



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Iowa

Capacity and Usage Assessment

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

Summary Assessment

Legislative oversight in Iowa is typified by a relative balance of institutional powers between the legislative and executive branches, and observable cooperation between the executive branch auditor and the legislature. Some oversight appears to occur in most areas, but we stress that the lack of audio or video recordings of committee hearings and the cryptic committee minutes make it very difficult to tell what is happening during committee hearings. There is evidence that the legislature actively reviews administrative rules. The legislature does occasionally reject gubernatorial appointees even during the current era of one-party control of state government.

Major Strengths

Evidence suggests that cooperation exists between the directly-elected, executive branch auditor of state and the legislature. The Administrative Rules Review Committee appears to wield its powers effectively. The House Government Oversight Committee's activities demonstrate a laudable commitment to the monitoring of executive branch agencies. The Fiscal Services Division of the Legislative Services Agency produces very detailed reports that legislators find valuable in keeping tabs on the performance of state agencies.¹ This analytic bureaucracy also provides fiscal notes and budget information used by legislators to build the state's budget. Again, it is hard to assess how extensively this information is used because there are no publicly available records. We could only rely on interview responses rather than listening to hearings ourselves.

¹ Interview notes 12/18/18

Challenges

Much of the oversight that occurs appears to be reactive (i.e. in reaction to scandal and/or public pressure) rather than proactive, which was confirmed by discussions with people familiar with the process. Despite the productive relationship between the state auditor and the legislature, the absence of a legislative auditor limits legislators' capacity to monitor state agencies. Additionally, the lack of a legislative auditor limits opportunities for the minority party to conduct oversight through dedicated non-partisan staff.² The legislature makes modest use of its power to confirm or reject gubernatorial appointees. Also, the lack of any video or audio recordings of committee hearings is problematic and demonstrates a level of opaqueness to the oversight process.

Relevant Institutional Characteristics

Iowa ranked 17nd among the 50 states in legislative professionalism (Squire, 2015). Legislators in Iowa work roughly two-thirds time³ while earning approximately \$25,000 per year⁴ with a per diem of \$168/day.⁵ As of 2015, the legislature had 342 staff members, 167 of whom were permanent staff.⁶ These supporting staff members include personal staff, committee staff, partisan staff, and non-partisan professionals from legislative service agencies such as the Office of Ombudsman and the Legislative Services Agency's (LSA) Administrative Services Division, Computer Services Division, Fiscal Services Division, Legal Services Division, and Legislative Information Office.

The Iowa Legislature—also referred to as the general assembly—alternates annually between 100 and 110-day regular sessions.⁷ It may also hold special sessions, which can be called by the governor or the legislature. In order for the legislature to call a special session, two-thirds of the members of each house must write a request to the presiding officer of each house.⁸ However, the Iowa Legislature has not convened for a special session since 2009.⁹

Ferguson (2015) ranked the Office of Iowa Governor as having the 31st-strongest institutional powers of the fifty U.S. state governorships. Iowa does not have legislative or gubernatorial term limits.¹⁰ Therefore, the governor has very high tenure potential, but does not have especially strong budgetary powers. The governor can only make budget recommendations to the legislature. On the other hand, the governor can veto line items in the budget, and it takes a two-thirds majority vote in each chamber of the legislature to override these vetoes.

Iowa has a slightly larger than average percentage of its population employed by state and local government—11.9% compared to the national average of 11.3%. Much of this

² Interview notes 12/18/18

³ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 7/30/18.

⁴ <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>, accessed 7/30/18.

⁵ https://ballotpedia.org/Iowa_General_Assembly, accessed 9/21/18.

⁶ <http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf>, accessed 7/30/18.

⁷ <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx>, accessed 7/30/18.

⁸ <http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx>, accessed 7/30/18.

⁹ <https://legiscan.com/IA>, accessed 7/30/18.

¹⁰ <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>, accessed 7/30/18.

employment reflects a higher than average percentage employed in education and in welfare—7.1% versus the national average of 6.1% in education and 1.7% versus the national average of 1.5% in welfare. This is partially offset by a lower than average proportion of the population employed in safety—1.1% compared to a national average of 1.7% (Edwards, 2006).

Political Context

Iowa typically operates under divided party control. Although its state government is currently controlled by a Republican trifecta, in the years since 1992, there have been only two other relatively brief periods of one party control—from 1997-98 Republicans were in control and from 2007-10 Democrats were in control. The current Republican Governor, Gov. Kim Reynolds, was elected in 2017¹¹ and the Democrats lost control of the senate that same year. Republicans have controlled the lower chamber since 2011.

