



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Indiana

Capacity and Usage Assessment

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

Summary Assessment

The evidence compiled in this report suggests the Indiana legislature lacks crucial institutional resources necessary for legislative oversight of the executive branch. Importantly, none of the analytic bureaucracies conduct performance audits of state agencies. Moreover, it appears that the Legislative Council tightly controls the legislative oversight process. The legislature also lacks the capacity to truly engage in administrative rules review, and the legislature does not confirm gubernatorial appointments to head state agencies. Despite these limitations, legislators ask tough questions of executive branch officials presenting budget requests. Occasionally program evaluations are conducted by outside contractors, and legislators appear interested in passing legislation to implement recommendations in these reports. There appears to be latent capacity for oversight, but more audits of state agencies need to be conducted and more evidence produced.

Major Strengths

Several legislators appear to be very knowledgeable and ask very incisive questions, especially during the appropriations process. We found evidence that the State Board of Accounts (SBOA) and the Legislative Service Agency (LSA) reports are utilized by the legislature to impact legislation. The legislature has some capacity to oversee state contracts via SBOA audits and committee hearings. The LSA (especially its Office of Management and Fiscal Analysis) can conduct studies of programs at the request of legislators. However, their actual program evaluations typically number only one per year. Also, the SBOA reports its audit findings to a joint committee, making the communication of audit reports to both chambers easier. Most of these audits, however, focus on local governments rather than state agencies. The

legislature appears to be willing to pass legislation to alter the behaviors of state agencies and state programs when the need arises.

Challenges

Indiana's legislature has no prerogatives to confirm or reject any gubernatorial appointments to lead any state agency. The legislature can codify reorganization plans, but they seldom use this as a form of "advice and consent." The process of committees asking the Legislative Council holding hearings and passing resolutions to assign oversight to some other entity seems cumbersome and time consuming. This centralized control of committee jurisdiction seems to limit the ability of legislators to investigate problems when they arise. It conveys an impression that there are studies to study whether to study an issue. Not only does the Indiana Legislature lack some oversight prerogatives, it has been willing to eliminate some of the powers it had previously, such as eliminating the Administrative Rule Oversight Committee (AROC). Without that committee, the legislature has had limited capacity to engage in rules review, although it appears that it rarely used this power when it still possessed it.

Relevant Institutional Characteristics

Unlike most Midwestern states, Indiana's legislature is not ranked as highly professional. Indeed, it ranks among the lowest in the nation at 40th (Squire, 2017). Legislators in Indiana work up to two-thirds time while earning less than full-time pay—\$25,945 plus per diem of \$173.¹ There is additional money available to pay legislators per diem for interim committee service, but it is tightly controlled through an appropriation that provides most interim committees with funds to pay for only three meetings per year.² Furthermore, the number of supporting staff members (roughly 300 staff during session) available to assist legislators in Indiana pales in comparison to the number of supporting staff members available to legislators in some states with professional legislatures (NCSL, 2009; NCSL, 2017).

The Indiana Legislature's session length is somewhat short; the legislature only holds legislative sessions for 61 days on odd-numbered years and for 30 days on even-numbered years (NCSL, 2010). Although the Indiana Legislature may also hold special (sometimes known as extraordinary) sessions, these may only be called by the governor (NCSL, 2009). Special sessions are still utilized today, as the Indiana Legislature had convened a special session in May 2018 (Kelley, 2018).

According to Ferguson (2015), the Indiana's governor is the 22nd most institutionally powerful of all fifty states. This assessment seems generous given the constraints the legislature places on the governor. The governor only controls about half of the state agencies; the rest are controlled by the cabinet, most of whom are separately elected. Indiana's governor can serve for eight years (two four-year terms) during any 12-year period. Indiana's governor lacks line-item veto power, and the state's Supreme Court ruled that pocket vetoes are unconstitutional.

¹ https://ballotpedia.org/Indiana_General_Assembly , accessed 1/1/19.

² http://iga.in.gov/information/archives/2017/video/committee_i_legislative_council/, accessed 12/31/18.

Therefore, if a governor fails to sign or veto a bill, it automatically becomes law after seven days.³ Indiana is one of only six states in which gubernatorial vetoes of bills can be overridden by a simple majority in both chambers.⁴ Despite this low bar, Ferguson (2006) reports that the legislature only overrode 10% of gubernatorial vetoes from 1967 to 2002.

Most of the governor's power accrues from his or her role in the budget process. The state operates on a two-year budget cycle beginning in July 1 of odd-numbered years. The state lacks a balanced budget requirement, and deficits can be carried over to subsequent budgets.⁵ Therefore, neither the governor nor the legislature is required to propose or pass a balanced budget. But the governor must sign or veto the budget in its entirety. The governor's power to call a special session provides some leverage over the legislature because the short legislative sessions mean that there is often unfinished business that legislators want to a chance to complete.⁶ The governor's power and limitations are discussed further in the Oversight Through Advice and Consent section of this paper.

Indiana possesses an average-sized state and local government bureaucracy—11% of the state's total workforce compared to the national average is at 11.3% (Edwards, 2006). Its education sector is larger than the national average, with 6.5% of its state workforce employed in K-12 or higher education, compared to a national average of 6.1%. Its service bureaucracy, which provides things like highways, transit, parks, water, sewers, and so on, is 1%, smaller than the national average of 1.3%. Similarly, its safety workforce (police, corrections, fire, judicial) is 1.5%, a smaller percentage of its population than the national average, which is 1.7% (Edwards, 2006).

Political Context

Over the last thirty years, Democrats have never simultaneously controlled both legislative chambers in Indiana. The Republican Party, however, controlled both chambers from 1995 to 1996, 2005 to 2006, and again from 2011 to 2018. Recent evidence suggests that both chambers of the Indiana Legislature are not that polarized along party lines (Shor and McCarty, 2017). Indiana's House has been ranked as the 27th most polarized lower legislative chamber, while Indiana's Senate has been ranked as the 33rd most polarized upper chamber. Polarization is based on differences between median roll call votes for each party in each chamber. This lack of polarization reflects a more conservative than normal Democratic Party in Indiana. Both chamber's Democratic caucuses are the 8th least liberal in the U.S. The Republican caucuses are fairly, but not extremely, conservative. Indiana's house Republican caucus is the 15th most conservative and its senate Republican caucus is only the 22nd most conservative. So it is the moderation of the Democratic Party that restrains partisan polarization in the legislative chambers.

