



WAYNE STATE UNIVERSITY

Center for Urban Studies

# Legislative Oversight in Georgia

## Capacity and Usage Assessment

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

## Summary Assessment

Georgia’s legislature has exceptionally strong oversight powers in a few key areas (especially administrative rules review), but it appears to make very limited use of some of these powers. Moreover, Georgia’s legislature lacks several prerogatives that most other states possess, such as confirmation of gubernatorial appointees. We found evidence that oversight through the appropriations process is robust, but evidence of oversight through standing committees is far more limited.

## Major Strengths

The Georgia Department of Audits and Accounts appears to conduct high quality performance audits, despite recent budget cuts and staff reductions. It has a separate Performance Audit Division. Moreover, the appropriations committees appear to make effective use of this information. Legislators have an opportunity to request audits. Therefore, they are often eager to hear about and use the findings. The legislature has some sunset review prerogatives through standing committees, but these do not appear to be used extensively.

## Challenges

There is no committee specifically responsible for audit reports or linked with the audit division. Consequently, outside of the appropriations process, there does not appear to be much committee time or attention paid to these audits. Despite having a short legislative session, Georgia does not appear to have a well-developed interim committee system, which we found to be active in oversight in many western states that have similarly short legislative sessions. Therefore, the time available for legislators to probe the performance of state agencies is more

limited than it is in other part-time legislatures. Similarly, there is no dedicated committee responsible for administrative rules review, which is quite common in other states (e.g., Joint Committee of Administrative Rules or other similar committee). This may contribute to the apparent limited use of the legislature's prerogatives in this area. The legislature lacks the power to oversee gubernatorial appointments given that there is no requirement for senate confirmation for the vast majority of department heads and other top executive branch officials. Likewise, the governor can reorganize government without legislative input.

## Relevant Institutional Characteristics

The Georgia Legislature consists of 56 senators and 180 representatives.<sup>1</sup> The National Conference of State Legislatures (NCSL, 2017b) classifies Georgia's legislature as a hybrid—the job takes more than two-thirds the time of a full-time job, but the pay typically requires a second job. The Squire Index, which measures professionalism using some of the aforementioned variables and other considerations, ranks the Georgia Legislature 42<sup>nd</sup> (Squire, 2017). Therefore, he judges Georgia's legislature to be among the 10 weakest in the nation.

The salary for a legislator is \$17,342, and when the legislature is in session, there is a per diem of \$173 set by the Legislative Services Committee.<sup>2</sup> Georgia's legislature is in session for 40 legislative days as stipulated in the constitution (NCSL, 2010). Therefore, legislators earn approximately \$24,000 per year for the regular session. The legislature was in session from January 8, 2018, through March 29, 2018, and the previous session was from January 9, 2017, through March 31, 2017.<sup>3</sup> The Georgia Legislature has the ability to call a special session (Richards, 2016)<sup>4</sup> if three-fifths of the members of each house sign a petition to the governor and copy the secretary of state.<sup>5</sup> The legislature has 742 staff members, 511 of which are permanent (NCSL, 2018). There are no limits on the number of terms, consecutive or otherwise, a legislator may hold.

The institutional power of Georgia's governor also is rated below average, 36<sup>th</sup> nationally (Ferguson, 2015). The governor is granted very few powers to make appointments in major functional areas, such as K-12, with many of these appointments being done by someone other than the governor and not requiring the governor's approval or confirmation. It is important to note that the legislature is also out of the loop on these appointments, lacking any power to confirm or reject these appointees. The governor's overall institutional powers are somewhat buoyed by the significant powers in creating the budget. Georgia is one of seventeen states that give the governor full responsibility for creating the budget, and the legislature may not increase the governor's overall revenue estimates if it makes any modifications to the proposed budget. The governor has a line-item veto authority. Moreover, the legislature must muster a two-thirds vote to override a gubernatorial veto.

Georgia's state and local government employees make up 11.9% of total employment in the state. Although this has only slightly higher proportion of state and local government

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<sup>1</sup> [https://ballotpedia.org/Georgia\\_General\\_Assembly](https://ballotpedia.org/Georgia_General_Assembly) accessed 8/29/18.

<sup>2</sup> [https://ballotpedia.org/Comparison\\_of\\_state\\_legislative\\_salaries](https://ballotpedia.org/Comparison_of_state_legislative_salaries), accessed 11/20/18.

<sup>3</sup> [https://ballotpedia.org/Georgia\\_General\\_Assembly](https://ballotpedia.org/Georgia_General_Assembly) accessed 8/29/18.

<sup>4</sup> <https://www.11alive.com/article/news/lawmakers-no-special-session-for-veto-override-please/112544490>, accessed 8/29/18.

<sup>5</sup> <http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx>, accessed 8/29/18.

employees than the national figure of 11.3%, it is higher 32 other states. It is the education sector that produces Georgia's higher proportion of state and local government employment; 6.8% for Georgia compared to 6.1% nationally. The remaining proportions are nearly identical to the national proportions: 1.8% is employed in public safety, 1.5% in welfare, 1.2% in general services, and .7% in other sectors (Edwards, 2006).

## Political Context

In the last 50 years, Georgia's legislature experienced a long period of Democratic control followed by divided government beginning in 2002 and then, starting in 2004, Republican control of both chambers (NCSL, 2017a). The governor's party mirrors the partisan control found in the legislature with the election of Republican Governor Sunny Purdue in 2003, marking a shift from Democratic control that had lasted over fifty years (NGA, 2017). Georgia has been a Republican trifecta (control of both houses and governorship by the same party) since 2005.<sup>6</sup> The house is currently comprised of 64 Democrats, 115 Republicans, with one vacancy<sup>7</sup> while the senate is comprised of 19 Democrats and 37 Republicans.<sup>8</sup> According to Shor and McCarty (2015), Georgia's house is the 16<sup>th</sup> most polarized in the country, while its senate is the 12<sup>th</sup> most polarized.

