



WAYNE STATE  
UNIVERSITY

Center for Urban Studies

## Legislative Oversight in Michigan

### Capacity and Usage Assessment

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

### Summary Assessment

Michigan possesses extensive resources that could facilitate legislative oversight of the executive branch, especially its highly professional, well-funded Office of the Auditor General. Yet, evidence suggests that legislative oversight is generally lax. The use of Michigan's oversight resources is highly dependent on the vigor of committee chairs, which appears to vary widely. Whether oversight will be non-partisan and evidence-based is similarly subject to the preferences of the committee chairs. There are apparently no reports that specify legislative actions taken in response to audit reports. This is part of the oversight process in higher performing states, and something like this might improve Michigan's performance. Moreover, a closer relationship between the OAG and the legislature might increase the use of audit reports in the appropriations process.

### Major Strengths

Michigan has extensive legislative staff resources, not just in the OAG, but also in its nonpartisan chamber fiscal agencies. The state has extremely comprehensive reporting requirements. The appropriations process features reports, called boilerplate reports, that number in the hundreds annually. State agencies produce many of these reports, but fiscal agency staffs also participate in writing these reports. Staff members rather than legislators typically read these boilerplate reports. Media attention or other public attention seems to force problems identified in audit reports onto legislators' oversight agenda—police patrol oversight.

### Challenges

During periods of one-party government, there is no mechanism to insure that the minority party can participate effectively in oversight of the executive branch. The preferences of committee chairs is a major ingredient of legislative oversight in Michigan, and with the state's extremely stringent term limits most chairs lack the necessary expertise to conduct oversight effectively—although some of them appear to take the responsibility very seriously. We found it interesting that the House was more vigorous than the Senate in holding public hearings about a handful of issues identified by the OAG. Given that both chambers are controlled by Republicans, a simply explanation of partisan loyalty is inadequate. It appears, as we noted earlier, that the level of initiative taken by individual legislators, especially committee chairs, may more accurately explain the level of oversight. Only a few legislative committee members demonstrate knowledge and familiarity with state government programs that they are responsible for monitoring. Some mechanism to education legislators could help them perform more effective oversight, but that is difficult to achieve with high levels of turnover.

### Relevant Institutional Characteristics

Michigan has a highly professional legislature, recently ranked as the fifth most professional in the nation (Squire 2017). This reflects the legislature's unlimited session length and extensive resources, including staffs to support their work and salaries that permit legislators to devote all their work time to the job of legislator. Michigan's legislature has extensive non-partisan professional staffs—the chamber fiscal agencies and the Legislative Services Bureau (LSB)—in addition to partisan staff, committee staff, and personal staff.

The institutional capacity of Michigan's legislature, however, has declined in recent years, as stringent term limits have reduced legislator experience. Enacted in 1992, these term limits consist of a lifetime ban for legislators after serving 6 years in the lower and 8 years in the upper chamber.<sup>1</sup> Moreover, according to NCSL, staff resources have declined. There were 815 permanent staff members in 2015, down from a high of 1,404 in 1996.<sup>2</sup> Legislator compensation for 2016 was \$71,685 plus 54 cents/mile driven and \$10,800 in expenses associated with the job<sup>3</sup> an amount that is high enough for legislators to work full-time.

Many states with a strong legislature have a weak governor. Michigan is unusual—having both a powerful executive and a powerful legislative branch. Its governor's office is tied with Minnesota for the sixth most powerful governor in the country (Ferguson 2015). Michigan's executive branch also benefits from extensive staff resources that support a strong governor. The governor has the line-item veto for budget items, and it takes a vote by 2/3<sup>rd</sup>s of the elected legislators in each chamber to override gubernatorial vetoes.

Despite its robust resources for elected officials, Michigan has a smaller than average share of local and state government employees as a percentage of its workforce. These state and local government employees comprise only 10.6% of Michigan's workforce, while the national average is 11.3% (CATO Institute 2006). Of these employees, a slightly higher than average share work in K-12 education (6.6% for Michigan compared to 6.1% nationally). The state and

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<sup>1</sup> <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>, accessed 6/25/18.

<sup>2</sup> <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 2/12/18.

<sup>3</sup> [http://www.ncsl.org/Portals/1/Documents/legismgt/2016\\_Leg\\_Comp\\_Session\\_Per%20Diem\\_Mileage.pdf](http://www.ncsl.org/Portals/1/Documents/legismgt/2016_Leg_Comp_Session_Per%20Diem_Mileage.pdf), accessed 2/12/18.

local bureaucracy in Michigan is extremely small in the area of services (e.g., highways and transit, parks and natural resources, sewage and solid waste). Michigan is tied with Connecticut for last place in this category at 0.8% of its workforce compared to a national average of 1.3% (CATO 2006). Moreover, Hackbarth (2016) reports that Michigan was the only state in the nation that spent less on municipal government and the services during the decade from 2002 to 2012.<sup>4</sup>

Michigan's legislative term limits are the most stringent in the nation. As noted above, this is a lifetime ban with only 6 years permitted in the lower chamber. Consequently, turnover, especially in the lower chamber, is extremely high, and state representatives have little time to learn the more complex parts of their job. Exercising oversight by monitoring state agencies is something on which term-limited legislators report spending very, very little time (Sarbaugh-Thompson et al 2010). Although their predecessors also gave this activity little time and attention, the problem has become worse after term limits (Sarbaugh-Thompson and Thompson 2017) with more legislators unaware that oversight is even one of their duties. One interview respondent with nearly 25 years of experience working in or with the legislature said that term limits increases the power of the bureaucracy because the imbalance of knowledge and experience favors the power of bureaucrats and weakens the legislature (interview notes 2018).

## Political Context

Divided government characterized Michigan's state government during the latter half of the 20<sup>th</sup> century, punctuated only occasionally with single-party control (e.g., briefly in 1983 Democrats controlled both legislative chambers and the governor's office—a trifecta--until recall elections shifted control of the State Senate to Republicans, and in 1995-96 Republicans had a trifecta). In the first decades of the 21<sup>st</sup> century, one-party Republican control prevailed. From 1999—2002 and 2011--2018, Republicans controlled both chambers of the legislature and the governor's office, as well as the secretary of state and the attorney general offices.