Despite the Democratic Party's inability to control both chambers of the legislature in the past fifty years, the governorship in Indiana was controlled by the Democratic Party from 1992-

³ <http://www.ncsl.org/documents/legismgt/ilp/98tab6pt3.pdf>, accessed 12/12/18.

⁴ The five other states that permit this are: Alabama, Arkansas, Kentucky, Tennessee, and West Virginia

⁵ https://ballotpedia.org/Indiana_General_Assembly, accessed 12/12/18.

⁶ https://en.wikipedia.org/wiki/Governor_of_Indiana, accessed 12/12/18.

2005.⁷ Nonetheless, the one-party government has favored the Republican Party (NSA, 2017; NCSL, 2018). This is especially true recently.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are three primary analytic bureaucracies in the state of Indiana: the Office of the Auditor of State (OAS), State Board of Accounts (SBOA), and the Office of Fiscal Management and Analysis (OFMA) within the Legislative Services Agency. None of the three analytic bureaucracies is responsible for conducting performance audits of state agencies.

The Indiana State Auditor is a constitutionally elected office and is limited to eight years of total service in the office.⁸ The auditor's authority is granted by Article VI of the Indiana Constitution and, according to the OAS's website, the auditor has "four primary duties, including accounting for all of the state's funds; overseeing and disbursing county, city, town, and school tax distributions; paying the state's bills; and paying the state's employees." An interviewee clarified that the state auditor does not conduct audits, but instead is the state's financial officer (interview notes, 2018). According to the National Association of State Auditors, Comptrollers, and Treasurers (NASACT), Indiana's State Auditor is categorized as a state comptroller.⁹

The OAS is comprised of five departments; Accounting and Reporting, Accounts Payable, Internal Controls, Local Government, and Payroll. Combined, the OAS consists of fifty total staff (interview notes, 2018). Available on the auditor's website are two annual reports, including an annual financial report and comprehensive annual financial report (in compliance with Generally Accepted Accounting Principles). Furthermore, "the Auditor of State provides daily allotment and trial balances, and other accounting and exception reports to keep agencies informed of their account balances."¹⁰

It does not appear that the OAS provides any staff support at legislative committee hearings. It is unclear, even to knowledgeable participants, whether any specific reports, such as the comprehensive financial annual report, are brought up during committee hearings (interview notes, 2018). An interviewee said that representatives attend committee hearings if they are testifying. Particularly, during the budget process the auditor will testify on bills that impact the OAS (interview notes, 2018). An interviewee noted that the OAS maintains the state financial data, hence, if a legislator is making a decision based on how much money is present in a state fund, they would be utilizing information provided by the OAS. But, evidence from interviews and from listening to committee hearings indicates that reports produced by the OAS are rarely if ever used during committee hearings, including those involved in the budget process.

Secondly, the State Board of Accounts (SBOA) is comprised of the state examiner and two deputy state examiners, all of whom are appointed by the governor, but are approved by the Legislative Council,¹¹ and they report to a legislative subcommittee, the Legislative Council

⁷ https://ballotpedia.org/Governor_of_Indiana, accessed 12/13/18.

⁸ https://ballotpedia.org/Indiana_Auditor_of_State, accessed 8/11/18.

⁹ https://www.nasact.org/AF_MemberDirectory.asp, accessed 8/14/18.

¹⁰ <https://www.in.gov/sba/2372.htm>, accessed 8/11/18.

¹¹ <https://www.in.gov/sboa/4434.htm>, accessed 8/14/18.

Audit and Financial Reporting Subcommittee (LCAFR). NASACT’s directory categorizes the state examiner as Indiana’s state auditor.¹² As of 2018, the SBOA consists of 289 employees (interview notes, 2018). This is an increase of 81 employees from its 2015 staff size of 208 (NASACT, 2015). The SBOA is required by statute to (1) “collect financial reports annually from every state or local government . . . entity;” (2) “examine all accounts and financial affairs of every public office and officer;” (3) “establish uniform compliance guidelines;” (4) “conduct any recount or other contest proceeding ordered by the state recount commission” and; (5) “collect all Conflict of Interest Statements from State and Local Government officials.” In its responses to NASACT’s survey, the SBOA reports that it does financial audits, the state’s single audit and has responsibility for auditing local government, but it does not conduct performance audits or sunset reviews of state agencies (NASACT, 2015).

Pursuant to IC 2-5-1.1-.3, the SBOA “reports annually and as [required by statute] to the Legislative Council’s Audit and Financial Reporting Subcommittee,” which “reviews relevant information to assure the independence of the SBOA and provides guidance to the SBOA [as requested by the SBOA]” (interview notes, 2018). This joint interim subcommittee consists of two Democrats and two Republicans (including the chair),¹³ and is established in IC 2-5-1.1-6.3. SBOA members do not staff committees (interview notes, 2018). During the 2017 meeting between the SBOA and the subcommittee, the state auditor was present and briefly testified that the OAS and the SBOA work together well.¹⁴

Recordings of meetings between the SBOA and LCAFR focus on information about what SBOA does, the problems it encounters, and the potential for the legislature to pass laws that would enable SBOA to audit some local government activities. For example, SBOA staff report that many local governments have contracts with non-profits for the purpose of increasing local economic development. Because these are classified as personal service contracts, the SBOA cannot audit these expenditures. If the legislature were to classify these contracts as grants, SBOA staff says that they would be able to audit these expenditures. In both subcommittee meetings that we listened to, one in 2017¹⁵ and one in 2018,¹⁶ SBOA staff point this out and seem to be asking or suggesting that the legislature should do this.

The SBOA provides a brief history on its audit reports, explaining how their current practices are intended to eliminate political bias. This is done by publishing reports publicly and allowing officials to have a hearing before publication. The SBOA must follow the Generally Accepted Government Auditing Standards (GAGAS). The board can audit local and state-wide government and non-government entities, including libraries and districts (government) and corporations (non-government). The board, according to statute or by request, conducts single audits for local and state government, financial audits (in accordance with GAAS – Generally Accepted Auditing Standards), private examiner audits, compliance engagement reports, reviews of financial statements, special investigations, agreed-upon procedures, and information technology audits (interview notes, 2018). The unit completed roughly 500 reports for the year

¹² https://www.nasact.org/AF_MemberDirectory.asp, accessed 8/14/18.