## Formal Mechanisms of Oversight

### Oversight Through Analytic Bureaucracies

The primary legislative analytic bureaucracy in Georgia is the Department of Audits and Accounts (DOAA). The head of DOAA is the state auditor, a statutory position (Georgia Code, 50-6-1). Although the state auditor is formally considered an executive branch official, he or she serves at the pleasure of the legislature.<sup>9</sup> The Georgia State Auditor is chosen by the Georgia General Assembly from among the qualified candidates nominated by members of the legislature with a majority vote of both chambers needed for confirmation (Georgia Code, 50-6-1). Qualifications for the position include at least five years of experience in government auditing. In the event that the state auditor resigns while the legislature is not in session, the governor appoints a state auditor until the legislature reconvenes, a situation that occurred in 2012.<sup>10</sup> The governor's appointee was confirmed by the legislature in the following session. We were told that, although the process for removal of the state auditor is not specified in statute, and the legislature has not yet attempted to remove a sitting state auditor, the assumption is that the legislature would simply appoint a successor to replace the sitting state auditor (interview notes 2018).

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<sup>6</sup> [https://ballotpedia.org/Party\\_control\\_of\\_Georgia\\_state\\_government](https://ballotpedia.org/Party_control_of_Georgia_state_government), accessed 8/29/18.

<sup>7</sup> [https://ballotpedia.org/Georgia\\_House\\_of\\_Representatives](https://ballotpedia.org/Georgia_House_of_Representatives), accessed 8/29/18.

<sup>8</sup> [https://ballotpedia.org/Georgia\\_State\\_Senate](https://ballotpedia.org/Georgia_State_Senate), accessed 8/29/18.

<sup>9</sup> [https://ballotpedia.org/Georgia\\_State\\_Auditor](https://ballotpedia.org/Georgia_State_Auditor), accessed 8/29/18.

<sup>10</sup> <http://www.audits.ga.gov/AdminDiv/BioGregGriffin.html>, accessed 8/29/18.

DOAA offers a variety of work products and services to the legislature. The Performance Audit Division (PAD) is a unit within DOAA chiefly responsible for performance audits. In 2018, DOAA listed a total of 18 professional contacts on their website, including four professional staff contacts for PAD.<sup>11</sup> A staff of twenty-six is allocated to performance audit (NASACT, 2015), a decrease of five from the 31 PAD positions listed in the DOAA annual report for 2012, the last annual report posted on the website.<sup>12</sup> NCSL survey data indicate that the PAD dedicates 100% of their activity to performance audits, program evaluations, and policy analyses (NCSL Survey Retrieved from Database).<sup>13</sup> PAD describes its work as “focusing on holding government accountable by determining whether goals are met, measurable outcomes achieved, and ensuring government is complying with applicable rules.”<sup>14</sup> Its staff considers itself management analysts rather than financial auditors (PAD).<sup>15</sup> PAD produced 10 performance audits in 2017.<sup>16</sup> This is a substantial decline from the 20 performance audits PAD completed in 2012, the last year for which an annual report is posted on its website.<sup>17</sup> It would appear that resources for PAD have been reduced during the past several years. Indeed, the DOAA reported major budget cuts for several years in response to a survey question about recent changes experienced (NASACT, 2015).

DOAA provides audits of financial statements, statewide federal single audits, attestation engagements, compliance only audits, economy and efficiency audits, program audits, IT audits, Accounting and Review Services, and desk reviews (NASACT, 2015). In addition to PAD, DOAA has three other divisions: Audit and Assurance Services, Equalized Property Tax Digest, and Internal Operations. The DOAA provides the legislature with services often provided by a separate fiscal analysis agency, including fiscal notes on bills and state retirement account information. The DOAA “issue[s] approximately 150 retirement certifications and 50 summaries of actuarial investigations.”<sup>18</sup>

The 2015 NASACT report, *Auditing in the States*, indicates that DOAA audits are selected by law or rule, by the governor, legislators, agency management, or by the state auditor. However, according to PAD’s website, they decide whether to conduct a performance audit or evaluation based on request from key figures:

We select topics from a variety of sources. The programs and activities to be audited are selected by the State Auditor and reviews may be requested by individual legislators, the Governor, or agency management. Our reports cover a wide array of programs and activities encompassing any program or activity that receives state funding (Performance Audit Division).<sup>19</sup>

The key word here is “select.” Audits that are not legally mandated sometimes have a requesting source, but it is not necessary for the DOAA to respond to these requests. Thus, ultimately, the state auditor decides which of these audits to schedule (interview notes, 2018). In

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<sup>11</sup> <http://www.audits.ga.gov/Contacts/contact.html>, accessed 8/29/18.

<sup>12</sup> [http://www.audits.ga.gov/files/2012\\_Annual\\_Report.pdf](http://www.audits.ga.gov/files/2012_Annual_Report.pdf), accessed 11/23/18.

<sup>13</sup> [nctl.org/Portals/1/Documents/nlpes/NLPESEnsuringThePublicTrust2015\\_3.pdf](http://nctl.org/Portals/1/Documents/nlpes/NLPESEnsuringThePublicTrust2015_3.pdf), accessed 8/29/18.

<sup>14</sup> <http://www.audits.ga.gov/PAO/PAOdivision.html>, accessed 1/14/19.

<sup>15</sup> <http://www.audits.ga.gov/PAO/PAOdivision.html>, accessed 1/14/19.

<sup>16</sup> <https://www.audits.ga.gov/rsaAudits/viewMain.aud> accessed 8/16/18.

<sup>17</sup> [http://www.audits.ga.gov/files/2012\\_Annual\\_Report.pdf](http://www.audits.ga.gov/files/2012_Annual_Report.pdf), accessed 11/23/18.

