires Senate confirmation of numerous appointments to boards and commissions. Confirmation requires a vote by a majority of senators. Failure to act on an

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<sup>32</sup> [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0100-0199/0120/0120.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0120/0120.html) Section 120.536, Item 3, accessed 8/2/17.

<sup>33</sup> <http://www.forc.org/Public/Journals/2012/Articles/Summer/Vol23Ed2Article3.aspx>.

appointment means that the appointee is not confirmed. Rosenthal and Moakley (1984) note that some boards and commissions delegate governing autonomy to agribusiness or tourism, among other special interests. For example, they describe the Florida Citrus Board, whose members are appointed by the governor subject to Senate confirmation, as “self-governing, self-taxing, and self-regulating,” based on a statute that created it.

During 2017, there were 206 appointments that required Senate confirmation. Of these, 23 appointees failed to receive confirmation. Examples of some of the positions for which nominees were rejected include the State Retirement Commission, the Secretary of Business and Professional Regulation, the Barber’s Board (two of three failed), governing boards of various regional water management districts (nine of twelve appointments were not confirmed), and the Florida Building Commission (one of two failed). In 2016, even more appointments—357 in total—required Senate confirmation, of which the Senate failed to confirm 40. Similar, but less common than gubernatorial appointments, are gubernatorial suspensions—the removal of an appointed officer from office—which are initiated via executive order and require the consent of the state Senate.

Florida’s senators, more than many other states’ legislators, appear to take their advice and consent power over gubernatorial appointments seriously. That said, they also have many more opportunities to exercise this power given the hundreds of appointees in the state.

The Florida legislature plays a mixed role in the oversight of gubernatorial executive orders. Much of the discussion of executive orders involves emergencies such as the Zika outbreak or hurricane evacuations. Here, the legislature also plays little or no role in oversight. The legislature does, however, play a role in agency reorganization and the continuing existence of boards and commissions. But its role remains secondary to the executive branch.

The governor has the authority to create agencies, boards, and commissions as he or she sees fit without confirmation by the legislature, and may reorganize the executive branch by simple executive order (Perkins, 2017). The legislature is tasked with reviewing agency performance and the continuing need for boards and commissions with a mission to “sunset” these entities when needs change. However, the executive branch appears to have even wider latitude in consolidating and eliminating agencies, boards, and commissions.

## Oversight Through Monitoring of State Contracts

Authority to oversee agency procurement is largely centralized within the executive branch. In most cases, agencies are required to undergo a competitive procurement process which is overseen by the Department of Management Services, an executive agency that reports to the governor. The legislature has very limited tools by which it may monitor agency contracts. One such available tool is the financial audit.

As noted earlier, the Commission on Ethics oversees state contracts. This commission reports to the legislature and makes recommendations. However, its authority appears to be limited to conflicts of interest. Despite this, comments from appropriations staff suggest that there may at least be some “informal” mechanism of oversight, at least in the cases of extreme and apparent procurement maleficence, as appropriations staff routinely discusses these issues during budget deliberations (Interview, 2018).

## Oversight Through Automatic Mechanisms

Florida, in 1976, was one of the first states to implement a comprehensive sunset law; a law which required the legislature to review all its laws after a period of time. The Office of Program, Policy Analysis and Government Accountability (OPPAGA) was responsible for performing regular reviews of existing law and providing a detailed report to the full chambers of the legislature, which then choose whether or not to renew the law. However, as was the case with the other comprehensive good government reforms, the state legislature chafed under the added demands (interview, 2018), and in 2011 the legislature repealed its sunset provisions (Baugus and Bose, 2015). While Florida no longer has a sunset mechanism, it does, as previously mentioned, have an extensive sunrise mechanism in place for administrative rules, which invites substantial input from special interests.

## Oversight Unique to the State or Uncommon Across States

The involvement of the legislature in oversight appears to be a reaction to the power of special interests in the state. Yet, the major career paths of state legislators indicate that many of them hail from the construction industry and real estate, so they may have close ties to these industries. While many state legislatures are dominated by members of the legal profession, 63% of Florida's state legislators in the 1980s had backgrounds in business. Consequently, Florida has adopted financial disclosure regulations to try to monitor its state legislators. But, it appears there is a major battle between special interests and the public interest.

Sometimes oversight by Florida's state legislature appears to empower dominant industries in the state to block government action on behalf of citizens. For example, the power of the legislature to force repeal of administrative rules that are deemed too costly for economic development and business competitiveness provides a mechanism to weaken statutes intended to preserve the ecosystem, the water system, the air or other public goods. Some of this occurs when individual citizens, who are empowered to trigger rule review hearings, protest the effect of a rule. At first glance, this appears like democracy in action, but this also provides a forum for individual citizens with corporate connections to launch the challenge.

A different example is provided by Rosenthal and Moakley (1984) who emphasize the power of special interests and lobbying in Florida government. These authors describe efforts by the tourist industry in the 1970s to bring Disney World to Florida. The legislature and executive branches collaborated in the creation of a special, self-governing district covering tens of thousands of acres of land across three counties. Each landowner gets to vote on district decisions based on the number of acres he or she holds—1 vote per acre. The Disney Corporation owns 95% of the land in the district, allowing the Disney Corporation to do whatever it wants with the land. The nature of this, and other special districts, may explain the heavy emphasis in the JLAC on audits of the boards and commissions.

## Methods and Limitations

We were able to interview four of the 10 people that we contacted for interviews. Florida does not have easily accessible archived recordings of its committee hearings. Although some hearings are available on the legislature's website, many of the recordings are only available through The Florida Channel, a public access stations that includes numerous broadcasts of information of interest to Florida citizens. This makes it very difficult to find a specific hearing on a specific date. It was, therefore, hard to follow lines of oversight inquiry. This made it difficult for us to verify the extent to which Florida legislators use their power to conduct oversight.

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