¹³ https://iga.in.gov/legislative/2018/committees/i_legislative_council_audit_and_financial_reporting_subcommittee, accessed 8/11/18.

¹⁴ https://iga.in.gov/information/archives/2017/video/committee_i_legislative_council_audit_and_financial_reporting_subcommittee/, accessed 8/11/18.

¹⁵ http://iga.in.gov/information/archives/2017/video/committee_i_legislative_council_audit_and_financial_reporting_subcommittee/, accessed 12/31/18.

¹⁶ http://iga.in.gov/information/archives/2018/video/committee_i_legislative_council_audit_and_financial_reporting_subcommittee/, accessed 12/31/18.

2017.¹⁷ Additionally, in 2015 the SBOA released an Audit Exceptions Report to the legislature that goes over significant compliance and accounting issues not mentioned in previous audits to the legislature.¹⁸

Vignette: The Analytic Bureaucracies' Oversight over the Muncie School District

The SBOA appears to collaborate with the State Board of Finance, the governor and the legislature. An article released by the Muncie Star Press in July 2018 illustrates this role. The Muncie Community Schools needed \$12 million in funds to remain solvent, so it sought a state loan. The school district was operating under supervision of an emergency manager, who requested an audit of the district's use of \$10 million that it had raised through the sale of bonds several years ago. The emergency manager wanted the SBOA to investigate potential misuse of the bond money because the money had not been used for facilities upgrades and construction projects that were supposed to be funded by the bonds. The SBOA hired an independent accounting firm to conduct a forensic audit of the school district. Waiting for this audit report delayed the loan. The SBOA communicated with the firm during the firm's analysis. When it was complete, the SBOA used it to "determine [the] appropriate next steps, which could include . . . a special compliance report." The firm's report was not public (Slabaugh, 2018). The completed audit showed that no one had committed fraud, but that the money had been used to operate the school district rather than for physical infrastructure.¹⁹

The state legislature and the governor initially authorized the loan through legislation, HB 1315, that transferred governance of the school district to Ball State University. However, it is up to the State Board of Finance to determine whether to grant the loan. When asked about the HB 1315, the treasurer referred the questions to the Distressed Unit Appeal Board (DUAB). DUAB reported that the loan was delayed so audit findings could help guide the finalization of said loan. The State Board of Finance relies on the DUAB's recommendation to decide whether to authorize the loan (Slabaugh, 2018). This incident illustrates the interaction between the state's analytic bureaucracies, its executive branch and the legislature with respect to state financial decisions.

The SBOA conducted over 300 audits on townships in the past three years. During a hearing held on January 29, 2018, (Part 2) the Chairman of the House Ways and Means Committee comments that the SBOA's audits found roughly 30 instances of improper spending. The chair argued that there is a limited amount of oversight over township governments' spending of taxpayer money (Associated Press, 2018). The bill (HB 1005) that "[r]equires all townships with a population of less than 1,200 to merge with other townships," successfully passed through the committee.²⁰ During the first part of this meeting, the author of HB 1290 also references a report made by the SBOA. This evidence indicates that SBOA audit reports have a significant impact on legislation.

There are other various instances of the SBOA's reports having an impact on legislation. This impact has been confirmed by an interviewee; "[the SBOA's] reports at times have

¹⁷ <https://secure.in.gov/apps/sboa/audit-reports/#/>, accessed 8/11/18.

¹⁸ https://www.in.gov/sboa/files/Audit_Exceptions_Report.pdf , accessed 8/11/18.

¹⁹ <https://www.thestarpress.com/story/news/local/2018/10/01/forensic-audit-finds-no-public-corruption-muncie-schools/1484786002/>, accessed 12/14/18

²⁰ <https://iga.in.gov/legislative/2018/bills/house/1005#document-fd6ed09a>, accessed 8/11/18.

prompted legislative inquiries or changes in law, such as in situations where there were multiple repeat findings involving the same issue or set of issues.” Pursuant to IC 5-11-5-1.5, “when an agency or local unit does not complete a corrective action plan after a repeat finding, [the SBOA] are required to provide a memo to the audit subcommittee describing the non-compliance and our recommendations for addressing it, and the subcommittee can then consider a number of responses and remedies” (interview notes, 2018). Another interviewee mentioned that the SBOA may even suggest potential legislation (interview notes, 2018).

Lastly, the Legislative Service Agency (LSA) was established in statute (IC 2-5-1.1-7) and is headed by an executive director appointed by the Legislative Council,²¹ who then hires staff to perform the duties of each of its divisions. The LSA produces reports on state programs, analyzing their management problems and evaluating their outcomes. The LSA reports to Legislative Council (LC) and conducts additional investigations as directed by the Legislative Evaluation and Oversight Policy Subcommittee of the LC. The LC consists of sixteen legislators from both chambers.²² These legislators include the president pro tempore and the minority leader of the senate, both the majority and minority caucus chairs of the senate, the speaker of the house, both the majority and minority house leaders, and both the majority and minority caucus chairs in the house. Additionally, seven members are appointed by chamber leaders: three by the senate president pro tempore, two by the house speaker, and one each by the senate and house minority leaders.

The Office of Fiscal Management and Analysis (OFMA) is one of the subdivisions of the LSA. It is mainly responsible for conducting budget analyses and producing fiscal notes for all bills and amendments to bills. But legislative committees and individual legislators can request that the OMFA conduct fiscal and management research. Also, the OMFA “provides technical support to the State Revenue Forecast committee” (NCSL, 2018). The OMFA’s program evaluations are listed under the LSA’s website, with their last program evaluation being published in 2016.²³ This analytic bureaucracy appears to produce no more than one evaluation report per year, (six reports from 2010 through 2018). In one instance, the legislature requested the OFMA to evaluate workforce-related programs over a ten-year period and to provide technical support to [the] water infrastructure task force.” Occasionally an evaluation will impact legislation. For example, we were told that “Tax Incentive Evaluations” have been used to justify repealing these incentives (interview notes, 2018). According to an interviewee, OFMA evaluations and analysis (including their budget analysis) are used by legislators during committee hearings to question agencies.