<sup>18</sup> <http://www.audits.ga.gov/legislativeServices.html>, accessed 8/29/18.

<sup>19</sup> <http://www.audits.ga.gov/PAO/PAOdivision.html>, accessed 1/14/19.

addition, audits are published only at the state auditor's discretion (interview notes, 2018). Neither the DOAA nor PAD is attached to a single legislative committee. Each state audit report includes an explanation of its origin, often citing a legislative committee request or a governor's office request. For example, the 2017 *State Workers' Compensation* audit was requested by the Senate Appropriations Committee.<sup>20</sup>

Implementing audit recommendations is the responsibility of the legislature or of the audited agency. In the case of the former, the main transmission belt from DOAA or PAD is the report itself. We are told that legislative money committees or subject matter jurisdiction committees may or may not hold hearings on an audit (interview notes, 2018). For example, the performance audit titled, *Math and Science Salary Incentives for Teachers*,<sup>21</sup> was discussed at the House Education Committee and Senate Education and Youth Committee (interview notes, 2018). We found many cases of DOAA reports being used during legislative oversight through the appropriations process, which will be discussed further in that section. Agencies often voluntarily adopt recommendations. These adoptions typically take on the form of changes in policy through discussion with PAD, and these proposed actions are typically described in the audits themselves. Follow-up reviews by PAD are common, accounting for three of the 10 audit reports created in 2017.<sup>22</sup> These reviews include a comparison of the PAD recommendation to agency's corrective action along with comments from the agency.<sup>23</sup> For recommendations in financial audits, the corrective action plan<sup>24</sup> produced by the agency is also filed with the state accounting office.<sup>25</sup>

In addition to DOAA, each chamber has offices to assist with the budget and research: House Budget and Research Office<sup>26</sup> (17 staff),<sup>27</sup> Senate Budget and Evaluation Office<sup>28</sup> (eight staff),<sup>29</sup> and the Senate Research Office<sup>30</sup> (seven staff).<sup>31</sup> These offices provide the legislature with research capacity,<sup>32</sup> committee staffing, bill summaries, and capacity<sup>33</sup> to develop the annual budget.<sup>34</sup> Each of these offices attempts to provide the legislature with the capacity to be data and information driven in their approach to the budget and policy.

## Oversight Through the Appropriations Process

Georgia produces an annual budget. The budget process is initiated by the governor, who works with the state economist and the Office of Planning and Budget (OPB) to determine an estimate for revenues and budget needs. This estimate determines the budget instructions that are

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<sup>20</sup> <https://www.audits.ga.gov/rsaAudits/download/20763>, accessed 8/29/18.

<sup>21</sup> <http://www.open.georgia.gov/openga/report/downloadFile?rid=18643>, accessed 1/14/19.

<sup>22</sup> <https://www.audits.ga.gov/rsaAudits/viewMain.aud>, accessed 1/14/19.

<sup>23</sup> <http://www.open.georgia.gov/openga/report/downloadFile?rid=21362>, accessed.

<sup>24</sup> <http://www.audits.ga.gov/Resources/stateGovResources.html>, accessed 1/14/19.

<sup>25</sup> <https://sao.georgia.gov/federal-compliance-reporting#sar-audit>, accessed 1/14/19.

<sup>26</sup> <http://www.house.ga.gov/budget/en-US/default.aspx>, accessed 8/29/18.

<sup>27</sup> <http://www.house.ga.gov/budget/en-US/hbroStaff.aspx>, accessed 8/29/18.

<sup>28</sup> <http://www.senate.ga.gov/sbeo/en-US/Home.aspx>, accessed 8/29/18.

<sup>29</sup> <http://www.senate.ga.gov/sbeo/en-US/StaffListing.aspx>, accessed 8/29/18.

<sup>30</sup> <http://www.senate.ga.gov/SRO/en-US/Home.aspx>, accessed 8/29/18.

<sup>31</sup> <http://www.senate.ga.gov/sro/en-US/SenateResearchStaff.aspx>, accessed 8/29/18.

<sup>32</sup> <http://www.senate.ga.gov/sro/en-US/Home.aspx>, accessed 8/29/18.

<sup>33</sup> <http://www.house.ga.gov/budget/en-US/default.aspx>, accessed 8/29/18.

<sup>34</sup> <http://www.senate.ga.gov/sbeo/en-US/Home.aspx>, accessed 8/29/18.

communicated to agencies, usually in July.<sup>35</sup> These agencies produce budget requests based on the instructions and submit them to the OPB, House Budget and Research Office, and the Senate Budget and Evaluation Office by September 1.<sup>36</sup> According to the Georgia Constitution, The governor's budget must be submitted to the legislature within five days of the Georgia General Assembly convening in January (Digby, 2018).<sup>37</sup>

Once the budget is submitted to the legislature, committees review the budget and agency budget requests with the assistance of the House Budget and Research Office, the Senate Research Office, and the Senate Budget and Evaluation Office. The House Appropriations Committee<sup>38</sup> and the Senate Appropriations Committee<sup>39</sup> perform these activities separately with each committee relying on a substantial number of subcommittees.<sup>40</sup> Archival video recordings of the House Appropriations Committee<sup>41</sup> demonstrate that hearings are held frequently and include testimony from the public<sup>42</sup> and from agency staff and officials.<sup>43</sup> Legislators occasionally engage the officials with questions. The 2017 house archive shows that during the regular session, subcommittees held 47 hearings.<sup>44</sup> The full House Appropriations Committee held eight hearings in 2017. The 2017 archive shows that there were also pre-session meetings by six house appropriations subcommittees, each meeting lasting one or two hours long. For example, the House Appropriations Economic Development Subcommittee held two pre-session hearings on January 4, 2017, each lasting two and a half hours in which officials from a variety of agencies made presentations including, but not limited to, the Georgia Department of Economic Development, Georgia Ports Authority, Georgia World Congress Center Authority, Georgia Agricultural Exposition Authority, Georgia Soil and Water Conservation Commission, State Road and Tollway Authority, and the Regional Transportation Authority.<sup>45,46</sup> Most of time spent in these two sessions was consumed by presentations by leaders from the agencies or authorities. Legislators asked very few questions during these hearings, with a notable exception being questions directed at the official from the Georgia Regional Transportation Authority about specific operating costs, the relationship between usage of express bus coaches and road congestion, and the expansion/maintenance of the express bus coaches (two hour and 10-minute mark).<sup>47</sup>