The Democratic Party in Michigan is an alliance, and often an uneasy one, between labor and liberals. Historically many of Michigan's Republicans were moderates, often business pragmatists who worked well with their Democratic colleagues (Brown & VerBerg, 1995). With decades of changing partisan control of government, these veteran legislators spent time and effort “building coalitions across party lines to pass legislation” (Sarbaugh-Thompson & Thompson, 2017). But in 1992, Michigan adopted term limits. Veterans were purged from office beginning in 1999 in the House and in 2003 in the Senate. After term limits, much more conservative Republicans and somewhat more liberal Democrats gained control of Michigan's legislature (Sarbaugh-Thompson & Thompson, 2017). The result is more partisan polarization. Recent data rank Michigan's House as the 12<sup>th</sup> most polarized lower legislative chamber and its senate as the 4<sup>th</sup> most polarized upper chamber, based on differences between median roll call votes for each party in each chamber (Shor and McCarty 2015).

## Dimensions of Oversight

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<sup>4</sup> <http://blogs.mml.org/wp/inside208/2016/04/22/revenue-sharing-budgets-positioned-for-initial-action-senate-cuts-statutory-by-1-5/>, accessed 6/26/18.

## Oversight Through Analytic Bureaucracies

With a staff of 142 employees (on September 30, 2017) and a state budget appropriation of about \$15 million,<sup>5</sup> Michigan's Office of the Auditor General (OAG) is a major actor in legislature oversight. Michigan's Constitution in Article IV, Section 53 requires that the legislature appoint an auditor general who is responsible for conducting post audits of financial transactions and the accounts of the state, including all branches, departments, offices, boards, commissions, agencies, authorities and institutions. This same section of the constitution also charges the auditor general with conducting performance post audits of this same list of entities. Furthermore, the constitution requires that the OAG report annually to the legislature and to the governor and may report more often if either the governor or the legislature deems it necessary. The OAG also performs some audits of state contracts. Although the OAG is described as an independent agency that creates its own audit plan (interview notes 2018) and legislators state that they can only suggest investigations informally,<sup>6</sup> the Michigan Constitution allows the legislature to direct the auditor general to conduct investigations pertinent to the conduct of audits. In practice, it appears that the OAG has latitude to manage its own audit priorities, but is responsive to areas of public and legislative concern. Financial audits are mandated on a specific schedule, so it is primarily in the area of performance audits that the OAG is able to set its own priorities. The demands of financial audits sometimes occupy 50% of the OAG's time, but if these audits can be completed more efficiently, then the OAG is able to meet its goal of a 40/60 split between financial audits and performance audits (interview notes 2018).

In its Annual Report to the state legislature, the auditor general describes five types of audits performed. These include financial and government operations audits, statewide single audit, and three types of performance audits: environmental and information technology performance audits, health, safety and regulatory performance audits, and service, assistance, and educational performance audits. Each of these five types of audit is performed by a separate subunit within the Bureau of Audit Operations, housed in the auditor general's office.<sup>7</sup> During fiscal year 2017 the OAG completed 81 reports, which included 41 performance audits (including 9 follow up reports), 19 financial audits, and 16 contract audits.<sup>8</sup>

Michigan's Constitution specifies that the auditor general (AuG) serves for an eight-year term, unless removed from office for cause by a two-thirds vote of members of both chambers of the legislature. The AuG is constitutionally prohibited from being assigned duties not specified in the constitution and is described as independent and non-partisan, despite being appointed by the legislature. The AuG, the deputy AuG, and one other OAG staff member are non-civil service positions--another constitutional requirement. The remaining OAG staff consists of civil servants, most of whom (120) have professional degrees in accounting, business, internet security, and similar fields.<sup>9</sup> Nearly half of these professionals are CPAs.

In its last five triennial reviews, the National State Auditor Association ranked Michigan OAG at its highest level of performance and an external peer review of the OAG determined that

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<sup>5</sup> NASACT 2015, The National Association of State Auditors, Comptrollers and Treasurers, *Auditing the States: A Summary*, 2015 Edition.

<sup>6</sup> <http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-011818.mp4>, accessed 6/20/18.

<sup>7</sup> <https://audgen.michigan.gov/wp-content/uploads/2017/10/2017-Annual-Report.pdf>, accessed 2/1/18.

<sup>8</sup> <https://audgen.michigan.gov/archive/archive-2017/> accessed 2/1/18.

<sup>9</sup> NASACT 2015, The National Association of State Auditors, Comptrollers and Treasurers, *Auditing the States: A Summary*, 2015 Edition.

the office has “no impairments affecting its independence.”<sup>10</sup> The quality of Michigan’s OAG is indicated by its 2017 Excellence in Accountability award from the National State Auditors Association for the audit of the Grand Rapids Veterans’ Homes (one award is given nationally in that category).<sup>11</sup> Unlike many states in which a legislative committee tells the audit agency what to investigate, in Michigan the OAG is independent, as noted above. It formulates its own audit plan using a matrix of items such as the size of the budget, size of the program population, prior audit findings, and the risk to the public or public impact of the program (interview notes 2018). Audits that the OAG thinks might generate change are prioritized (interview notes 2018). The OAG shares its six month plan with the chamber leaders from both political parties and with the governor’s office (interview notes 2018).

In its Annual Report, the OAG says that it notifies legislators as well as the audited entity and the governor’s office the day prior to the release of any reports. All audit reports are publicly available, and the auditee has two weeks to respond.<sup>12</sup> Changes in agency behavior are often negotiated between the agency and the auditor general’s office (interview notes 2018), but the OAG lacks formal enforcement power. Therefore, legislative intervention can be necessary. The auditor general’s 2017 annual report describes two situations in which state agencies refused to comply with the legal mandate to provide the auditor general’s office access to data needed for audits. According to that report, this is the first time in its history that the auditor general’s office had to issue subpoenas to obtain this sort of information. The dispute involves a state law that forbids the Department of Health and Human Services from providing access to adoption records versus the constitutional prerogatives granted to the auditor general to have access to all documents and records relevant to an investigation. In March of 2017, the House passed a bill (107 to 0) to provide the auditor general with access to all confidential state records. More than a year later the senate has not acted.<sup>13</sup> Currently the OAG lawsuit about access to the adoption records is being heard by the Michigan Court of Claims.<sup>14</sup>

When an audit report is released (posted publicly on the OAG website) each legislator is sent an e-mail link to the report. The reports are also referred to the Senate Committee on Government Operations (interview notes 2018). The OAG employs a State Relations Officer to facilitate relationships with individual legislators, legislative committees, and legislative fiscal agencies, as well as the media, and executive branch. The OAG extends to legislators an offer to brief them individually or provide testimony in committees about audit reports or other issues, and evidence indicates that the OAG regularly makes presentations to legislators and participated in committee hearings (interview notes 2018). During the past four years the OAG has made 14 presentations to the legislature in 2015, 13 in 2016, 4 in 2017 and 3 during the first half of 2018. The number of presentations tends to fluctuate for various reasons, such as election years and the scope and topic of specific audit reports (interview notes 2018).