Unfortunately, there is no data available from Shor and McCarty (2015) on the degree of ideological polarization in either of Iowa's legislative chambers. However, anecdotal evidence from interviews suggests the legislature is more polarized today than in the past.¹² In one interview, it was suggested that the State Auditor's office because it is a partisan elected office has worked closely with the governor and Republican leadership in the legislature to avoid oversight of issues that would embarrass or harm the governor and Republican party.¹³

However, Iowa does have a recent history of more amicable politics when compared to its Midwest neighbors. According to Patterson (1984) “[i]deological extremes are not popular in Iowa in a way that such extremes can be sustained in Minnesota or Wisconsin, or perhaps Illinois.” Patterson further contends that Iowans tend to prefer a limited role for the government and feel that the state government should not meddle in public affairs unless it is to stimulate business, particularly the agricultural industry, which they value considerably.

In sum, “Iowa politics is blatantly characterized by honesty, fair play, honorable intentions, and good government . . . Iowans’ expectations about how government and politics should be conducted are based upon such high standards, and generally speaking they are fulfilled so well, that Iowa politics is often not very interesting” (Patterson, 1984). However, much has changed since Patterson's initial assessment of Iowa politics, and it is fair to suggest that Iowa is not immune to the increased polarization of political parties in institutions across the various states.

Dimensions of Oversight

¹¹ https://ballotpedia.org/Governor_of_Iowa, accessed 7/31/18.

¹² Interview notes 12/18/18

¹³ Interview notes 12/18/18

Oversight Through Analytic Bureaucracies

The main auditing entity within Iowa's state government is a separately elected executive branch Office of the Auditor of State (OAS), which fulfills many of the oversight responsibilities often performed by legislative auditors in other states. The OAS receives its authority from § 11, Iowa Statutes,¹⁴ which summarizes its functions as "responsibility for audits of counties, cities, school districts and other governmental subdivisions . . ." along with the requirement, "to provide guidelines to CPA firms performing such audits."¹⁵ The OAS website describes the auditor as "a constitutional official, elected every four years. The auditor is required to annually make a complete audit of the books, records and accounts of every department of state government."¹⁶ With a staff of approximately 100 professionals and a budget of \$10.4 million (NASACT, 2015), the OAS produced 314 reports during 2017 (including two performance audits), while contracting an additional 1,057 reports to private firms.¹⁷ Although the total budget exceeds \$10 million, the state appropriation for the OSA is less than \$1 million (NASACT, 2015). All local governments and other public entities that are required to be audited pay the OSA a filing fee when they are audited. The auditor also audits the state's Comprehensive Annual Financial Report, and participates in financial oversight of contracted entities, as discussed below.

There appears to be some collaboration between the OAS and the legislature. The legislature may order the state auditor to conduct a specific audit, but this involves passing legislation. Use of such authority is evidenced by the senate's passage of SF 2355 on March 7, 2018.¹⁸ An example of the House Government Oversight Committee's use of auditor of state reports is discussed below, in the "Oversight Through Committees" section.

Within the last year there have been charges that the OAS acts as a partisan office to protect the governor rather acting as an independent auditing agency. In conversations with individuals familiar with the legislative oversight process and actions of the legislative oversight committees, it appears that the OAS is highly reactive to scandals and highly visible agency failures, but yet very little is done to address those failures in any meaningful fashion.¹⁹ Specifically, there appear to have been no consequences or changes affecting the Department of Human Services (DHS) after the deaths of several teenagers who were alleged to have been starved to death by their custodians.²⁰ While the director eventually resigned and some hearings were held, no substantial solutions were offered by OAS or the legislative oversight committees to change the way DHS monitored children.²¹ Indeed, after a review of the OAS list of audit reports and special investigations webpage, we could find no reports that were conducted in response to this high profile failure.²²

Iowa's Legislative Services Agency's (LSA) Fiscal Services Division is the state's other analytic bureaucracy that is involved in legislative oversight. The LSA is headed by a director

¹⁴ <https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=11&year=2018>, accessed 7/31/18.

¹⁵ <https://auditor.iowa.gov/about-us>, accessed 8/1/18.

¹⁶ <https://auditor.iowa.gov/about-us>, accessed 8/1/18.

¹⁷ <https://auditor.iowa.gov/audit-reports>, accessed 8/10/18.

¹⁸ <https://www.legis.iowa.gov/docs/publications/LGR/87/SF2355.pdf>, accessed 8/12/18.