The Georgia House of Representatives is responsible for introducing any appropriations bills that amend the governor's budget, but these appropriations bills may not exceed the governor's estimated revenues. Each chamber passes an amended and general fiscal year budget

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<sup>35</sup> <https://georgia.gov/blog/2014-02-10/how-does-georgia%E2%80%99s-budget-work>, accessed 8/29/18.

<sup>36</sup> <http://www.house.ga.gov/budget/Documents/GABudgetCycle.pdf>, accessed 8/29/18.

<sup>37</sup> <https://www.georgiaencyclopedia.org/articles/government-politics/state-budgeting>, accessed 8/29/18.

<sup>38</sup> <http://www.house.ga.gov/Committees/en-US/committee.aspx?Committee=88&Session=25>, accessed 8/16/18.

<sup>39</sup> <http://www.senate.ga.gov/sbeo/en-US/AppropriationsCommittee.aspx>, accessed 8/16/18.

<sup>40</sup> Senate Subcommittees: Agriculture and Natural Resources, Community Health, Criminal Justice and Public Safety, Economic Development, Education, Fiscal Management and General Government, Higher Education, Human Development, Insurance, Judicial, Transportation

House Subcommittees: Economic Development, Education, General Government, Health, Higher Education, Human Resources, Public Safety, and Transportation.

<sup>41</sup> <http://www.house.ga.gov/Committees/en-US/CommitteeArchives88.aspx>, accessed 8/16/18.

<sup>42</sup> <https://livestream.com/accounts/19771891/events/6811947/videos/150225205>, accessed 8/16/18.

<sup>43</sup> <https://www.youtube.com/watch?v=m-clQ0cLTTc&feature=youtu.be>, accessed 8/16/18.

<sup>44</sup> <http://www.house.ga.gov/Committees/en-US/CommitteeArchives88.aspx>, accessed 8/16/18.

<sup>45</sup> <https://livestream.com/accounts/19771755/events/6810993/videos/145840412>, accessed 8/16/18.

<sup>46</sup> <https://livestream.com/accounts/19771755/events/6810993/videos/145852694>, accessed 8/16/18.

<sup>47</sup> <https://livestream.com/accounts/19771755/events/6810993/videos/145852694>, accessed 8/16/18.

that is reconciled in conference committee before it is sent to the governor. There were three conference committee hearings to resolve differences in appropriations bills passed by the house and senate in 2017.<sup>48</sup> Once the budget is passed by the legislature, the governor has 40 days after the legislative session ends to review the budget and may exercise line-item vetoes.

While the legislature has the ability to override gubernatorial vetoes and even call a special session to address appropriations vetoes, this kind of activity has not occurred in the last two years, despite plenty of opportunities. In 2018, the governor vetoed 21 bills on the last possible day to sign or veto legislation passed in the 2018 session (Campbell, 2018).<sup>49</sup> The current governor has exercised line-item veto authority. For example, in 2016, he used his line-item veto on \$809,900 of funds for the construction of seawall on land that his office determined was not owned by the state. The state was thus “prohibited from using general obligation debt to finance the project.”<sup>50</sup>

While the annual budget provides opportunities for the legislature to assert its priorities, a closer look at state spending on college tuition scholarships reveals a complex oversight environment informed by Performance Audit Division audits, legislation considered routinely by committees, and individual legislators fulfilling major campaign promises. In the past few years, there have been three story threads that have developed into an emerging issue frame as the result of PAD reports: Georgia Lottery Corporation (GLC) bonuses to its employees, Georgia Lottery Corporation business practices resulting in diminished funding for pre-kindergarten and post-secondary degree scholarships-- known as HOPE scholarships or Zell Miller scholarships, and overall cost shifting of higher education over the last decade from the public to individual students. In each case, varying degrees of legislative action have been taken. These threads taken together-- decline in lottery revenues earmarked for higher education scholarships and the increasing student-borne cost of higher education-- are shaping public debate most clearly in the 2018 Democratic Party's candidate for the governorship.

The first story deals with Georgia Lottery Corporation business practices that were flagged by PAD and corrected by legislative action. In 2010, the legislature learned \$1.9 million in bonuses were paid out to Georgia Lottery Corporation employees. In response, the legislature passed a law limiting the amount that could be paid in bonuses and as a result, bonuses were \$712,344 in 2016 (Shearer, 2017).<sup>51</sup>

The second story is written by State Senator Jack Hill and deals with follow-up audits on the Georgia Lottery Corporation (GLC) that found questionable business practices. The audits, produced by PAD at the request of at least the Senate Appropriations Committee, found that while the lottery legislation sets a goal that 35% of lottery proceeds would go to education, in 2016, only 25.5% went to education (Hill, 2017b).<sup>52</sup> Second, GLC relied on dubious market research to suggest that every one percent increase in payout would result in \$13.5 million in additional revenue. The audit found that the research lacked "statistically significant findings," omitted key variables, and was performed by a GLC subcontract, which "could be seen as a

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<sup>48</sup> <http://www.house.ga.gov/Committees/en-US/CommitteeArchives88.aspx>, accessed 8/16/18.

<sup>49</sup> <http://times-herald.com/news/2018/05/governors-veto-pen-gets-a-workout>, accessed 8/16/18.

<sup>50</sup> <https://gov.georgia.gov/press-releases/2015-05-11/deal-signs-2016-budget>, accessed 8/16/18.