The OAG also, according to its annual report, responds to requests for audit services from legislators. But a veteran staff member with extensive experience claims never to have requested

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<sup>10</sup> <https://audgen.michigan.gov/wp-content/uploads/2017/10/2017-Annual-Report.pdf>, accessed 2/1/18

<sup>11</sup> [http://www.nasact.org/accountability\\_awards](http://www.nasact.org/accountability_awards), accessed 2/1/18.

<sup>12</sup> NASACT 2015, The National Association of State Auditors, Comptrollers and Treasurers, *Auditing the States: A Summary*, 2015 Edition.

<sup>13</sup> <https://www.lansingstatejournal.com/story/news/local/capitol/2018/06/04/michigan-auditor-general-takes-historic-fight-court/663946002/>, accessed 6/22/18.

<sup>14</sup> <https://www.lansingstatejournal.com/story/news/local/watchdog/2018/01/12/michigan-auditor-general-sues-dhhs-release-adoption-records/1027921001/>, accessed 6/23/18.

an OAG report and did not know what the procedure to do so would be (interview notes 2018). The OAG also emails a monthly newsletter to all legislators and to the governor describing the status of various audits and investigations (Annual Report, 2017, OAG). Moreover, given the public availability of these reports, any legislator who wanted a report, even if he or she was not on the official distribution list, could simply have staff obtain a copy of the report (interview notes 2018).

Despite the availability of audit and boilerplate reports,<sup>15</sup> interviews with legislators provide mixed evidence about the time and effort committees devote to them. A legislator reported receiving somewhere between 1 and 12 reports per week and reading 1 to 2 of them per week. (interview notes 2018). It appears that legislators concentrate their attention on reports in one or two areas of their own policy interest rather than the dozen or so reports per week that they receive (interview notes 2018). Staff is more likely to read or at least scan the broader range of reports available (interview notes 2018). Staff acknowledges that the legislature should probably spend more time on oversight (interview notes 2018). A legislator, who personally described reading some of the reports, estimated that legislators only spend about 5% of their time or less overseeing the work of state agencies (interview notes 2018).

To examine legislative actions arising from performance audits, a search on the state legislature's website for key words appearing in a small sample of Auditor General Reports rarely provided a link to legislation or hearings on these topics. It appears that the audit process revolves around interaction between the OAG and the agency. Yet sometimes the legislature is motivated to act on these reports. News media coverage of an auditor general report frequently triggers legislative action in Michigan. This is a pattern found widely throughout the states (Brown 1979). Consistent with this, one highly knowledgeable observer of Michigan government and one legislator told us that the Michigan Legislature appears to be following what the media reports rather than the media following what the legislature does (interview notes, 2018).

The Grand Rapids Veterans Homes audit is an example that illustrates the interaction between legislative action and a scathing audit report, triggered by media attention.<sup>16</sup> The report revealed that the Homes were not taking care of veterans properly. In this case, the legislature appropriated \$100 million to build two new state-of-the-art veterans' facilities (SB 800).<sup>17</sup> Triggering events such as substandard care of veterans may produce an audit report that Brown (1979) describes as providing evidence that the legislature needs to take action that it already wanted to take, so there may be a synergistic effect of legislators' interest and OAG reports.

Another trigger for legislative follow up is involvement of federal agencies. Many of the reports produced by the OAG and the state agencies provide information required by federal statutes and rules. For example, Bovine TB detected in several counties in Michigan results in federal inspections and legislative hearings and funds appropriated. Oversight related to Bovine TB is described in greater detail below in our discussion of *Oversight Through the Appropriations Process*.

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<sup>15</sup> Boilerplate reports outline specific compliance requirements. Staff describes them as more specific than a statute and a way to gain agency compliance with legislative intent. They are described in more detail in the section of *Oversight Through the Appropriations Process*.

<sup>16</sup> <http://www.freep.com/story/news/local/michigan/2016/02/18/draft-audit-michigan-veterans-home/80556304/>, accessed 8/17/2017.

<sup>17</sup> <http://legislature.mi.gov/doc.aspx?2016-SB-0800>, accessed 3/2/18.

In addition to the OAG, oversight activities in Michigan's House and Senate are supported by staff in chamber specific non-partisan analytic bureaucracies: the House Fiscal Agency (HFA) and the Senate Fiscal Agency (SFA). A governing board comprised of six Representatives, three from each political party, appoints the HFA Director and oversees HFA's work. Its budget is approximately \$3 million annually. Staff (approximately 25 professionals)<sup>18</sup> falls into three categories: fiscal analysts, economists, and legislative analysts. Each of these professionals is assigned to specific areas of substantive responsibility, such as corrections, the lottery, tax analysis, and so on. The HFA posts dozens of current and recent reports on its website, adding more than new 30 reports per year. These range from revenue estimates to legislative analysis to appropriations bill summaries.

The SFA is the companion non-partisan support agency for Michigan's upper legislative chamber. Its governing board consists of five Senators: the Majority and Minority Party Leaders, the Chair of the Senate Appropriations Committee, and one Senate Appropriations Committee member from each political party appointed by the Appropriations Committee Chair subject to approval by the Senate Majority Leader. It too provides legislative analysis, (including but not limited to budget bills) and economic and budget forecasts. Additionally, the SFA analyzes state ballot proposals, produces a quarterly publication on state issues (*State Notes*), tracks lawsuits involving the state, and analyzes the governor's budget proposals. Its staff serves as clerks for Appropriations Subcommittee meetings and acts as liaisons with state agencies. Its budget is approximately \$3 million annually, and it employs about 25 professional staff along with a very small support staff. With the advent of term limits in Michigan, fiscal agency staff is described as the source of institutional knowledge in the legislature (interview notes 2018).

A major difference between the OAG and fiscal agency staffs is the direct contact that fiscal agency staff has with legislators. Additionally, the OAG has a set cycle of reports that they must produce, so their ability to respond to legislators' requests is constrained. Responding to legislators' needs is the primary purpose of fiscal agency staff (interview notes 2018).

## Oversight Through the Appropriations Process

Prior research on the Michigan Legislature identifies the Appropriations Committee as the locus of the Michigan House of Representatives oversight activities (Sarbaugh-Thompson et al 2010). Video recordings of house committee and subcommittee meetings are archived and available.<sup>19</sup> The same research identifies the Senate the Joint Committee on Administrative Rules (JCAR) as well as the Senate Appropriations Committee as the major actors on legislative oversight. Audio recordings of many senate committee and appropriations subcommittees meetings are also available.<sup>20</sup> Each chamber's fiscal agency staffs rather than OAG work more closely with the appropriations committees and their subcommittees (interview notes 2018).