¹⁹ Interview notes 12/18/18

²⁰ https://siouxcityjournal.com/news/state-and-regional/iowa/iowa-dhs-director-to-retire-amid-child-abuse-complaints/article_ea73f8c0-0595-542a-b13b-20b98ede9dfe.html, accessed 12/18/18

²¹ Interview notes 12/18/18

²² <https://www.auditor.iowa.gov/reports/audit-reports/>, accessed 12/18/18

appointed by the Legislative Council--an interim joint committee, described as a “steering committee” on its website.²³ The director of the LSA is responsible for staffing the Fiscal Services Division’s 17-member staff and the Legislative Services Division’s 21-member staff.²⁴ The LSA derives its authority from § 2A, Iowa Statutes,²⁵ which, among other things, obliges the LSA to conduct fiscal analyses of state agencies.

The LSA and its Fiscal Division juggle a wide range of demands, staffing committees, analyzing legislation, producing fiscal analyses conducted throughout the year, and “[providing] information to legislators and staff regarding the state’s financial condition and the potential fiscal impact of legislative and administrative rules.”²⁶ The Fiscal Services Division also works together with the Legal Services Division, “[performing] review and oversight of the state program operations and program evaluations of state agencies.”²⁷ The LSA produces around a dozen to 15 issue reviews each year that describe various state programs or issues in some detail. The reports are about 10 to 15 pages long. They are not comprehensive performance audits or program evaluations that would meet national standards or win awards from professional audit and evaluation organizations, but they do provide substantial descriptive and quantitative information on specific topics. While the division’s fiscal analyses are numerous and difficult to quantify, reports on the fiscal impact of administrative rules can be quantified and total six for the 2017 fiscal year. These analyses of the fiscal impact of administrative rules are provided for each Administrative Rules Review Committee meeting.

The following information is based on a publicly available interview with the Director of the Fiscal Services Division of the Legislative Services Agency.²⁸ The LSA’s Fiscal Service Division (FSD) also produces fiscal notes, which are required for any legislation introduced that would have an impact of \$100,000 per year on the state revenue and/or expenditures. Additionally, any legislator can request a fiscal note for any piece of legislation simply by contacting the FSD by either email, phone, or in person. These requests for fiscal notes are confidential unless the legislation moves to a stage at which a fiscal note is required, or the legislator asks that the analysis be made public. Typically, the FSD files approximately 150 fiscal notes, but write and research many more that are not filed because the legislation does not get far enough in the legislative process. If time permits, the FSD also responds to requests for information from the public or the press.

Iowa also utilizes an Office of Ombudsman which is classified as an “independent and impartial agency” that investigates state government activities at the behest of the citizenry.²⁹ While the Ombudsman is authorized to investigate complaints against state agencies and officials, it is not required to submit reports or recommendations on its findings.³⁰ Since 2009, the Ombudsman has issued 9 investigative and special reports, which may appear to be a small number. However, the Ombudsman website explicitly states it attempts to resolve issues informally if possible.³¹ The Ombudsman’s office publishes an annual report detailing the

²³ <https://www.legis.iowa.gov/committees/committee?ga=87&groupID=703>, accessed 8/9/18.

²⁴ <https://www.legis.iowa.gov/agencies/nonpartisan/lisa/fiscalServices>, accessed 8/1/18.

²⁵ <https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=2A&year=2018>, accessed 8/1/18.

²⁶ <https://www.legis.iowa.gov/agencies/nonpartisan/lisa/fiscalServices>, accessed 8/1/18.

²⁷ <https://www.legis.iowa.gov/agencies/nonpartisan/lisa/fiscalServices>, accessed 8/1/18.

²⁸ <https://www.legis.iowa.gov/publications/fiscal/conversations>, accessed 9/23/18.

²⁹ <https://www.legis.iowa.gov/Ombudsman/>, accessed 12/13/18

³⁰ <https://www.legis.iowa.gov/Ombudsman/>, accessed 12/13/18

³¹ <https://www.legis.iowa.gov/Ombudsman/>, accessed 12/13/18

variety of issues reported to the office. In the latest report issued in 2017³² the focus was on difficulties citizens encountered the state's switch from state-managed Medicaid plans to privately managed plans, the increase in complaints about the state's corrections facilities, and, disturbingly, the "culture of secrecy among state regulators who license doctors, real estate agents, and other professionals."³³ In particular, the legislature failed to substantively address the issues surrounding the privatization of Medicaid before the end of the legislative session.³⁴

Oversight Through the Appropriations Process

Iowa's annual state budget is prepared by the governor and then submitted on or before February 1 to the legislature for approval. Both the governor and the legislature are required to use the budget targets set by the state's Revenue Estimating Conference when proposing a budget. This ensures that there is agreement on the official economic forecasts used in the budget process. A balanced budget is both constitutionally and statutorily mandated.³⁵ Once the legislature passes a final budget bill the governor can sign it, veto the whole bill, or use the line item veto to eliminate selected portions of the bill.³⁶

The Iowa Senate and House each have their own respective Appropriations and Ways and Means Committees. While neither audio, video, nor transcripts are available for legislative committee meetings, meeting minutes are available; these minutes, however, provide only a very general description of what occurs during meetings (i.e. which members were present, which bills were discussed, etc.). If nothing more, it is clear that the legislature's Appropriations and Ways and Means Committees meet regularly. The Senate Appropriations Committee met ten times during the 2018 legislative session and nine times during 2017;³⁷ Senate Ways and Means met ten times in 2018 and ten times in 2017.³⁸ House Appropriations met 19 times in 2018, and 22 times in 2017;³⁹ House Ways and Means met 22 times in 2018 and 21 times in 2017. Appropriations subcommittees also meet fairly regularly.