As of 2018, the OFMA consists of “three employees with a Ph.D., seventeen . . . employees with a master’s degree, and one . . . employee with a bachelor’s degree.”²⁴ OFMA staff attends every committee hearing and will respond to questions, such as those relating to the budget or an amendment. The OFMA makes presentations on budget issues only when requested; OFMA presentations are, however, rare (interview notes, 2018).

According to Indiana Law, state agencies are required to cooperate with the LSA in its evaluations. Reportedly, the LSA has “strong relationships with the state departments of

²¹ <http://www.in.gov/legislative/pdf/services/LSAbackground.pdf> , accessed 8/11/18.

²² <http://www.ncsl.org/aboutus/ncslservice/director-office-of-fiscal-and-management-analysis-legislative-services-agency-indiana-general-assembly.aspx>, accessed 8/11/18.

²³ https://iga.in.gov/legislative/2018/publications/evaluation_report/, accessed 8/11/18.

²⁴ <http://www.ncsl.org/aboutus/ncslservice/director-office-of-fiscal-and-management-analysis-legislative-services-agency-indiana-general-assembly.aspx>, accessed 8/11/18.

Revenue and Workforce Development and the Indiana Economic Development Corporation.”²⁵ The OFMA uses information provided by the OAS in their analyses (interview notes, 2018). Also, the OFMA annually produces the *Indiana Handbook of Taxes, Revenues and Appropriations*, which is a “guide to state and local government revenues and expenditures.”²⁶

Oversight Through the Appropriations Process

The governor is fully responsible for the creation of the budget in Indiana (Council of State Governments, 2008). To begin the budget process, state agencies submit a budget request to the State Budget Agency (SBA). The Director of the SBA is a fiscal analyst who serves the governor and essentially falls under the purview of the Office of Management and Budget (OMB).²⁷ Next, the SBA will analyze the effectiveness of the agency and make recommendations that will be discussed with the governor. The governor presents the proposed budget to the Budget Committee once the requests are readjusted. The Budget Committee is an interim committee that gets its authority from IC 4-12. The committee consists of four legislators equally split between parties and chambers and the Director of the State Budget Agency (SBA). The SBA is not staffed by the LSA.

The Budget Committee goes over agencies’ budget requests during public hearings. They also go over the Revenue Forecast, which is prepared by the Economic Forum and the Revenue Forecast Technical Committee. Afterward, the committee makes a comprehensive budget recommendation to the governor. The committee also uses the recommendation to formulate an itemized budget report and the initial draft of the budget bill. The report and draft are forwarded to the governor who then sends the final budget report and bill to the general assembly. According to an interviewee, the State of Indiana does use performance-based budgeting. A new data hub collects the performance information of agencies on a quarterly basis and publishes it on the state’s transparency portal. This interviewee said that the legislature often looks at information on the portal in finalizing the budget (interview notes, 2018).

The House Ways and Means Committee is the first stop within the legislature for the budget bill. This committee holds hearings with agency representatives and the public.²⁸ The OFMA provides a fiscal impact statement (which considers local and state impact) of the state budget to the legislature. We found evidence that the House Ways and Means Committee is not shy about questioning budget requests made by independently elected executive branch officials. For example, in a hearing on January 11, 2017, (Part 2) the attorney general asked for money to increase the pay for attorneys in his office because other state agencies were hiring away his talented younger attorneys. Legislators wanted to know why there was not a standard pay scale for attorneys throughout state government. They also expressed skepticism about the quality of the service the attorney general’s office provided to other agencies given that those agencies wanted their own counsel rather than working with the attorney general’s office. Committee

²⁵ <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/06/how-states-can-gather-better-data-for-evaluating-tax-incentives#2-collect-new-information>, accessed 8/11/18.

²⁶ <http://www.agecon.purdue.edu/crd/localgov/glossary.htm#lstart>, accessed 8/11/18.

²⁷ <https://www.in.gov/sba/index.htm>, accessed 8/11/18.

²⁸ <https://www.in.gov/sba/2372.htm>, accessed 8/11/18.

members also questioned the Secretary of State at their January 17, 2017, meeting about whether the money spent on early voting increased voter turnout.²⁹

The House Ways and Means Committee held a meeting with the Department of Workforce and Development, Natural Resources, Environmental Management, the Indiana Public Retirement System, and the Indiana Finance Authority on January 31, 2017. A few committee members were absent; out of those who were present, several committee members participated in asking questions of the agencies presenting. In-depth questioning was present throughout the meeting, but only a small number of legislators asked most of the questions. The chair of this committee appeared to have a wealth of knowledge and experience about the state. Several times he asked questions that demonstrated his command of state government and the state's budget. A few other legislators also seemed well versed on budget issues and asked very tough questions, indicating the ability of this committee oversee the work of the executive branch. One key area of interest for legislators was the department's use of state contracts. We discuss this further in the "*Oversight Through Monitoring of State Contracts*" section.

The Senate Appropriations Committee is also responsible for legislative oversight during the appropriations process. However, the oversight authority of the committee is not mentioned in the state constitution, statutes, and chamber rules. The committee holds public hearings before issuing a committee report. The Senate Appropriations Committee held twelve meetings during the 2017 legislative session, with each archived video being roughly one to four hours long. During a meeting held on March 14, 2017, the Senate Appropriations Committee heard multiple budget proposals from various agencies. This included a budget proposal from the Indiana Department of Transportation (INDOT) given by its commissioner. During this meeting, a committee member (prompted by constituent) asked where money in the Major Moves fund is being spent and why the funds are not being considered over raising taxes. The commissioner explains that most funds have already been invested into projects. This type of in-depth questioning was conducted by only a few legislators and was not consistent throughout each presentation.

Oversight Through Committees

The Indiana Constitution and chamber rules do not mention the authority of Indiana's standing committees. However, Title 2, Article 2.1, Chapter 1, Section 10 of the Indiana Code mentions that during any session, the standing committees of the house and senate may announce and hold public hearings on any bill or resolution assigned to them. Videos of meetings conducted by standing committees are available on the Indiana General Assembly's website. Investigation of these videos indicates that finance-standing committees question agencies more often than non-finance standing committees.