<sup>51</sup> <http://onlineathens.com/local-news/2017-01-02/state-audit-questions-georgia-lottery-corporation-business-practices>, accessed 1/11/19.

<sup>52</sup> <http://www.savannahnow.com/effingham-now/2017-09-12/notes-senate-georgia-lottery-further-look>, accessed 8/29/18.

conflict of interest” (Hill, 2017a).<sup>53</sup> Third, while the law only mandates a payout of 45% of proceeds, payout was 65% in 2015. Fourth, the audit notes that subcontracting for marketing and market research equaled \$90 million and these contracts have not been rebid since 2002 (Hill, 2017a). Legislative action was considered in the form of SB 5,<sup>54</sup> which would require at least 26% of the net proceeds by 2018 and at least 30% by 2020 be transferred to the Lottery for Education Account. While ultimately the bill did not pass, it demonstrates legislative interest in audit findings. The conference committee hearing shows the floor debate and attempts by Senator Bill Cowsert to persuade the house to include the added language requiring the percentage targets, but the overwhelming concerns about technical difficulties, worries about over limiting the discretion of administrators, and calls for discussion in conference committee held the day.<sup>55</sup>

It is possible that GLC may experience increased monitoring in coming years in order to increase HOPE and Zell Miller scholarships. These reports are taking on new life by dove tailing with other reports out of PAD, which focus entirely on the costs of higher education. PAD stated that "historically, state appropriations were set to fund 75 percent of instruction costs and tuition rates were set at levels to fund the remaining 25 percent of the cost of instruction” (Trabrizi, 2017).<sup>56</sup> By 2011, the state appropriations were funding only 55% of instruction costs, leaving students to pick up the remaining 45%. In addition, non-instructional costs are ballooning. For example, fees for dining have grown at a rate double that of inflation (Downey, 2017).<sup>57</sup> The audit suggests the university system take measures to curb these costs, but the greatest overall contributor to the rising costs for students is the decline in state appropriations mostly in the form shrinking HOPE scholarships (Downey, 2017).<sup>58</sup> A local paper described a legislator’s approach as follows:

Fran Miller views the coming college affordability study as a possible first step on the road to need-based aid. He says creating such a program in a state where 17 percent of the population lives in poverty is vital for Georgia’s economic future. 'I don't think anybody's against it,' Millar said. 'It's just a question of where we're going to come up with money. We have to look at our priorities. I think we'll get there eventually,' he added, but said that any need-based program would likely have some kind of academic requirement, such as students needing to keep at least a 2.0 GPA (Butrymowicz & Kolodner, 2017).<sup>59</sup>

The creation of these audits has motivated some legislative action, but more effort will be needed to pass legislation or alter GLC practices. Legislative oversight of the GLC appears to be an important part of this effort, and it indicates that Georgia’s legislators do on occasion use

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<sup>53</sup> <https://www.savannahnow.com/effingham-now/2017-09-06/notes-senate-georgia-lottery-further-look>, accessed 11/28/18.

<sup>54</sup> <http://www.legis.ga.gov/Legislation/en-US/display/20172018/SB/5>, accessed 8/29/18.

<sup>55</sup> <https://www.youtube.com/watch?v=9C1dR253V44>, accessed 8/29/18.

<sup>56</sup> <http://georgiastatesignal.com/georgia-students-pay-high-fees-public-colleges-funding-cuts/>, accessed 8/16/18.

<sup>57</sup> <https://www.ajc.com/news/local-education/georgia-still-grappling-with-college-cost-quandary/15q3kP8euhZerGoeHA48SM/>, accessed 11/28/18.

<sup>58</sup> <http://www.ajc.com/news/local-education/georgia-still-grappling-with-college-cost-quandary/15q3kP8euhZerGoeHA48SM/>, accessed 8/16/18.

<sup>59</sup> <https://www.myajc.com/news/affording-college-georgia-getting-tougher/EquLCn7GSX7rxF9IXoRypI/>, accessed 8/30/18.



audit information to oversee state programs through the appropriations process. Overall, however, the limited questioning of agencies by legislators during appropriations hearings indicates that routine oversight of state agencies through the appropriations process lacks rigor.

## Oversight Through Committees

No single committee is charged with general oversight of the executive and not one single joint committee or one single committee in either chamber is charged with reviewing all performance audits (interview notes, 2018). Rather, subject matter jurisdiction committees are responsible for oversight in their area, and money committees are responsible for oversight of expenditures. A review of the committee roster<sup>60</sup> identified three committees that appeared to have some special role in oversight: Senate Government Oversight Committee, House Governmental Affairs, and House Budget and Fiscal Oversight. A closer inspection revealed that these committees were not engaged very actively in legislative oversight of the executive and do not appear to have the resources and capacity to do so.

Senate Government Oversight Committee<sup>61</sup> has key topic areas that include state purchasing and government programs.<sup>62</sup> This met three times in 2017: February 10, 2017 (three minutes), February 24, 2017 (13 minutes), and March 13, 2017 (32 minutes).<sup>63</sup> The issues discussed: changes to committee rules, an amendment to the Georgia Constitution that would allow faith based organization to receive public aid,<sup>64</sup> and a bill that would decrease the penalties for drivers who roll through a stop sign which included testimony from a Georgia Sheriff in support of the bill.

House Governmental Affairs is charged with overseeing operations of state, county, and municipal government. This committee met seven times in 2017.<sup>65</sup> The average meeting lasted for less than a half hour and most focused on election laws and cybersecurity. Most of the time in these was consumed by legislators presenting bills. We found only two examples of government officials presenting on pending legislation in 2017. House Governmental Affairs was responsible for HB 899, signed into law in 2018, which changed bidding requirements, making it possible for bidders to apply for a contract even if they lacked experience with the delivery method.<sup>66</sup> This would appear to weaken rather than strength requirements to insure good performance by state agencies and programs.