The Joint Fiscal Committee also provides general oversight of budgetary matters; while it is not explicitly an interim committee, it appears to only meet outside of the legislature's regular session. § 2.46, Iowa Statutes,⁴⁰ grants the committee authority to, "[e]xamine budget and expenditure matters. Direct the administration of performance audits and visitations. Study the operation of state government and make recommendations regarding reorganization to the

³² <https://www.legis.iowa.gov/docs/publications/CA/961900.pdf>, accessed 12/13/18

³³ https://siouxcityjournal.com/news/state-and-regional/iowa/medicaid-complaints-to-iowa-ombudsman-tell-story-of-frustration/article_54de5669-0b1c-5d53-a03c-f5cc6b33dd8d.html, accessed 12/13/18

³⁴ https://qctimes.com/opinion/editorial/editorial-iowa-medicaid-is-burning/article_6455a38e-39a1-579a-9fd4-92580540431e.html, accessed 12/13/18

³⁵ https://ballotpedia.org/Iowa_state_budget_and_finances, accessed 8/9/18.

³⁶ <https://dom.iowa.gov/faq/what-process-developing-state-budget>, accessed 8/9/18.

³⁷ <https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=324&ga=87>, accessed 8/9/18.

³⁸ <https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=692&ga=87>, accessed 8/9/18.

³⁹ <https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=695&ga=87>, accessed 8/9/18.

⁴⁰ <https://www.legis.iowa.gov/docs/code/2018/2.46.pdf>, accessed 7/31/18.

General Assembly.”⁴¹ The committee met once during the 2016 interim,⁴² twice during the 2015 interim,⁴³ and twice during the 2014 interim.⁴⁴

The Fiscal Committee’s membership consists of 10 members, five of whom are senators and five of whom are representatives. Senate membership of the Fiscal Committee is comprised of the leading members of the Senate Appropriations and Ways and Means Committees; house membership is comprised of the leading members of the House Appropriations and Ways and Means Committees. These leading members come from both the majority and minority parties of their respective chambers.⁴⁵

The Appropriations Committees appear to meet during the legislative session according to the calendar of the meetings they held in 2018. According to a publicly available interview with the Senior Legislative Analyst with the Legislative Services Agency, there are seven appropriations subcommittees, all of which are joint chamber subcommittees. These committees receive budget targets from the revenue estimating conference, then meet three times per week for approximately six weeks to develop appropriations for agencies under their jurisdiction. They submit their appropriations recommendations to the full Appropriations Committee. The only exception is that the Transportation Subcommittee is not constrained by the state budget target.⁴⁶

While the various appropriations, ways and means, and fiscal committees have some formal procedures with which to exercise oversight of the appropriations process, the extent to which such oversight occurs is difficult to discern, largely due to the dearth of detailed documentation of committee and subcommittee meetings. To try to determine whether reports produced by the state’s Legislative Services Agency are used by appropriations committees, we interviewed people knowledgeable about the budget process to see if a January 2018 report entitled, *Health and Human Services Appropriations Subcommittee Detailed Analysis of the FY 2018 and FY 2019 Governor’s Recommendations* was used.⁴⁷ These kinds of reports explain parts of the governor’s budget recommendations that are not “clear or easy to read” (interview notes, 2018). We were told that staff walks the subcommittee through reports like this, then the committee members use information in the report, particularly in the appendices, to question executive branch agencies. Committee members, we were told, are especially interested in funds carried forward and funds that reverted back to the General Fund. This report would be a first step in building the state budget. The appendices are especially helpful in providing legislators with information about what is going on in an executive branch agency. This information can be used to oversee these agencies (interview notes, 2018).

Oversight Through Committees

The house and senate each have government oversight committees. During 2017, these committees received a total of 20 reports from a variety of public and quasi-public agencies and

⁴¹ <https://www.legis.iowa.gov/committees/committee?ga=87&groupID=704>, accessed 7/31/18.

⁴² <https://www.legis.iowa.gov/docs/publications/IP/858368.pdf>, accessed 8/9/18.