There are five interim committees with the word "oversight" specified in their names, including the Legislative Council's Technology Oversight Subcommittee, Study Committee on Pension Management Oversight, INSPECT Oversight Committee, Judicial Technology Oversight Committee, and the Child Services Oversight Committee. The Technology Oversight Subcommittee and the Pension Management Oversight Committee do not have available meeting

²⁹ http://iga.in.gov/information/archives/2017/video/committee_ways_and_means_2200/, accessed 12/31/18

archives.³⁰ The INSPECT Oversight Committee has not met since 2016.³¹ The Child Services Oversight committee met twice in 2018 (as of August), yet video and transcripts for these meetings are unavailable.³² It is also worth noting that this committee is not a legislative branch entity, hence, it is not staffed by the LSA and is staffed only by the legislative assistant of the chair (interview notes, 2018). The committee is always chaired by a member of the legislature (currently, a house representative is the chair) (interview notes, 2018), but as its website demonstrates its 10 members include only four legislators. The remaining members are practitioners and other knowledgeable members of the community, such as public defenders and educators. It appears that this is one of several committees that meld the legislative, executive, and judicial branches of government based on an issue or a topic.

Nonetheless, there are oversight interim committees without “oversight” explicit in their name, such as the Audit and Financial Reporting Subcommittee, that are legislative committees and appear to do some oversight. Based on available video archives it appears that this subcommittee meets once or twice per year. During the 40-minute long meeting held on October 23, 2017, the SBOA summarized its work for the past year. The duties of this subcommittee were described during the hearing by the SBOA to the subcommittee members. The duties are as follows: (1) To review the independence, objectivity, and regulatory requirements of the SBOA; (2) To evaluate the quality of findings of the SBO, and; (3) To review the integratory and effectiveness of the SBOA in reviewing the accounting controls of auditing entities. So in effect, rather than presenting detailed audit findings or reports, the SBOA is meeting with the subcommittee as an annual review of SBOA’s work.

Also, at this meeting, the SBOA discussed their current staffing levels, a joint project with the OMB, Office of Technology, the Management Performance Hub, an independent auditor’s failed peer-review, and an update on various audit reports. During this hearing, questions solely focus on how the SBOA’s functions. Communication between the subcommittee and the SBOA is less about legislative oversight and more about helping the SBOA perform its work more effectively. For example, during the meeting held on September 13, 2016, a committee member asked the state examiner why the SBOA had asked that the Director of Special Investigations in the SBOA be classified as a law enforcement officer. The state examiner explained that the SBOA is charged with auditing local government, however, the SBOA does not have access to databases that law enforcement do. These databases would tell the SBOA whether the locality had prior inappropriate transactions. Furthermore, the SBOA works with the FBI, the police, and other law enforcement agencies in conducting certain audits, but since no one within the SBOA is law enforcement, the FBI and the police cannot talk to the SBOA about what is happening within the SBOA’s own audit. The subcommittee and the state examiner agreed that it would be beneficial to have a trained law enforcement officer as a part of the SBOA to facilitate information sharing.

The Legislative Council is a standing committee that is responsible for managing the workflow of the legislature. It assigns issues to specific committees, especially interim committees. In our efforts to understand legislative oversight through committees we examined the Legislative Council’s response to a program evaluation conducted by an outside contractor. A hearing on this program evaluation was intended result in a senate resolution that would ask the Legislative Council to assign the issue of child welfare services to an interim study

³⁰ <https://www.in.gov/children/2359.htm>, accessed 1/1/19.

³¹ <https://www.in.gov/pla/inspect/2437.htm>, accessed 8/11/18.

³² <https://www.in.gov/children/2359.htm>, accessed 8/11/18.

committee. It appeared from a very brief discussions of this resolution held in this senate committee on February 12, 2018, and February 26, 2018, that the legislature was trying to insure that it had a voice in the evaluation process that seemingly was driven by the executive branch. The senate committee's resolution asked the Legislative Council to assign members of the Senate Committee on Family and Child Services and the corresponding committee in the House to this interim study committee. As we will discover below, the Legislative Council did assign the topic to an interim committee, but it created a judiciary committee rather than a child services committee. This is the only evidence we could find in the agendas for the five meetings of this senate committee that related to this program evaluation. So rather than conducting oversight, the standing committee asked the Legislative Council to make sure that some other legislative committee conduct oversight.

The Legislative Council met on July 2, 2018, to listen to a presentation of the program evaluation of the Department of Child Services.³³ The program evaluation seems to have been triggered by a couple of events reported in the media. First, media reported that from 2005 to 2017 the number of children in foster care in Indiana increased by nearly 90% compared to decreases in foster care populations ranging from 10-40% in neighboring states. Second, the DSC executive director had resigned in December 2017 warning the governor that budget cuts "all but ensure children will die."³⁴ Outside consultants, the Child Welfare Policy and Practice Group (CWG), were hired to conduct a thorough (six-month) evaluation of the DCS.³⁵ According to CWG's June 18, 2018, report, Indiana has a problem in its child welfare system. The evaluation report included 20 recommendations. High turnover among staff was one problem identified by the evaluation. The governor, in response, directed the Office of Management and Budget to provide \$25 million from a surplus account to raise staff salaries and provide additional training for staff.

The executive director of DCS sat next to the CWG representative during the presentation of the evaluation to the Legislative Council. She responded to some of the questions from legislators. Legislators asked many questions that demonstrated familiarity with the issue, which appears to have been discussed by legislators in a variety of other committee hearings in prior years. During his presentation the CWG representative noted that there were three other outside evaluations that had been completed in the past few years that provided valuable information and recommendations consistent with CWG findings and recommendations. Legislators claimed to have been unaware of those reports. The new executive director of DCS, in response to legislators' questions, explained what she had been doing to implement some of the recommendations from those prior reports while the department waited for this new report. Legislators were especially interested in why Indiana's foster care caseload differed so much from neighboring states. CWG provided several reasons—one being the practice of putting children into foster care if their parents had substance abuse problems even if there was no evidence of abuse or neglect of the children.