The House Budget and Fiscal Oversight met three times in 2017.<sup>67</sup> The first meeting dealt with organizational issues and voting on committee rules (22 minutes and 49 seconds).<sup>68</sup> The second meeting looked at alternative mechanisms for funding the state employees' defined benefit retirement system. This included two presentations, each from a governmental official: a staffer from the Employees Retirement System of Georgia and the Executive Director of the

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<sup>60</sup> <http://www.senate.ga.gov/COMMITTEES/en-US/Home.aspx>, accessed 8/16/18.

<sup>61</sup> <http://www.senate.ga.gov/committees/en-US/committee.aspx?Committee=130&Session=25>, accessed 8/16/18.

<sup>62</sup> <http://www.senate.ga.gov/SiteCollectionImages/Gove130.jpg>, accessed 8/16/18.

<sup>63</sup> <http://www.senate.ga.gov/committees/Documents/2017Minutes130.pdf>, accessed 8/16/18.

<sup>64</sup> <http://www.legis.ga.gov/Legislation/en-US/display/20172018/SR/105>, accessed 8/16/18.

<sup>65</sup> <http://www.house.ga.gov/Committees/en-US/CommitteeArchives92.aspx>, accessed 8/16/18.

<sup>66</sup> <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/899>, accessed 8/16/18.

<sup>67</sup> <http://www.house.ga.gov/Committees/en-US/CommitteeArchives126.aspx>, accessed 8/16/18.

<sup>68</sup> <https://livestream.com/accounts/19771738/events/6811894/videos/147684643>, accessed 8/16/18.

Teachers Retirement System of Georgia (one hour, six minutes, and four seconds).<sup>69</sup> Legislators questioned the presenters about the options and stated some of their policy preferences. The third meeting examined unfunded mandates. Information provided included an internal report by the legislature on unfunded mandates, which lacked specific numbers, and another report on unfunded mandates from NCSL (45 minutes and 41 seconds).<sup>70</sup> This third meeting focused on developing a list of unfunded mandates that would be sent to the Georgia Speaker of the House with the ultimate goal of contacting the U.S. Congress about these programs.

Not only did we find instances of limited or weak oversight, we found evidence of failed oversight. A 2015 audit report showed that the Georgia Environmental Protection Division (EPD) and the Georgia Department of Natural Resources (DNR) were not effectively monitoring the disposal of old tires, despite the fact that its citizens pay a one-dollar disposal fee for every new tire they buy. A 2018 follow-up report showed that the problems had persisted.<sup>71</sup> The follow-up report about the tire disposal program mentions the need for the general assembly to “revise state law to move the fee payment from retailers to wholesalers.”<sup>72</sup> Moreover, the audit report indicates that the fees collected for tire disposal are deposited in the state’s general fund, but then were to be allocated to the Solid Waste Trust Fund (SWTF). The legislature, however, failed to appropriate all of the money to SWTF. Therefore, the money was and continues to be used for other purposes<sup>73</sup> because the legislature failed to appropriate the available funds to SWTF. Meanwhile, positions needed to monitor tire disposal compliance are vacant, and the agencies report a lack of funds to carry out this mission (Salzer, 2015).<sup>74</sup> Despite this ongoing problem, the Natural Resources and Environment Committee never mentioned the issue during any of its six hearings in 2018. Moreover, the agencies involved never testified at any of the six committee hearings held in 2018. Archives for the Georgia House Special Study Committees, which extend back to 2014, do not reveal any study committees on this topic.<sup>75</sup>

The Natural Resources and Environment Committee’s initial meeting was informational with presentations about the overall process of waste disposal, county landfills, and coal ash disposal. There were only a few questions from legislators because the committee did not have time available for questions. None of the presenters were from state agencies, although, one represented county landfills. The only state agency staff making any presentations during all six hearings was from the director of the state’s Forestry Commission (minute five from the February 8, 2018, hearing).<sup>76</sup> Legislators’ questions to the director were not probing questions that exhibited deep knowledge about forestry in the state. The exchanges would be best described as information seeking. The four other meetings held during 2018 focused exclusively on bills. Subcommittees appear to examine the bills in depth and then make a brief report to the committee followed by an explanation from the bill’s sponsor. Committee members ask questions of the bill’s sponsor. There is no agency testimony on any of these bills.

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<sup>69</sup> <https://livestream.com/accounts/19771738/events/6811894/videos/150067918>, accessed 8/16/18.

<sup>70</sup> <https://livestream.com/accounts/19771738/events/6811894/videos/151266584>, accessed 8/16/18.

<sup>71</sup> [www.open.georgia.gov/openga/report/downloadFile?rid=21222](http://www.open.georgia.gov/openga/report/downloadFile?rid=21222), accessed 1/14/18.

<sup>72</sup> [www.open.georgia.gov/openga/report/downloadFile?rid=21222](http://www.open.georgia.gov/openga/report/downloadFile?rid=21222), accessed 1/14/18.

<sup>73</sup> [https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/swtf\\_050318.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/swtf_050318.pdf), p. 2, accessed 11/24/18.

<sup>74</sup> <https://politics.myajc.com/news/state--regional-govt--politics/audit-questions-georgia-need-for-full-scrap-tire-fee/XyyMzMAoSAC90jIVy3CmPJ/>, accessed 11/24/18.

<sup>75</sup> <http://www.house.ga.gov/Committees/en-US/StudyCommittees.aspx>, accessed 11/24/18.

<sup>76</sup> <https://livestream.com/accounts/19771805/events/7993495/videos/169943565>, accessed 11/24/18.