Boilerplate language in appropriations bills provides additional opportunities for legislative oversight in Michigan. Boilerplate is described as a way to restrict spending and articulate reporting requirements that is less restrictive than a statute. This means that changes in spending can be made more efficiently by changing boilerplate reporting requirements (interview

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<sup>18</sup> [https://en.wikipedia.org/wiki/Michigan\\_House\\_of\\_Representatives#House\\_Fiscal\\_Agency](https://en.wikipedia.org/wiki/Michigan_House_of_Representatives#House_Fiscal_Agency), accessed 6/17/18.

<sup>19</sup> <http://www.house.mi.gov/MHRPublic/videoarchive.aspx>, accessed 6/18/18.

<sup>20</sup> <http://www.senate.mi.gov/committeeaudio/2017-2018.aspx>, accessed 6/18/18.

notes 2018). Fiscal agency staff actively participates in writing boilerplate language (interview notes 2018). Writing boilerplate requirements is one way to motivate agencies to comply with the wishes of the legislature (interview notes 2018). For example, staff might include a reporting requirement with teeth in boilerplate language, such as you must report on X within 30 days otherwise we'll cut your budget by 1% (interview notes 2018). And the threat from a legislator to an agency that he might have to “unroll” the agency’s budget (e.g., publicly discuss and vote on every line item) will generally get an agency to comply with the legislator’s request. But on the whole, at least for legislators from the governor’s party, the assumption is that the agency is doing what it is supposed to, unless you are “smacked in the face” with evidence to the contrary, such as in the case of the Flint water crisis (interview notes 2018).

The list of boilerplate reports required in the 2016-17 Appropriations Act is very long—more than 600 reports.<sup>21</sup> This list shows that a diverse set of actors, (state agencies, boards, commissions, universities, community colleges and other similar state entities), produce these reports, many of which are mandatory. Occasionally reports are required from grantees or other independent actors engaged in public service provision. And some boilerplate reports are produced by the Michigan House and Senate Fiscal Agencies. The list of boilerplate reports also shows that these reports are typically sent to appropriations committee and subcommittee chairs, as well as the chambers’ fiscal agencies. But some of the reports are posted publicly or submitted to specific entities such as the State Budget Office. Once again, it appears that staff scans a wider range of these reports than legislators do (interview notes 2018). Staff, however, admit that they simply do not have time to read all the reports that flow into their legislator’s office (interview notes). Given how closely fiscal agency staff works with legislators on appropriations subcommittees, they are able to synthesize and summarize information from the reports for legislators and their staff members.

A search of legislative committee websites for non-partisan issues that could lend themselves to evidence-based oversight identified a 1.5 hours hearing by the Senate Appropriations Sub-Committee on Agriculture and Rural Development on a topic covered by a boilerplate report—Bovine Tuberculosis (TB).<sup>22</sup> Bovine TB is a major problem primarily in four or five Michigan Counties, but the number of counties infected ebbs and flows. It puts farm families at risk of contracting the disease and also leads to the destruction of dairy herds. The federal government mandates reporting on Bovine TB and may quarantine products from states or regions within a state in which Bovine TB is found. Increases in Bovine TB were discovered in Michigan in the mid-1990s, and it has been a chronic problem since then. It is endemic in some Michigan deer herds. Contact with the deer can transmit the disease to cows, and contact with the cows can transmit the disease to human. It is, therefore, a serious health problem as well as an economic problem for farmers in the affected regions of the state. Until February 2018 it appeared to be concentrated in a small portion of the state –“located around the four corners where the counties of Montmorency, Alpena, Oscoda and Alcona meet”, according to the Michigan DNR. In February 2018 two cows in Ottawa County exhibited the disease. A public meeting was held on June 12<sup>th</sup>, 2017 in Alcona County, which is in the district represented by the

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<sup>21</sup> [https://www.house.mi.gov/hfa/PDF/Alpha/boilerplate\\_report\\_fy16-17.pdf](https://www.house.mi.gov/hfa/PDF/Alpha/boilerplate_report_fy16-17.pdf), accessed 1/24/18.

<sup>22</sup> <http://www.senate.michigan.gov/committeeaudio/2017-2018/Agriculture/Iron%20River%20Committee%206%2012%202017.mp3>, accessed 1/29/18.

chair of the Appropriations Sub-Committee on Agriculture and Rural Development, Senator Stamas.<sup>23</sup>

Prior to this meeting, there are other committee hearings and press releases on this issue. In addition to the federally mandated boilerplate report, there is a 2017 Auditor General Report on this topic.<sup>24</sup> That report identified some problems with procedures governing the transportation of cows from the affected counties in Michigan. The June 12<sup>th</sup> hearing appears to have been well attended by farmers in the area. About half of the time in the hearing was spent with agency staff, both Michigan Department of Agriculture and Rural Development (MDARD) and the Michigan Department of Natural Resources (MDNR). Agency staff provided information to the senators and other in attendance about the problem. Although Bovine TB had received some media attention and had been discussed in prior committee hearings, none of the senators appeared to know enough to really quiz the agency witnesses. The farmers, however, quizzed the agency witnesses. The chair asked the farmers to be sure to give him their names after the hearing. He wasn't calling on the farmers as witnesses, the typical practice in hearings. The farmers were talking directly to the DNR and the MDARD witnesses. There was a lively give and take discussion going on that did not often involve the senators, although occasionally a senator made a comment or asked a question. This was not a typical committee hearing where legislators drive the agenda and the chair controls the questioning. The DNR representative, who had previously worked in Minnesota, explained that Minnesota had successfully used a bounty on deer to exterminate the affected deer herd and to quickly contain the disease.

The House Appropriations Subcommittee on Agriculture and Rural Development also held hearings at which Bovine TB received some attention. At the March 16<sup>th</sup> 2017 hearing of this subcommittee, the state veterinarian explained the need for money requested in the governor's budget for monitoring the spread of Bovine TB. A representative who raises cattle inquired about the risk of human infection and also about what was being done to deal with the disease in the deer population in the four consistently affected counties in the state. As he described it, the Michigan is observing and monitoring a wildfire—trying to keep it from spreading—rather than trying to put it out. He wanted farmers to be able to shoot deer on their property at any time. The state veterinarian pointed out that MDNR is in charge of that and that that agency had tried to “incentivize” deer hunting in the affected area.