The result of this particular Legislative Council meeting was a resolution referring the issues raised in the evaluation to the Interim Study Committee on Courts and the Judiciary for further discussion and investigation. This was not the set of legislators that the Senate Committee on Family and Child Services had hoped would receive this assignment. But the issue was assigned to an interim committee.

³³ http://iga.in.gov/information/archives/2018/video/committee_i_legislative_council/, accessed 1/1/19

³⁴ http://www.therepublic.com/2018/10/04/legislature_dcs_must_get_it_right/, accessed 1/1/19.

³⁵ <https://www.in.gov/dcs/files/IndianaEvaluationReportCWGFinal.pdf>, accessed 1/1/19.

It appears that this same presentation was being provided to other groups, such as the Child Services Oversight Committee, the executive, legislative, and judicial committee described above. Although the repeated presentations of the same information to multiple groups seems like a cumbersome and time consuming approach to disseminating information, the legislature appears to take action when it does have evidence from a high quality program evaluation. According to media reports, of 14 pieces of legislation introduced in the aftermath of the report to address child welfare problems in the state, eight reached the governor's desk. More legislation seems to be anticipated in 2019.³⁶ But there seems to be a lot of time spent asking for permission to conduct oversight or creating some new entity and assigning oversight to that entity. Moreover, the discussion in the Senate Committee on Family and Child Services implies that standing committees do not conduct oversight hearings.

The interim committee to which the Legislative Council assigned the child welfare issues met four times to address "problems with DCS" on September 5, 19, and on October 3 and 17.³⁷ Although other issues were addressed by the Interim Study Committee on Court and the Judiciary (such as the new for a new magistrate in a particular court), there was time spent on DCS at each of these hearings. At the initial meeting the LSA provided, at the chair's request, a list of anything in the evaluation that could require the legislation be passed. A final report from the committee³⁸ includes four items related to DCS: 1) recommends preparation of Preliminary Draft 3370 (legislation) for introduction to the General Assembly during the 2019 session; 2) encourages the Child Services Oversight Committee to collaborate with DCS, judges, the state bar and others concerning contracting with outside attorneys to represent DCS and prepare a report comparing in house and outside attorneys; 3) urging DCS to submit a report on various aspects of staffing and caseload; and 4) urging the Office of Judicial Administration and the Office of Court Services to provide training to judicial officers overseeing Child in Need of Services proceedings. There appears to be a lot of encouraging and urging, but not a lot of action other than preparation of draft legislation, the content of which is not specified in the final report.

Oversight Through the Administrative Rules Process

The legislature plays only a limited role in the administrative rules process. The attorney general and the governor both have veto power over newly promulgated rules. First, the attorney general will approve or disapprove the rule based on format and statutory compliance. Then, as a courtesy, the rule will be sent to the governor who can choose to veto the rule (Tharp, 2001).³⁹ Indiana is only one of two states that requires the governor's "approval of substantially all rules." After the rules are reviewed by the attorney general and the governor, they are sent to the Indiana Register and Administrative Code Division (IRACD) to be reviewed, accepted, and filed.⁴⁰ The Office of Management and Budget (OMB) will also review objections to the rule (not including

³⁶ <https://www.theindianalawyer.com/articles/48050-study-committee-to-return-spotlight-to-dcs?v=preview>, accessed 1/1/19.

³⁷ http://iga.in.gov/legislative/2018/committees/i_courts_and_the_judiciary_interim_study_committee_on, accessed 1/1/19

³⁸ <http://iga.in.gov/documents/d8f42ca2>, accessed 1/2/18.

³⁹ <http://www.in.gov/legislative/iac/IACDrftMan.pdf>, accessed 8/11/18.

⁴⁰ <http://www.in.gov/legislative/iac/IACDrftMan.pdf>, accessed 8/11/18.

court challenges) (Schwartz, 2010). It appeared that both OMB and the governor's blessings were crucial to a rule's survival.

After the agency submits their notice to adopt a rule and their Economic Impact Statement (which are sent together), they submit a notice of a public hearing. The hearing is approved by the IRACD and the attorney general. Once held, the agency may choose to submit another notice for an additional public hearing.⁴¹ Indiana Code 4-22-2 (which determines the procedures for a public hearing for administrative rules) does not indicate that citizens may file requests for hearings to be held. However, an agency may hold additional public hearings on a controversial rule to obtain a wider range of responses, allowing for more public input (interview notes, 2018).

Prior to 2014, the legislature had some power to oversee rule making.⁴² At that time the legislature had a joint Administrative Rules Oversight Committee (AROC), but it had advisory powers only. Thus the legislature was limited to making recommendations to the agency promulgating a rule or to introducing legislation overturning a rule. When the AROC was meeting its membership consisted of four members from the house and four members from the senate with equally divided party membership. The LSA provided staff. In 2014, however, the legislature in SB 80 repealed IC 2-5-18, which had established the AROC.⁴³ The rationale was that the AROC was not a productive use of legislators' time and per diem stipends, which as we noted earlier is a pot of money that the Legislative Council apportions very carefully, limiting the number of meetings an interim committee may hold. As a result of the decision to eliminate the AROC, the legislature participates infrequently in Indiana's present-day administrative rules review process.

Even when the AROC was active in statute, they would only occasionally hold hearings and had minimal involvement in agency rules (Schwartz, 2010). An interviewee remarked, ". . . when there was a complaint it would go to committee. There was not much activity" (interview notes, 2018). The lack of activity suggests that the AROC did not often make recommendations to the legislature, including those to void rules. However, an interviewee commented that (after rules are in effect) the legislature will occasionally pass legislation to void a rule (interview notes, 2018). This indicates that, even after the repeal of the AROC, the legislature still participates in oversight over administrative rules, even if minimally, with low capacity, and not over the rulemaking process itself.

After the AROC disbanded, the OMB was primarily responsible for conducting present-day rule review. The OMB would adopt the impact statements for their own analyses. This consequently put a lot of analysis responsibility on the agencies, with a lack of guidance for the agencies in doing so. Furthermore, there was not always enough time for agencies to prove fiscal efficiency since statutes required costs to be analyzed within the first year of the effective rule (Schwartz, 2010). The OMB would use their cost-benefit analysis to review a statement of need and the overall rationale and impacts of the rule. Recently, however, their authority to conduct rules review has been modified by HB 1003, passed in 2018.