⁴³ <https://www.legis.iowa.gov/docs/publications/IP/798000.pdf>, accessed 8/9/18.

⁴⁴ <https://www.legis.iowa.gov/docs/publications/IP/680681.pdf>, accessed 8/9/18.

⁴⁵ <https://www.legis.iowa.gov/docs/code/2018/2.45.pdf>, accessed 8/1/18.

⁴⁶ <https://www.legis.iowa.gov/docs/publications/FOA/24887.mp3>, accessed 8/23/18.

⁴⁷ <https://www.legis.iowa.gov/docs/publications/SCGR/917104.pdf>, accessed 10/30/18.

boards, a few of which were prepared by the LSA.⁴⁸ The majority of these reports were statutorily-required, with the various statutes that required the reports' submission to the oversight committees referenced within the text of such reports.

Unlike some states, the House and Senate Oversight Committees have a partisan split, and there is no joint oversight committee to help coordinate the efforts of the Senate and House. Meetings of the Senate Oversight Committee in recent years have been perfunctory. The committee is not balanced by party but rather reflects the Republican majority in the Senate. According to one source, the lack of hearings is a conscious choice by the Republican majority. There are efforts to prevent issues from being properly addressed by the committee due to fears of embarrassing the governor and majority party.⁴⁹ Overall the oversight process in the House and Senate appear to be coordinated effort by the Republican trifecta and the Republican State Auditor to keep certain policy hot topics, like Medicaid abuses, as reported by the Ombudsman's Office, and DHS failures from being publicly addressed.⁵⁰ Based on meeting minutes, the committee met twice during 2017, with a total of one bill discussed, and each meeting lasting ten minutes. One Joint Government Oversight Committee meeting also occurred during 2017, lasting over six hours and featuring extended questioning of Department of Human Services (DHS) officials. In 2018, the Senate Oversight Committee met three times, during which three total bills were discussed. One of these meetings lasted five minutes, while minutes are not available for the other two meetings. The joint committee met twice during 2018; one meeting lasted an hour and 35 minutes, in which the DHS Director testified. Minutes were not available for the other joint committee meeting.⁵¹

The House Government Oversight Committee, conversely, meets more frequently (six times in 2017, seven times in 2018), with meetings longer in duration, and with more bills and subjects discussed than its senate counterpart.⁵² Further, the House Government Oversight Committee appears to utilize oversight performed by the OAS to inform its own monitoring of state agencies, at least in instances in which allegations of improprieties within such agencies have come to light. One such example occurred recently, involving the Iowa Communications Network (ICN) (Heartsill, 2018), "an independent state agency that administers Iowa's statewide fiber optic telecommunications network," used by schools, libraries, hospitals, and state and federal government offices in Iowa, under the supervision of the Iowa Telecommunications and Technology Commission (ITTC).⁵³

Vignette: The State Auditor, House Government Oversight Committee, and ICN

In January 2018, Ric Lumbard, the Iowa Communication Network's (ICN) executive director was fired following an Office of the Auditor of State (OAS) report,⁵⁴ which "found that he misspent almost \$380,000 of taxpayers' money as part of a wide-ranging enterprise that involved questionable purchases and cronyism" (Kauffman, 2018). The impetus behind the state auditor's investigation was "a meeting held on July 17, 2017, [in which] Auditor Mosiman and staff from the OAS were informed of concerns regarding ICN's purchase of pre-owned semi-

⁴⁸ <https://www.legis.iowa.gov/committees/meetings/documents?committee=589&ga=87>, accessed 8/5/18.

⁴⁹ Interview notes 12/18/18

⁵⁰ Interview notes 12/18/18

⁵¹ <https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=588&ga=87>, accessed 8/11/18.

⁵² <https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=589&ga=87>, accessed 8/11/18.

⁵³ <https://icn.iowa.gov/about-icn/agency-information-icn-story>, accessed 8/5/18.

⁵⁴ https://auditor.iowa.gov/sites/default/files/audit_reports/1860-3360-0E00.pdf, 8/9/18.

trailers containing video production equipment” (p. 9). According to the auditor’s report, Lumbar had improperly hired and/or given pay raises to persons he’d known prior to his appointment, had improperly awarded no-bid contracts, had used agency funds for some relatively small personal electronics purchases, and had used ICN funds to purchase the aforementioned semi-trailers, delivered to Wind and Fire Ministries (an organization of which he was CEO, concurrently to his role at the ICN), the contents of which were later sold on Ebay.⁵⁵ The report also found that the ITTC had failed to properly monitor the activities of the ICN. Lumbar’s 2014 appointment had been approved by the senate (Kauffman, 2018).