No one at this hearing mentioned the successful program in Minnesota in which, using a bounty on deer, the state eliminated Bovine TB by exterminating the affected deer herd. Moreover, a quick examination of the internet demonstrates that the DNR already is allowing farmers to shoot deer on their own land—the suggestion of the representative—but that it is not reducing the size of the herd.<sup>25</sup> No one provided this information during the hearing. Moreover, neither the house standing committee on MDNR (15 meetings in 2017) nor the corresponding DNR House Appropriations Subcommittee (2 meetings in 2017) mentioned Bovine TB. This indicates a lost opportunity to follow up publicly about deer eradication efforts. The gubernatorial budget proposed \$1 million in additional funds for Bovine TB prevention, and the final budget preserves these funds for the MDARD, but it is not clear how effectively these funds will be used and whether anyone will follow up on Bovine TB eradication.

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<sup>23</sup> <http://www.senatorjimstamas.com/media-advisory-senate-agriculture-committee-holding-meeting-in-alcona-county-about-bovine-tb/>, accessed 1/29/18

<sup>24</sup> <https://audgen.michigan.gov/wp-content/uploads/2017/01/rs791011016-2277.pdf>, accessed 2/1/18.

<sup>25</sup> [http://www.michigandnr.com/FTP/wildlife/NRCMaterials/DMU%20Narratives/NLR%20Narratives/DMU\\_001.pdf](http://www.michigandnr.com/FTP/wildlife/NRCMaterials/DMU%20Narratives/NLR%20Narratives/DMU_001.pdf), accessed 6/20/18.

Also, in the same House Appropriations Subcommittee meeting (March 16<sup>th</sup> 2017), one minority party representative did refer to the OAG audit<sup>26</sup> when asking a question during a presentation by the state veterinarian.<sup>27</sup> Basically, the OAG found that MDARD needs to work more closely with law enforcement to detect illegal transportation of cattle from the affected counties—a recommendation that the agency accepts. The veterinarian responded about the audit report findings that the department was revising the animal transit procedures to comply with the OAG recommendations. But the answer by the state veterinarian did not provide specific information, and he and the representative agreed to continue the conversation outside the hearing. It appears that these informal outside conversations are frequently used to discuss and negotiate about state agency activities (interview notes 2018).

Our conclusion after listening to hearings about this issue is that there are ample formal procedures and opportunities for the Michigan’s legislators to exercise oversight through the appropriations subcommittee process, but very few of them are knowledgeable enough about the issues to hold anyone’s feet to the fire. They are providing a forum for agency dialogue with concerned citizens and are learning about what’s happening by listening to the agency and citizens interact. Although this information dissemination and discussion forum is probably very useful to the affect participants, it may not constitute legislative oversight of state agencies or their programs. It did not address the issue of policy change with respect to “managing” deer herds infected with Bovine TB, despite the potential public health risks and economic damages to the state’s cattle industry, and the costs to state government of containing the disease (\$145 million over the 20 years from 1995 to 2005).

The legislature approved a one-time increase of one million-dollar gubernatorial budget recommendation for Bovine TB management. MDARD personnel described the need for this money to the senate and to the House Subcommittees on Agriculture and Rural Development in its initial presentation of the governor’s budget (committee hearing 2/21/17).<sup>28</sup> The final language in the state budget follows:

6. Enhanced Wildlife Risk Management. Governor and Senate recommended one-time funding of \$1.0 million GF/GP for local conservation districts in Alpena County to assess cattle farms and implement practices to prevent the spread of bovine tuberculosis.<sup>29</sup>

This suggests that federal mandates, which generate boilerplate reports, can lead to a response from both the executive and legislative branches of Michigan’s government. Additionally, the issue of Bovine TB illustrates the overlapping efforts of the OAG (an audit report), the executive branch (both the agency and the governor request resources to contain the spread of this disease), responsiveness to citizen concerns of relevant appropriations subcommittees, and last, but not least, monitoring by the federal government with the potential to

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<sup>26</sup> <https://audgen.michigan.gov/wp-content/uploads/2017/01/r791011016-2277.pdf>, accessed 6/20/18.

<sup>27</sup> <http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=APPR-SAGR-031617.mp4>, accessed 6/20/18.

<sup>28</sup> [http://www.senate.mi.gov/committeeaudio/2017-2018/Approps%20Subcommittees/Agriculture%20and%20Rural%20Dev/AgriRuralDev-02-21-2017\\_0301PM\\_11\\_21.mp3](http://www.senate.mi.gov/committeeaudio/2017-2018/Approps%20Subcommittees/Agriculture%20and%20Rural%20Dev/AgriRuralDev-02-21-2017_0301PM_11_21.mp3), accessed 6/19/18.

<sup>29</sup> [http://www.legislature.mi.gov/\(S\(1yw4v23c1wvlpq51h3nbg1dd\)\)/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-0139-F.pdf](http://www.legislature.mi.gov/(S(1yw4v23c1wvlpq51h3nbg1dd))/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-0139-F.pdf), accessed 1/29/18.

impose restrictions that impact family farms. Although these processes provide multiple opportunities for oversight, the duplication of presentations by agency staff and the paucity of knowledgeable legislators in either chamber does not appear to produce high-quality oversight. Time could be used more efficiently if there were at least some joint chamber committee hearings. Joint committee meetings might expose legislators to their rare colleague with knowledge on this subject. Moreover, given the limited institutional knowledge of this issue and the disjointed response to an issue that spans the jurisdiction of several agencies and committees, a more coordinated approach might help legislators see the larger picture and better assess the limitations of the current approach, which contains rather than eliminates the disease. A solution to the problem involves both agriculture and natural resources agencies.

## Oversight Through Committees

According to the chamber rules, all standing committees can hold oversight hearings, but there is also a House Oversight Committee that reviews audits (6 members) and a corresponding five-member Senate Oversight Committee.<sup>30</sup> The House Oversight Committee is one of the 25 standing committees designated in Rule 33 of the Standing House Rules.<sup>31</sup> This same document specifies in Rule 36 that this committee reviews reports from the auditor general “and, if appropriate, refer the reports to the appropriate standing committee for consideration.” Moreover this rule specifies that referring a report to the appropriate standing committee does not restrict an individual house member from initiating action in response to reports from the auditor general. Although any legislator may contact the OAG, requests for the OAG to present to a committee must go through the committee chair, because the chairs control the committee agenda (interview notes 2018).

The journals for the chambers indicate receipt of audit reports by oversight committees.<sup>32</sup> But a search for the key words “auditor general” merely indicates that the clerk of the chamber announced that a specific report had been received. Any actions taken by the legislature in response to these reports seems not to be routinely reported in the legislative journals. Committee hearings for the Oversight Committees indicate that after reviewing these reports they are sometimes referred to the standing committees. It appears that a copy of the agency compliance plan in response to audit investigations is sent to relevant house and senate committees and to the chambers’ fiscal agencies. We base this on the distribution list on the cover letter accompanying the reports.