HB 1003 repeals the requirement of the OMB to conduct "a cost-benefit analysis of certain rules for the three-year period following the rules' effective dates." It also repeals the statute that allows: "(1) state agencies to submit comments on proposed legislation to the OMB,

⁴¹ <http://www.in.gov/legislative/iac/IACDrftMan.pdf>, accessed 8/11/18.

⁴² <https://iga.in.gov/static-documents/b/9/c/f/b9cf71db/IssuesRelatingToLegislativeCommittees.pdf>, accessed 8/11/18.

⁴³ <https://iga.in.gov/legislative/laws/2018/ic/titles/002>, accessed 8/11/18.

and (2) OMB to review, amend and transmit the comments to the [LSA] for posting on the general assembly’s website,” among other reporting requirements for agencies.⁴⁴ Even before the repeal, OMB cost-benefit analyses were not required for a review and were meant to review business impacts. Although HB 1003 indicates that the legislature is shaping the rules review process, HB 1003 does not grant the legislature oversight authority within the process itself. The above findings align sources the say that formal rule review is not performed by either the legislative nor executive branch in Indiana (Council of State Governments, 2016).

Oversight Through Advice and Consent

The advice and consent powers on gubernatorial appointments for the Indiana Senate are not mentioned in the state constitution or chamber rules. The legislature does not approve gubernatorial executive branch appointments according to an interviewee (interview notes, 2018). This is consistent with information provided by the Council of State Governments (2014). The governor can appoint, without the consent of the legislature, the adjutant general, emergency management, the heads of budget, commerce, corrections, economic development, finance, health, higher education, labor, natural resources, public utility regulation, social services, transportation, and so forth. In some cases, agencies heads select executive branch officials, and the lieutenant governor selects some executive branch officials.

The governor derives the authority to issue executive orders from the constitution, statutes, and case law (Council of State Governments, 2014). The governor can issue orders in response to public emergencies, including energy emergencies, creating advisory and study commissions, to respond to federal programs and requirements, and to handle state personnel administration. According to an interviewee, the legislature does not have “anything in statute regarding the priority of an executive order. . .” (interview notes, 2018). This is supported by the finding that executive orders are not subject via formal provision to any filing or publication procedures, the Administrative Procedure Act, or to legislative review (Council of State Governments, 2014).

The governor of Indiana can issue agency reorganization plans and create agencies via executive order, although, the Council of State Governments notes that this power is limited. Although executive orders are not subject to legislative review (Council of State Governments, 2014), some reorganization plans include legislative action. According to IC 4-3-6, the governor is required to review the organization of all agencies to determine if changes are necessary. If the governor finds that “an agency should be transferred into another agency, abolished, or consolidated,” the governor shall submit the plan “to the general assembly to take effect through the enactment of a bill” (interview notes, 2018). The legislature is not required to approve these plans, and they expire when the governor leaves office (unless the next governor upholds it in an executive order). Furthermore, “the senate does not track which bills originated from a [gubernatorial] reorganization plan” (interview notes, 2018). Thus, it is hard to say how often the senate approves or disapproves gubernatorial reorganization plans. However, the legislature recently codified the governor’s Management Performance Hub (a part unit of the OMB)⁴⁵ in 2017 under IC 4-3-26-8 (interview notes, 2018). Another interviewee commented that, “rarely

⁴⁴ <https://www.indianachamber.com/wp-content/uploads/2018/02/2018LegAgendaV2.pdf>, accessed 8/15/18.

⁴⁵ <https://www.in.gov/omb/2345.htm>, accessed 9/1/18.

does the governor reorganize . . . at an executive level . . . governors do not reorganize . . . on their own unless it is purely executive and would not be controversial.” So although the legislature has the authority to oversee government reorganization, it is not clear how extensively this power is used. The only media coverage of government reorganization in Indiana involves consolidation of townships and other municipal reorganization issues.

Oversight Through Monitoring of State Contracts

Pursuant to IX 4-13-1-4(2), the Indiana Department of Administration (IDOA) is responsible for overseeing all state contracts (interview notes, 2018). Nonetheless, analytic bureaucracies in the state of Indiana play a role in overseeing state contracts. For instance, the “SBOA audits may review [state or local] contracts and related financial and compliance issues involving those contracts” (interview notes, 2018). Meeting archives reveal that for the years 2016 and 2017, findings related to state contracts have not been reported to the Subcommittee on Audit and Financial Reporting. But as we discussed earlier, the SBOA repeatedly points out to the LCAFR subcommittee, if local government economic development activities were classified as grants rather than personal services contracts, SBOA would be able to audit them. That the legislature has demurred despite these entreaties suggests that the legislature is not especially eager to wade into this area of oversight.

The state auditor does not oversee state contracts but provides transparency tools for overseeing state contracts. In June 2018, the OAS released an updated version of the Indiana Transparency Portal (ITP), which “allows users to track spending by state agency [including contracts], program, and year” (Associated Press, 2018). The ITP maintains a record of agency budgets and performance measures.⁴⁶ The IDOA also tracks state contracts, including contracts with state businesses, Certified Disadvantaged Business Enterprises (DBE), and Quantity Purchase Agreements (QPA’s). The IDOA Procurement Division manages the purchasing for all state agencies, except for the Department of Transportation.⁴⁷

Furthermore, companies who plan to contract with the State of Indiana must register with the IDOA, the secretary of state, and the auditor of state. Under IC 4-2-7, the inspector general is responsible for addressing the wrongdoing of agencies in state contracts. They can investigate contracts and receive complaints about the “violation of a statute or rule relating to the purchase of good or services by a[n] . . . employee [which includes anyone who is doing business with an agency].” IC 35-44.1-1-4 covers conflicts of interest, which entails those conscious of their wrongdoing can be convicted of a level 6 felony. These statutes do not make mention of the legislature.

However, the legislature can use statutory change to oversee state contracts to an extent. IC 4-2-7 (which covers ethics and conflicts of interest) reads that the Ethics Commission can hear complaints filed by the inspector general under 4-2-7 (or other statutes), refer the matter to the inspector general, or “[r]ecommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, special state appointees, and persons who have business relationships with agencies.” Although this was not the result of a recommendation, the legislature recently introduced SB 388. If passed, SB 388 will prohibit agencies from contracting

⁴⁶ <https://www.in.gov/itp/>, accessed 8/11/18.