Following the January 2018 report and Lumbar’s subsequent firing, the House Government Oversight Committee sought frequent updates on the OAS Investigation. The ICN was a topic of discussion at committee meetings on January 31, February 8, February 28, and March 21. At these meetings, Auditor Mosiman (1/31), ICN Acting Executive Director Groner and Chief Administrative Officer Johnson (2/8), and ITTC Commissioners Bruner and LaPointe (2/28) made presentations and took questions from the committee.⁵⁶ While neither recordings nor transcripts documenting these meetings appear to exist, these officials’ attendance at the meetings suggests that the committee, at minimum, attempted to monitor the agency’s response to the recent scandal.

On March 7, the senate unanimously passed SF 2355, which ordered the state auditor to conduct a new, detailed audit of the ICN.⁵⁷ The LSA’s fiscal note⁵⁸ on the legislation, however, found that “[t]he OAS does not have the in-house expertise to conduct a complete inventory audit as well as identify and quantify the value of services provided by the ICN and its current authorized users, nor can it identify all such current users and business units” (p. 2). Further, the LSA found that “[i]n order to facilitate the gathering and analysis of data done by both the OAS and the independent appraisal firm, the ICN assumes it will need to hire one additional full-time equivalent (FTE) position” (p. 2). The LSA put the total cost of the new audit at \$1.4 million.⁵⁹ This cost was evidently prohibitive. On March 13, the same day as the fiscal note was published, the House State Government Subcommittee⁶⁰ recommended that the bill be postponed indefinitely.⁶¹

It also appears that public pressure may, at times, motivate the legislature to modify or abandon unpopular legislation. For instance, on March 6, 2017, the legislature held a public hearing on HF 484, a bill that would transfer the Des Moines Water Works from an independent board of trustees to area city councils. According to the legislature’s website, 207 individuals signed up to speak at the hearing, of which only eight individuals supported the bill. Public testimony at the hearing, as well as news media, suggested that this bill originated in the Agriculture Committee and was possibly being pursued so that powerful individuals in the agricultural community can continue to pollute the water system with chemicals from the fertilizers they use. Following the public hearing, the bill was never brought up for debate before the legislature and remained on the “unfinished business” calendar at the end of the 2017 legislative session (Bleeding Heartland,

⁵⁵ https://auditor.iowa.gov/sites/default/files/audit_reports/1860-3360-0E00.pdf, accessed 8/10/18.

⁵⁶ <https://www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=589&ga=87>, accessed 8/12/18.

⁵⁷ <https://www.legis.iowa.gov/docs/publications/LGR/87/SF2355.pdf>, accessed 8/12/18.

⁵⁸ <https://www.legis.iowa.gov/docs/publications/FN/943507.pdf>, accessed 8/12/18.

⁵⁹ <https://www.legis.iowa.gov/docs/publications/FN/943507.pdf>, accessed 8/12/18.

⁶⁰ <https://www.legis.iowa.gov/committees/subCommitteeAssignments?groupID=681&ga=87>, accessed 8/12/18.

⁶¹ <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=SF2355>, accessed 8/12/18.

2017).⁶² This example suggests that, while there are procedures for legislators to exercise oversight through the committee process, the occurrence of such oversight may be contingent on public outcry. In this situation, the public opposition expressed at the hearing likely influenced legislators to preclude, at least for the time being, what appeared to be certain passage of HF 484.

Oversight Through the Administrative Rules Process

The Iowa General Assembly's Administrative Rules Review Committee (ARRC) is a joint statutory committee that derives its authority from § 17A.8 of the Iowa Administrative Procedure Act (2018), which allows the committee to temporarily suspend both proposed and existing rules.⁶³ Per § 17A.4, rules may be suspended by a two-thirds majority vote of committee members (the same section allows the attorney general and the governor to suspend rules, as well).⁶⁴ In instances in which rules are suspended accordingly, the rule is then referred to the pertinent substantive committee. Rules can only be formally disapproved—and thus permanently abolished—by joint resolution of the general assembly.⁶⁵ Such joint resolutions are not subject to gubernatorial veto.⁶⁶ Once the legislature, governor, or attorney general has suspended a rule, the agency has the burden of proof in any court proceedings to demonstrate that the rule is reasonable and within the agency's authority and neither arbitrary nor capricious (Schwartz, 2010).

The ARRC consists of 10 members: five from the senate and five from the house, with a partisan split of six Republicans and four Democrats. Six legislators (three senators and three representatives) are appointed by the majority leaders of the senate and house, and four legislators (two senators and two representatives) are appointed by the minority leaders of the senate and house, respectively.⁶⁷ Although the members are appointed by the leadership of their respective chambers, the committee itself chooses its chair. The chair rotates between chambers annually. The agenda—which rules will be considered—is the primary power of the chair. The public is encouraged to participate in these meetings, and agencies must defend their rules to the public.⁶⁸ The house rotates membership on the committee frequently, but senators tend to serve on the committee for many years, providing continuity and uniquely high levels of knowledge about the agencies.⁶⁹ The ARRC has two part-time attorneys and one part-time fiscal analyst to help it evaluate rules (Schwartz, 2010). Additionally, there is an Administrative Rules Coordinator, an ex-officio, non-voting member of the ARRC, who is the governor's representative on the committee (Schwartz, 2010).