Video recordings of the House Oversight Committee demonstrate that this committee meets and that staff from the OAG presented audit report findings to the committee three times during 2017 through May of 2018. One committee hearing, discussed in detail below, occurred approximately two months after media coverage of the subject of the audit report--problems at a state psychiatric hospital.<sup>33</sup> Another oversight committee hearing for 2017-2018 that featured a presentation from the OAG examined limited efforts of the Veterans Affairs Agency to identify

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<sup>30</sup> [https://www.legislature.mi.gov/documents/publications/rules/house\\_rules.pdf](https://www.legislature.mi.gov/documents/publications/rules/house_rules.pdf), accessed 1/24/18.

<sup>31</sup> [https://www.legislature.mi.gov/documents/publications/rules/house\\_rules.pdf](https://www.legislature.mi.gov/documents/publications/rules/house_rules.pdf), accessed 1/30/18.

<sup>32</sup> [http://www.legislature.mi.gov/\(S\(51f4k53lrkjewtyk1qtbmv5w\)\)/documents/2017-2018/Journal/House/pdf/2017-HJ-02-01-009.pdf](http://www.legislature.mi.gov/(S(51f4k53lrkjewtyk1qtbmv5w))/documents/2017-2018/Journal/House/pdf/2017-HJ-02-01-009.pdf), accessed 1/24/18.

<sup>33</sup> <https://www.detroitnews.com/story/news/local/wayne-county/2017/11/14/westland-psych-hospital-staff-audit/107676392/>, accessed 6/22/18.

veterans eligible for federal benefits. This hearing occurred approximately one month after media coverage of that audit report.<sup>34</sup> And the third Oversight committee hearing occurred about one month after media coverage of the cybersecurity risks to the state.<sup>35</sup> An internet search for media coverage of four other performance audit reports completed by the OAG during the same time period as the three reports presented to the committee did not yield media coverage of those reports, and at this point in time this committee had not held any publicly available hearings on these other auditor general reports. Media coverage appears to be a catalyst for legislative oversight activity in Michigan.

### *Vignette on Oversight of the Walter P. Reuther Psychiatric Hospital*

*On January 18, 2018, the OAG staff presented an audit of the Walter P. Reuther Psychiatric Hospital, which is in the Department of Health and Human Services, to the House Oversight Committee. The presentation involved working through the audit report findings and reading highlights. The audit report investigated conditions at a state run facility that houses mentally ill persons, some of whom are awaiting trial after having pleaded not guilty to crimes by reason of insanity. Its patients are both vulnerable and potentially dangerous. The OAG found that the facility could not account for keys (470 missing key rings and lock cores that had not been changed for at least 20 years), the staff at the hospital was working exceptionally high numbers of overtime hours and back to back shifts, some staff had inappropriate access to confidential patient health care records, inventory records for “high-risk non-controlled medications” were inadequate, and that the double set of doors at the entrance to the facility did not close properly, providing patients with an opportunity to flee. The audit documented that the facility’s incident reports “identified instances during April 2016 and June 2016 in which two patients fled from the facility by timing the opening of these doors. The patient who left in April 2016 was driven away in a waiting car and ultimately left the State.”<sup>36</sup> This is an especially worrisome situation given that the facility is located in a residential area and that the facility houses patients who are severely mentally ill and also patients charged with a crime but “who are not guilty by reason of insanity, court ordered, and incompetent to stand trial.” Some of the problems at the facility, (allegations of substandard patient health and hygiene conditions) received attention in the media as far back as 2013.<sup>37</sup>*

*The presentation by OAG staff on the Walter P. Reuther Psychiatric Hospital lasted about 20 minutes, followed by a few questions from the chair and committee members. Staff from the agency was then provided an opportunity to tell the committee how the facility and the state were responding to the audit findings and to provide any clarification. The director of the Department of Health and Human Service did not attend the hearing to give the agency response nor were there any Powerpoint slides or other materials or visual aids presented by the agency. In contrast during two other Oversight Committee hearing on an audit report, one involving*

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<sup>34</sup> <http://detroit.cbslocal.com/2018/02/10/audit-michigan-could-save-money-by-steering-veterans-to-va/>, accessed 6/22/18.

<sup>35</sup> <https://www.freep.com/story/news/local/michigan/2018/03/16/audit-state-michigan-computer-attack/431224002/>, accessed 6/22/18.

<sup>36</sup> <https://audgen.michigan.gov/wp-content/uploads/2017/11/r391023016-4441.pdf>, accessed 6/21/18.

<sup>37</sup> <https://www.clickondetroit.com/news/michigan/defenders-disturbing-conditions-found-at-hospital>, accessed 6/21/18.

*Veterans Affairs*<sup>38</sup> and the other on cybersecurity with the Department of Technology, Management, and Budget,<sup>39</sup> agency directors and support staff attended and provided prepared slides and materials for committee members. For this hearing the agency response was provided by a bureau director who oversees all state hospitals, and the hospital director for the Walter P. Reuther Psychiatric Hospital talked to the committee. The committee chair noted that this was the worst audit report on any agency he had seen,<sup>40</sup> and yet the agency did not launch an effective defense or explanation. On the other hand, a similar statement was made about the cybersecurity audit of the Department of Technology, Management, and Budget.<sup>41</sup> But the director of that agency did attend the hearing to present slides and information defending and explaining the work of his agency.

Questions from committee members ranged for naïve to insightful. For example, one legislator asked what an FTE is. Other committee members asked whether anyone had been disciplined or fired over the missing keys or the unauthorized access to medical records. The facility representative's responses did not seem to satisfy them. One committee member inquired about the salaries paid to employees and whether they were too low to attract and retain staff. The facility representative did not know what the average wages were. Later in the hearing she reported that there are numerous unfilled positions, but no one circled back to the issue of whether pay was too low to attract and retain nursing staff, which appears to contribute to the excess number of hours of overtime (more than 1,000 hours for 52 staff over a two-year period, and more than 4,000 hours for one staff member).