Even though the standing committee with jurisdiction over tire disposal did not appear to take action on this issue, there was some legislative effort to resolve problems with the tire disposal fees. It appears that Rep. Jay Powell has made repeated efforts to dedicate taxes and fees to their specific purposes (Salzer, 2017).<sup>77</sup> In 2017, working through the committee he chairs, the House Ways and Means Committee, he succeeded in gaining house approval for a bill to do this. The bill died in the senate. In 2018, he attempted to get an amendment, the Trust Fund Honesty amendment, to this effect on the November 2018 ballot.<sup>78</sup> That would have addressed the broader issue of diverting funds, such as a traffic fine add-on that was supposed to fund high school driver education programs. That effort failed in the legislature. This approach is markedly different from the oversight based approach we found in Oregon when their emergency management agency lacked the resources needed to fund its work. In that case, the chair of the committee of substantive jurisdiction promised agency leaders that he would work with the appropriations committee chair to increase the money available for the agency to meet its responsibilities. In Georgia, we found no evidence of hearings, let alone, a targeted approach to working on impediments to agency performance. Indeed, necessary legislative action was blocked in the Senate.

## Oversight Through the Administrative Rules Process

On paper, Georgia's legislature possesses formidable powers to oversee the promulgation of new administrative rules. A two-thirds vote of both chambers can block any administrative rule. In practice, this power appears to be used very rarely, leading Schwartz (2010) to describe it as a "sledgehammer collecting cob webs." Schwartz also reports that there is no review of existing administrative rules.

When agencies want to create a new rule, they must inform the legislative counsel of their intent at least 30 days before adopting the rule. This notification must include an exact copy of the rule, a synopsis, and the authority the rule is based upon (GA Code 50-13-4).<sup>79</sup> The rule is then referred to the standing committees in each chamber with jurisdiction over the agency. Either of these committees can ask the agency to conduct a public hearing, and either can object to the rule. If the agency adopts the rule over a committee's objection, then that committee can introduce a resolution to override the rule within the first 30 days of the next regular session of the general assembly (Wall, 2010).<sup>80</sup> If two-thirds of the committee's members vote to block the rule, it is presented to that chamber's entire legislative body. If two-thirds of the members of that chamber vote for the resolution to override the rule, a vote in the opposite chamber is held within five days (GA Code 50-13-4-f(2)). If the resolution receives less than two-thirds but more than half in each chamber, then the governor must sign the resolution for it to have the force of law. If the resolution is supported by a two-thirds vote in both chambers, then the governor's signature is not needed (Berry, 2017). If both committees vote by a two-thirds majority to oppose the rule,

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<sup>77</sup> <https://politics.myajc.com/news/state--regional-govt--politics/georgia-house-pushing-truth-fees-constitutional-amendment/HgY93YDQq92uO4N7D5CqPJ/>, accessed 11/24/18.

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[https://ballotpedia.org/Georgia\\_Legislature\\_Authorized\\_to\\_Dedicate\\_Revenue\\_from\\_Taxes\\_and\\_Fees\\_to\\_Specific\\_Purposes\\_Amendment\\_\(2018\)](https://ballotpedia.org/Georgia_Legislature_Authorized_to_Dedicate_Revenue_from_Taxes_and_Fees_to_Specific_Purposes_Amendment_(2018)), accessed 11/24/18.

<sup>79</sup> <https://law.justia.com/codes/georgia/2010/title-50/chapter-13/article-1/50-13-4/>, accessed 8/13/18.

<sup>80</sup> [http://knowledgecenter.csg.org/kc/system/files/Table\\_3.26.pdf](http://knowledgecenter.csg.org/kc/system/files/Table_3.26.pdf), accessed 8/13/18.

the proposed rule shall be held in abeyance until both chambers of the general assembly have time to vote for suspension (GA Code 50-13-4-f(2)).

Despite this power, the rule review process does not appear to be systematic or evidence-based (Schwartz, 2010). Moreover, the required impact statements focus only on economic impacts to business, without any consideration of impacts to the public. Even the business impact criterion is assessed without consistent qualitative or quantitative evidence. Benefits and costs are not considered at all. Moreover, Schwartz (2010) judges the committee review of the rules to be idiosyncratic, reflecting the chair's personal interests rather than uniform standards.

During 2017, the Georgia State Board of Education promulgated 17 new rules.<sup>81</sup> These rules took effect during the interim between regular legislative sessions. Therefore, the education committee in each chamber could have objected to these rules by passing a resolution during the first 30 days of the 2018 legislative session. The agendas for education committee meetings in either chamber for the month of January (senate education committee -- two meetings, joint education committee-- one meeting, and house education committee -- two meetings) do not indicate any discussion of these rules. Indeed, one meeting was canceled in the senate, the joint chamber meeting was canceled, and one meeting in the house was canceled. There does not appear to have been any use of the legislative administrative rule review process. It is possible that all 17 rules were viewed favorably by both chambers' education committees, but it seems like this is a lot of new rules for there to be no objections or issues to discuss. There is no indication of any discussion of these rules on any of these committee agendas. This supports the assessment that the Georgia Legislature makes limited use of its power to review administrative rules.

Yet there are instances in which the legislature has blocked administrative rules. For example, a November 27, 2017, meeting of the House Ways and Means Committee and the Senate Finance Committee<sup>82</sup> led to the delay of a rule promulgated by the Department of Revenue (proposed rule 560-6-2). This rule was intended to implement a newly passed law, HB 337. The rule created a single index for liens, rather than the 159 indices that existed previously in each county. The intent of the law was to simplify the process of looking up property liens in the state system by taking information that was in 159 counties and centralizing it in one place to streamline the process. The chair of the hearing said that the Department of Revenue interpreted the law with 560-6-2 in a way that was inconsistent with legislative intent. He was particularly concerned with the part of the rule that would require a "certificate of clearance" before any deed could be recorded, which he said would give "the department veto power over the recording of deeds of transfer." The action by the committees provided the legislature with the opportunity to "get back [into session] and make some modifications to the state and clarify" the intent (interview notes, 2018).