During the last year for which the ARRC's Annual Report is available (2014), the report indicates that Iowa's executive branch agencies adopted 263 "rulemaking filings," consisting of "approximately 1,000 individual rule additions, amendments, or rescissions" (p. 2).⁷⁰ None of

⁶² <https://www.legis.iowa.gov/committees/publicHearings?action=viewMeetingSignups&meetingID=25070>, accessed 8/4/18.

⁶³ <https://www.legis.iowa.gov/docs/code/17A.pdf>, accessed 8/8/18.

⁶⁴ <https://www.legis.iowa.gov/docs/code/17A.4.pdf>, accessed 8/8/18.

⁶⁵ <https://www.legis.iowa.gov/docs/code/17A.8.pdf>, accessed 8/8/18.

⁶⁶ <http://knowledgecenter.csg.org/kc/system/files/3.26%202016.pdf>, accessed 8/8/18.

⁶⁷ <https://www.legis.iowa.gov/docs/code/17A.pdf>, accessed 8/8/18.

⁶⁸ <https://www.legis.iowa.gov/docs/publications/FOA/645383.mp3>, accessed 9/22/18

⁶⁹ <https://www.legis.iowa.gov/docs/publications/FOA/645383.mp3>, accessed 9/22/18.

⁷⁰ <https://www.legis.iowa.gov/docs/publications/AAR/765726.pdf>, accessed 8/8/18.

these filings were formally objected to by the ARRC, although, “[t]wo session delays and four 70-day delays were imposed” (p. 3). Two of these delays imposed by the committee (a 70-day delay, followed by a session delay) pertained to a rule promulgated by the Iowa Department of Education.

The proposed rule that triggered these delays would have reduced the necessary qualifications for medical professionals performing mandatory annual physical examinations on school bus drivers. In the ARRC’s November 2014 meeting, members asked Department of Education officials whether the proposed rule would contravene federal requirements, thus risking the loss of federal revenue. As the officials did not know the answer, the ARRC delayed the rule’s implementation for 70 days. In the committee’s December 2014 meeting, Department of Education officials reported that federal regulations require that, medical professionals, who perform annual exams on contracted school bus drivers who cross state lines in fulfillment of their duties, are subject to the more stringent federal standards (evidently, such regulations do not apply to school bus drivers directly employed by school districts); thus, “\$37 million in federal funding could potentially be jeopardized” (p. 11). Accordingly, the ARRC voted to suspend the rule for the remainder of the session. As of the end of the 2015 legislative session, the rule had not been acted upon further.⁷¹ This example suggests that, despite lacking a unilateral mechanism to permanently block rules, the relative level of engagement of ARRC members—as well as the committee’s willingness to utilize those limited mechanisms that it does have—results in substantial oversight of state agencies’ rulemaking processes by the committee.

Despite the absence of an annual report, the ARRC continues to meet monthly. The minutes of the August 2018 meeting show that 48 rules were examined, but only one of these was delayed by the ARRC. Although there was some discussion by the committee of nearly half these rules, 25 rules received no discussion by the committee. These minutes show that some members of the public made comments about a small number of these rules and that lobbyists made comments on just a few rules.⁷² In addition to a delay, the ARRC could recommend that the chambers pass legislation to “overcome” the rule and accompany this by referring the rule to the speaker of the house and president of the senate for further study. These legislative leaders would then forward the rule to the appropriate committees.

Another example of rules review was provided by a retiring Administrative Rules Coordinator (ARC) in an interview with the Iowa Legislative Services Agency. This was a case in which the ARRC’s effort to delay a rule was thwarted by the full chamber but then the governor vetoed the rule. The rule involved requiring steel shot for dove hunting. There are people who think lead shot is poisonous and others who think that steel shot ruins your gun. There was a big meeting with a lot of public participation. The committee delayed the rule. The rule was perfectly legal, so this was a political decision. The full legislature did not repeal the rule, so eventually it went into effect. But, the governor’s office had 70 days to veto the rule after it took effect and, in this case, the governor vetoed the rule immediately after the legislature adjourned. Most rules are not controversial, and most of the time the governor pre-approves rules so that the executive branch is on the same page.⁷³ But in this case, according to the former ARC, the governor appears to have wanted to let the administrative rules process play out to see what level of public opposition there was to the rule (Legislative Services Agency interview with

⁷¹ <https://www.legis.iowa.gov/docs/publications/AAR/765726.pdf>, accessed 8/8/18.