At the conclusion of the hearing, the chair took a vote on whether to refer this audit report to the Appropriations Subcommittee on Health and Human Services. The vote was unanimously in favor. Although he mentioned also sending the audit report to the relevant standing committee, he did not take a vote to do that. At one point in the hearing, the self-described frustrated chair of the Oversight Committee, after accusing the absent Director of the Department of Health and Human Services with poor leadership, threatened to cut the agency's budget by 15% if there wasn't more action to correct the problems. But, he also told the hospital director to meet with the committee staff to draft a letter to Capital Outlay to request money for new doors for the facility, seemingly recognizing that lack of money was preventing the facility from replacing the doors. Subsequent legislative action on topics raised in the audit and hearings on the Walter P. Reuther Psychiatric Hospital involved introduction in the House of HR 4629 – HR 4631, which proposed statewide staffing to patient ratios for nurses. The bills never received a floor vote in the house and the chair of the Senate Health Policy Committee was reported to say that his committee would not consider the bills.<sup>42</sup>

The Michigan Senate has a similar oversight standing committee comprised of five members designated in Senate Rule 2.103<sup>43</sup> tasked with reviewing auditor general reports--the Senate Committee of Government Operations. Specifically, at the request of the chair of the Committee on Government Operations a senate standing committee will “hold hearings and

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<sup>38</sup> <http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-030818.mp4>, accessed 6/22/18.

<sup>39</sup> <http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-041218.mp4>, accessed 6/22/18.

<sup>40</sup> <http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-011818.mp4>, accessed 6/21/18.

<sup>41</sup> <http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=OVER-041218.mp4>, accessed 6/22/18.

<sup>42</sup> <http://www.crainsdetroit.com/article/20171119/news/645366/safe-nursing-staffing-bills-face-uphill-battle-to-get-hearing>, accessed 6/22/18.

<sup>43</sup> [http://www.legislature.mi.gov/Documents/Publications/rules/senate\\_rules.pdf](http://www.legislature.mi.gov/Documents/Publications/rules/senate_rules.pdf), accessed 1/30/2018.

make written recommendations to the Committee on Government Operations on an auditor general report” according to Rule 2.104.<sup>44</sup> Moreover, this recommendation is voted on by members of the standing committee. Despite this, none of the nine available committee meetings of the Senate Committee on Government Operations held during 2017-18 discussed any auditor general reports. Some of the audio recordings were blank, and some lasted less than 20 minutes. It is not clear that this committee is active in addressing concerns or problems with state agencies that might be raised by the OAG. The one lengthy meeting of the nine meetings recorded involved access to firearms in school districts. The hearing was held in the aftermath of the Las Vegas mass shooting. It did not appear to involve oversight of the executive branch.

The House Oversight Committee chair and his committee members are carrying out their oversight responsibility, but video recordings of most committee meetings demonstrate that the majority of the hearings consist of staff and agency officials explaining to legislators what a program is and what it does rather than legislators probing its performance or implementation problems. According to some informed observers, it takes at least 2 years and often 3 or 4 years before a legislator understands the work of a committee well enough to ask probing questions rather than just trying to figure out what the agency does, and even when legislators begin asking questions, the questions are often very general—just what did you do with the money (interview notes 2018)? Because many Michigan legislators do not remain on the same committee for their six-year tenure in the lower chamber, representatives may never gain enough experience to ask the probing questions necessary for oversight (Sarbaugh-Thompson and Thompson 2017). The few legislators we observed asking tough questions (why aren’t you doing X?) often seem to rely on their prior career experience (e.g., the cattle producer on the House Agriculture Subcommittee inquiring about Bovine TB) to give them enough knowledge to conduct oversight.

Although legislators in the senate have more experience, and hence might be able to ask more pointed questions, the senate does not appear to be as active as the house in holding formal oversight hearings. We were told that the house recently has adopted more formal procedures for reviewing audit reports, while the senate process is more informal (interview notes 2018). These hearings appear to confirm this. It is possible that the senate held some informal discussions about these audit reports behind closed doors. But an observer with knowledge of the senate claims that there is no longer any oversight in the standing committees (interview notes 2018), which is consistent with lacunae in the Senate committee tapes.

Given the power accorded to Michigan’s committee chairs and chamber leadership, it is more difficult for minority party legislators to get information from the OAG into the public records. Sometimes committee members can only invite witnesses to testify with the chair’s permission (interview notes 2018). Some chairs are receptive to involvement by the minority party and other minority party members reported no opportunities to influence the chair’s agenda (interview notes 2018). According to one legislator, minority party members are typically able to invite witnesses to testify about problems with state agencies. But another minority party legislator reported that he was only able to ask state agency officials questions informally outside the committee hearings because the chair did not permit such queries from the minority party members of the committee (interview notes 2018). The majority party can, through these techniques, limit oversight, but use of these tactics depends on choices made by the individual chair.

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<sup>44</sup> [http://www.legislature.mi.gov/Documents/Publications/rules/senate\\_rules.pdf](http://www.legislature.mi.gov/Documents/Publications/rules/senate_rules.pdf), accessed 1/30/2018.

## Oversight Through the Administrative Rules Process

In the early 1990s Governor John Engler (Republican) sued to prevent the state legislature from overturning administrative rules.<sup>45</sup> As a result, the Michigan Supreme Court restricted the ability of Michigan's legislature to overturn administrative rules once the rule is promulgated. Both Republicans and Democrats in the legislature decried this during interviews we conducted with them for our term limits research project (interview notes 1998). More recently, Public Act 513 of 2016 grants the legislature more options when it objects to an agency rule.<sup>46</sup> These new options include a way for the legislature to propose an alternative rule and pass that as a bill or to delay proposed rules. Additionally PA 513 allows the Joint Committee on Administrative Rules (JCAR) to suggest changes to proposed rules. The result is an exceptionally complicated contingent system that involves the legislature in the formulation of rules before they are finalized. This Public Act became effective on January 9<sup>th</sup>, 2017. It establishes the following procedures:<sup>47</sup>

*Initiating a Rule:* After a law is passed, the state agency, (or professional boards and commissions, etc.) affected sends a request for rulemaking (RFR) to the Office of Regulatory Reinvention (ORR) to initiate the process. If the ORR approves the RFR, it notifies the JCAR that a rule will be drafted.

*Drafting a Rule:* Then the state agency drafts a proposed rule to implement the law and sends that to the ORR, which again notifies JCAR and also sends the draft rule to the Legislative Services Bureau (LSB) Legal Division for editing.

*Public Hearing and Comments:* Next the agency prepares a Regulatory Impact Statement and Cost-Benefit Analysis and sends that to the ORR. This step must be completed 28 days prior to public hearings on the rule. ORR reviews the proposed rule and grants permission for the agency to hold a public hearing on the rule. The agency schedules the hearing and notifies ORR, which notifies JCAR of the hearing, which notifies the relevant standing committee of the hearing. JCAR can hold its own separate hearing on the rule if it chooses to do so. The agency must also notify the public of the hearing by publishing a notice in 3 newspapers at least 10 days, but not more than 60 days prior to the hearing. The agency may revise the rules based on public input and then sends the rule back to ORR to go through the various checking with LSB and JCAR again.