Despite this example of legislative review of an administrative rule, we were told that it is indeed uncommon for administrative rules, both proposed and existing, to be blocked by legislators (interview notes, 2018). This appraisal appears consistent with our observations and with Schwartz's (2010) assessment.

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<sup>81</sup> <http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/Pages/PEABoardRules.aspx>, accessed 11/24/18.

<sup>82</sup> <https://livestream.com/accounts/19771794/events/6811961/videos/166493489>, accessed 12/16/18.

## Oversight Through Advice and Consent

Georgia's legislature has very limited authority over gubernatorial appointments to the executive branch positions described in the *Book of the States* (Wall, 2014). Only two executive agency heads, that is of Revenue and personnel, require senatorial confirmation. Georgia also has a wide array of boards and commissions whose members are typically appointed by the governor. In a list of 15 of these, senatorial confirmation is mentioned for only one of these boards, the Board of Human Resources (Saunders, 2013).<sup>83</sup>

Georgia's governor may issue executive orders without any apparent restrictions (Wall, 2014). The source of authority for the executive is statutory, implied, and implied from the constitution (Wall, 2014). Executive orders are subject to filing and publication procedures, but they are not subject to an administrative procedures act or subject to legislative review. Many of these are not controversial. For example, an executive order in 2017 declared a state of emergency for 28 counties due to a coming winter storm, a more consequential event in a southern state that lack snow removal capacity (Haney, 2018).<sup>84</sup> Others involved lowering flags to half-staff.<sup>85</sup> But the governor makes extensive use of these orders (412 issued in 2017), and some indicate the broad power of the executive branch in Georgia. For example, many of the executive orders issued in 2017 dealt with the appointment of judges. Others dealt with the authorization of the demolition and removal of a building from the Walton Fish Hatchery,<sup>86</sup>

The governor also can reorganize government through executive orders without legislative intervention. Former U.S. President Jimmy Carter infamously overhauled Georgia's government in the 1970s to the dismay of state legislators (Rosenbaum, 1976).<sup>87</sup> The legislature could reorganize government, with the governor's approval, by exercising its power to write a bill and pass a law or joint resolution through normal means. But, if the governor objects, then this approach to government reorganization is difficult, given the two-thirds vote needed to override a gubernatorial veto.

## Oversight Through Monitoring of State Contracts

The DOAA Audit and Assurance Services is responsible for reviewing "the financial statements of about 500 nonprofit organizations that contract with the state."<sup>88</sup> In addition, DOAA's Performance Audit Division (PAD) has included commentary in their performance reports about best practices when contracting. PAD also produced an entire report in 2003, titled,

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<sup>83</sup> <https://www.georgiaencyclopedia.org/articles/government-politics/statutory-and-executive-boards-and-commissions>, accessed 11/27/18.

<sup>84</sup> <http://www.13wmaz.com/news/state-of-emergency-issued-for-28-georgia-counties-ahead-of-winter-storm/504300408>, accessed 1/14/19.

<sup>85</sup> [https://gov.georgia.gov/sites/gov.georgia.gov/files/related\\_files/document/09.08.17.18.pdf](https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/document/09.08.17.18.pdf), accessed 8/30/18.

<sup>86</sup> [https://gov.georgia.gov/sites/gov.georgia.gov/files/related\\_files/document/11.27.17.01.pdf](https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/document/11.27.17.01.pdf), accessed 8/30/18.

<sup>87</sup> <https://www.nytimes.com/1976/10/19/archives/4-years-later-carters-reorganization-of-georgia-government-is.html>, accessed 11/27/18.

<sup>88</sup> <http://www.audits.ga.gov/auditAssuranceServices.html>, accessed 8/16/18.

*Components of an Effective Contract Monitoring System.*<sup>89</sup> However, most oversight is done by the executive branch State Purchasing Division.<sup>90</sup>

## Oversight Through Automatic Mechanisms

Georgia has both sunset and sunrise reviews, but the former apply only to regulations and the latter focuses on occupational licensing requirements (Baugus & Bose, 2015). It does not appear that Georgia's current sunset procedures apply automatically to entire agencies or boards and commissions. According to the Council of State Governments (2014), the DOAA conducts performance reviews that include measures to assess the need for regulations or boards and commissions or other government entities to continue. Standing committees can request these audits. Thus, it is possible for the legislature to terminate both regulations and government entities, but this is not automatic or systematic. Its use relies on the vigor of standing committees to pursue oversight.

With respect to sunrise reviews, Georgia is one of three states that rely on special councils or boards rather than the legislature to conduct these reviews. The reviews focus on licensing requirements for occupations. In Georgia, the Occupational Regulation Review Council is responsible for sunrise reviews. Its membership is dominated by the executive branch (seven gubernatorial appointees plus the Director of the Office of Planning and Budget), but the legislature has some representation (two legislators are members).<sup>91</sup> Yet, this does not appear to be a forum for legislative oversight of the executive.

## Methods and Limitations

For Georgia, we contacted eight people requesting information about oversight, but we were able to interview only five of them. Georgia provides good access to archival information about committee hearings. Agendas, minutes, video,<sup>92</sup> and audio (interview notes, 2019) are available for senate committee meetings. Minutes and video are available for house committee meetings. Minutes are archived on committee websites and with the Georgia Archives (interview notes, 2019). Neither chamber has transcripts of committee meetings (interview notes, 2019).

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[https://sao.georgia.gov/sites/sao.georgia.gov/files/imported/vgn/images/portal/cit\\_1210/44/61/140551558Best%20Practices\\_Contract%20Monitoring.pdf](https://sao.georgia.gov/sites/sao.georgia.gov/files/imported/vgn/images/portal/cit_1210/44/61/140551558Best%20Practices_Contract%20Monitoring.pdf), accessed 8/16/18.

<sup>90</sup> <http://doas.ga.gov/state-purchasing>, accessed 8/16/18.

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