⁴⁷ <https://www.in.gov/idoa/2463.htm>, accessed 8/11/18.

with or providing grants to abortion educators and will cancel any current appropriations made to abortion educators; this bill would require that the budget agency prevent future contracts and terminate current contracts or grants for this specific purpose.⁴⁸ This legislation appears to be motivated more by the substance of the contracts than a desire on the part of the legislature to expand its capacity for oversight.

Vignette: The Legislature on I-6, a Project Two Years Overdue

Aside from enacting limitations on state contracts, the legislature utilizes committee hearings to oversee contracts. For instance, the Indiana Finance Authority (IFA) is questioned on their contract with the I-69 Development Partners during the House Ways and Means Committee hearing held on January 31, 2017. The committee member was initially questioning the agency on how they went about funding roads other than through bonds from private-public partnerships. The IFA replied that there were only two major projects funded by private activity bonds, including the Interstate-69 Section Five Project (sponsored by both the IFA and INDOT). The road construction begun in 2014 with an initial end date of 2016, yet it continued into 2018 (Spieth, 2018).

Simply put, the committee member asks the IFA when the project will be done. When the agency replied that they were in “negotiations” on the end date with the developers, the member asked why negotiations were taking place if an end date was already set, adding that if the end date has not been met, then the developers are in breach of their contract. The IFA responds that they believe the most time and cost-efficient route would be to further negotiate with the developers. The member brought up the possibility of ejecting them from the contract, and although the agency said that they could do that, it would be a difficult path to take. Five months later in June 2017, INDOT would announce their termination of their agreement with the private developers (Alesia, 2017; IFA, 2017), with INDOT officially taking over in August 2017 (Spieth, 2018). Although Indiana’s Legislature participates in overseeing state contracts, this appears to be on an ad hoc basis.

Oversight Through Automatic Mechanisms

The Indiana Legislature reviews agencies and regulatory boards on a selective basis (Baugus and Bose, 2015). Moreover, all administrative rules in Indiana sunset on January 1, seven years after they were adopted (Schwartz, 2010). Indiana does not have sunrise provisions.⁴⁹

All agencies are required to re-promulgate their rules and may adopt identical rules. According to Schwartz, opponents of the sunset provision claim that it allows rules to expire without public input while proponents of the sunset provisions believe it rids the state of obsolete rules. Nonetheless, it appears that most rules are renewed. Rules with impacts that are more than \$500,000 are more likely to be subject to legislative review and cost-benefit analyses (Schwartz, 2010). First, “an agency must obtain a waiver from the Regulatory Moratorium” before “filing a

⁴⁸ <https://iga.in.gov/legislative/2018/bills/senate/388#document-f3cd8f0d>, accessed 8/11/18.

⁴⁹ <https://www.clearhq.org/page-486181>, accessed 8/11/18.

notice of intent to file a proposed rule . . . for publication in the Indiana Register.” “The Indiana Register and Administrative Code Division (IRACD) of the LSA acts as the publishing branch of the Legislative Council for the Indiana Administrative Code.”⁵⁰ The agency must also “submit the proposed rule to the Small Business Administration (SBA) for review and approval” before submission.⁵¹ Agencies will also submit an Economic (Small Business) Impact Statement to the IRACD.⁵²

The legislative Job Creation Committee (JCC) and the Office of Fiscal Management and Analysis (OFMA), part of the Legislative Services Agency that we described in the section on analytic bureaucracies, both participate in sunset reviews. The JCC produces annual reports⁵³ that document this process. These reports, commissioned by the legislature, summarize the structures of reviewed boards. Members of the JCC are not legislators. Reports are submitted to the legislature, the governor, and the LSA. The JCC was created based on a “lack of regulatory oversight in Indiana following the elimination of the Indiana Sunset Evaluation Commission.” Furthermore, “[there is an] unwillingness of the general assembly to reduce regulations . . . given the . . . financial investment made by education providers and practitioners to meet state requirements and obtain a license.” To elaborate, the JCC is concerned about how licensing structures enacted by the legislature are difficult to remove in review.⁵⁴

During 2016 the JCC met four times and reviewed eight state licensing boards. Any changes to the licensing board would require either administrative action or legislative action. The 2017 JCC report, a 100-page document that provides detailed information about the activities of each board, indicates that in no case for any of the eight professional boards licensing occupations that were reviewed in 2016 did the JCC recommend either administrative or legislation changes.⁵⁵ The 2016 JCC report includes a series of recommendations for administrative changes to the State Board of Health Facility Administrators, such as classifying the license as a certificate so that there would not be a fee. The report also included several recommendations to the legislature, such as continuing to license veterinarians, vet technicians, and CSR-veterinarians and that the legislature continue to regulate several types of real estate licenses, physicians’ licenses, and that the legislature discuss further whether to license pharmacy technician training programs and other regulations pertaining to the pharmacy profession.⁵⁶ These reports indicate that the legislature has authority to oversee the work of occupational licensing boards in the state. It is not clear how much time the legislature spends following up on the JCC reports, but the information is available. The reports are thorough and detailed.

⁵⁰ <http://www.in.gov/legislative/iac/IACDrftMan.pdf>, accessed 8/11/18.

⁵¹ <https://www.in.gov/omb/2626.htm>, accessed 8/11/18.

⁵² <http://www.in.gov/legislative/iac/IACDrftMan.pdf>, accessed 8/11/18.

⁵³ <https://www.in.gov/pla/3144.htm>, accessed 8/11/18.

⁵⁴ https://www.in.gov/pla/files/JCC_-_2015_Annual_Report_for_Licensing_Boards%282%29.pdf, accessed 8/11/18.

⁵⁵ <https://www.in.gov/pla/files/2017%20JCC%20Annual%20Report%20-%20FINAL.pdf>, accessed 1/2/19.

⁵⁶ <https://www.in.gov/pla/files/2016%20JCC%20Annual%20Report%20FINAL.pdf>, accessed 1/2/19.

Methods and Limitations

In Indiana, 12 people agreed to interviews out of the 16 that we contacted. Archival videos of committee hearings are available on the Indiana Legislature's website, along with meeting minutes and reports from agencies.

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