⁷² <https://www.legis.iowa.gov/committees/meetings/minutes?meetingID=28123>, accessed 9/22/18.

⁷³ <https://www.legis.iowa.gov/docs/publications/FOA/645383.mp3>, accessed 9/22/18.

Joe Royce, former Administrative Rules Coordinator, publicly available on the Iowa State Legislative webpage).⁷⁴

In addition to the review of new rules, anyone in the state may petition the Administrative Rules Coordinator (ARC) asking that an agency review any of its rules to justify whether the rule should be repealed, amended, or replaced by a new rule. If the (ARC) decides that this review is not too burdensome for the agency, then the agency must prepare a report addressing the future status of the rule and provide copies to the ARRC, the ARC, and the public.

Oversight Through Advice and Consent

The advice and consent powers of the Iowa Senate are delineated in Rule 59 of the Iowa Senate Rules. Appointments are submitted by the governor and referred to the Senate Rules and Administration Committee. The nominees are then referred to the pertinent standing committee. Such standing committee may hold hearings to question the nominee on his or her qualifications and viewpoints on issues facing the office to which the person is nominated. After a nominee has been placed on the calendar and prior to the vote on confirmation, any senator may request an informational meeting on the nomination, which shall be held before the subcommittee. Lastly, the nominee must undergo a vote of confirmation and must receive a two-thirds vote of approval from all members of the Iowa Senate.⁷⁵

Although the Iowa Legislature does not appear to provide any record of votes on nominees for executive positions, news media indicate that the Iowa Senate occasionally refuses to confirm gubernatorial nominees. For instance, according to media reports, the senate refused to confirm two of the current governor's appointees in April 2017 (Boshart, 2017).

In Iowa, executive orders are subject to legislative review and also must comply with the state's Administrative Procedures Act. The number of executive orders peaked in the 1980s and 90s, with governors issuing 50 or more executive orders. Currently, Gov. Kim Reynolds has issued only three executive orders during her first year in office. Despite their power to review these orders, we find no evidence that the legislature exercises this prerogative often. Additionally, Iowa's governors do not appear to be shy about using their power to formulate policy. For example, on February 21, 2008, Governor Chester J. Culver issued an extensive (five pages) executive order called the Green Government Initiative.⁷⁶ The order implemented the Green Government Initiative in all state ". . . agencies under the jurisdiction of the Governor . . ." Part of the Green Government Initiative included an Energy Excellent Buildings Task Force, a Sustainable Materials Task Force, a Biofuels Task Force, and a Green Government Master Plan. A search of media sources and the legislature's webpage reveals no hearings or objections to gubernatorial executive orders.

The most recent activity in Iowa on government reorganization involves a report prepared by the Iowa Department of Administrative Services for the general assembly's State Government Reorganization Commission. This may indicate that the legislature, rather than the governor, takes the lead in government reorganization.

⁷⁴ <https://www.legis.iowa.gov/publications/fiscal/conversations>, accessed 9/23/18

⁷⁵ <https://www.legis.iowa.gov/docs/publications/SR/852022.pdf>, accessed 8/8/18.

⁷⁶ http://www.responsiblepurchasing.org/UserFiles/File/Iowa%20ex_ord_6.pdf, accessed 9/23/18.

Oversight Through Monitoring of State Contracts

As discussed in the analytic bureaucracy section of this report, the elected auditor is sometimes responsible for reviewing the financial records of contracted entities during the audit process. These may be disclosed in their contract/grant/agreed-upon procedures reports. Five of these reports were conducted in 2016. We have not identified any examples of the legislature making use of the auditor of state's reports for monitoring state contracts.

There appears to be some interest among Iowa media outlets in increased oversight through the monitoring of state contracts. For example, an article recently published in a local Iowa newspaper discusses the Iowa Transportation Commission's lack of oversight over 47 contracts valued at \$1 million or more—more than \$168 million in total—since 2013, awarded by the Iowa Department of Transportation. The article goes on to discuss whether the commission needs to exercise greater oversight over the department (Morelli, 2015).

Oversight Through Automatic Mechanisms

Iowa is one of three states that has never had a sunset law (Baugus & Bose, 2015).

Methods and Limitations

While Iowa provides public and online access to agendas and most minutes, these minutes tend to be vague. The legislature does not provide audio nor video archives of their committee meetings. A state website with public interviews of former state officials provided some information about the legislature. The lack of publicly available information increased the need for interviews. Out of the 19 people we contacted, we conducted interviews with two people.

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