*Post-Hearing Draft:* After holding the public hearing, the state agency sends a rules package back to ORR. JCAR must receive the rule within one year.

*JCAR Approval:* Once it receives the rules package, JCAR has 15 session days to exercise one of three possible options. First, it can let the rule go forward by doing nothing, in which case the ORR will send the rule to the Office of the Great Seal—making it an official rule. Second, JCAR can reject the rule and work through the legislature to repeal the law or pass a bill to rescind the rule or impose a one-year stay on the law. Alternatively, JCAR can ask the agency to make changes to the rule. In this case, the agency can accept JCAR's requested changes and send the revised rule to ORR to file with the Office of the Great Seal. Or the agency can reject

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<sup>45</sup> <http://www.craigslist.com/article/20160301/NEWS/160309985/casperson-bill-to-create-environmental-rules-committee-has-united>, accessed 2/16/2018.

<sup>46</sup> <http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0513.pdf>, accessed 2/16/2018.

<sup>47</sup> [https://www.michigan.gov/documents/lara/Admin\\_Rules\\_Process\\_353271\\_7.pdf](https://www.michigan.gov/documents/lara/Admin_Rules_Process_353271_7.pdf), accessed 2/16/2018.

JCAR's changes, which sends the rule back to JCAR, which has another 15 session days to decide whether to object to the rule or to take no action. Once again, taking no action will trigger submission of the rule by ORR to the Office of the Great Seal. Maintaining its objections means that JCAR will have to work through both chambers of the legislature to repeal the law or pass a bill to rescind the rule or impose a one-year stay on the law.

This extremely complicated and conditional set of actions means that unless the legislature is controlled by the same political party, it will be difficult for JCAR to block a rule by working back through both legislative chambers. On the other hand, if institutional prerogatives rather than partisanship prevail, the legislature does have options to restrain executive branch actions. It also appears that the executive branch, through the ORR, tries to work out any technical bugs in the agency rule prior to involving JCAR. Moreover the relevant standing committee in the legislature is not an integral actor in this process. JCAR is, however.

Searching for information on whether JCAR is actively involved in oversight revealed an entry in the Michigan Senate Journal (99<sup>th</sup> Legislature Regular Session of 2017, Wednesday, January 11, 2017)<sup>48</sup> in which 20 rules for which JCAR "by a concurrent majority vote, waived the remaining session days for the following rule set:" thereby allowing the ORR to immediately file the rule. In the same Senate Journal, the legislature is notified that 12 other rules have been officially filed by ORR. The webpage for the committee itself was uninformative. There was no record of prior meetings and no meetings currently scheduled.

Examining the ORR website for the history of pending rules reveals that JCAR is not mentioned in the list of steps involved in rules that were successfully modified in 2017. See for example changes to the "Responsibilities of Providers of Basic Local Exchange Service that Cease to Provide the Service."<sup>49</sup> The steps in the process of changing this rule mentions all the steps in the Administrative Rule Process that involve the agency, ORR, and LSB, but nothing involving JCAR participation is listed. The tab that is labeled JCAR includes transcripts of the public hearing, copies to newspaper notification of the public hearing, and other reporting about the actions taken. It appears that JCAR is informed of agency and ORR actions, but does not become involved, typically.

On the other hand, several blog posts indicated concern about JCAR's potential involvement in the rules promulgated to regulate medical marijuana. This indicates that JCAR can use legislative oversight to regulate initiatives passed through the citizen ballot initiative process—another little discussed form of legislative oversight. This, however, is not oversight of the executive as much as it is oversight of the citizenry or state government more broadly.

Recently the chair of the Senate Committee on Natural Resources sponsored a set of bills creating a separate panel of private sector actors who would oversee rules for the Department of Environmental Quality (DEQ). According to media coverage of this issue, the chair of the Senate Natural Resources Committee, Senator Casperson, says that, "environmental groups have too much sway over state regulators and conflates what he considers an onerous permitting process that drives away business with the influence of those groups, which, he says 'are flat out lying.'" This is the chair view, which seems to arise out of conflicts between environmentalists and his family's log trucking business.<sup>50</sup> Given the institutional resources available for agency oversight in Michigan and the power of a committee chair to exercise his oversight prerogatives, this appears to be a way to influence environmental laws after he is termed from office. Sen.

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<sup>48</sup> <http://legislature.mi.gov/doc.aspx?2017-SJ-01-11-001>, accessed 2/16/2018.

<sup>49</sup> <http://dmbinternet.state.mi.us/DMB/DTMBORR/Rules.aspx?type=Numeric&id=2017&>, site accessed 2/16/18.

<sup>50</sup> [https://www.mlive.com/news/index.ssf/2018/01/michigan\\_deq\\_oversight\\_bills.html](https://www.mlive.com/news/index.ssf/2018/01/michigan_deq_oversight_bills.html), site accessed 6/22/18.

Casperson will be termed out of the Michigan legislature at the end of 2018. The bills passed both chambers of the legislature and were given immediate effect.

The DEQ Rule Review Panel will consist of 6 industry representatives, with one individual representing each of the following industries: solid waste management, manufacturing, small business, public utilities, gas and oil, agriculture. The six non-industry members include one individual representing environmental groups, local government, land conservancy, a public health professional, and two representatives of the general public. No more than six members of the panel may be affiliated with one political party. There is no restriction on conflicts of interest on this panel. Therefore, a pipeline company could sit on the panel to oversee rules about pipeline safety.<sup>51</sup>

This idea allegedly was based on a model in operation in Indiana (interview notes 2018). Media reports about the way these committees work in Maine<sup>52</sup> and in Indiana<sup>53</sup> indicate that the affected interests are able to write the rules affecting their operations. Recently, Oklahoma's governor created a similar private sector panel for that state that will monitor performance of all state agencies. Some legislators see this effort as an abdication of the legislative responsibility for oversight (interview notes 2018). Earlier versions of the bill did not provide an option for the governor or the director of DEQ to appeal the rules, but the final version does provide that option—a slight nod to some checks on the power of a non-elected panel.

## Oversight Through Advice and Consent

The Michigan Senate can block appointments by rejecting them within 60 days. If no action is taken within the 60-day window, then the nomination is confirmed. Although Michigan's Senate could reject gubernatorial appointments, this power apparently is rarely used even under divided partisan control. In 1990 the Republican Senate rejected some appointments to boards and commissions made during Democratic Gov. Blanchard's final year in office<sup>54</sup>, and the Republican-controlled Senate rejected some of Democratic Gov. Granholm's appointments to university boards and to the state elections board. Some of these were in the final year of her second term,<sup>55</sup> but at least one was early in her term.<sup>56</sup>

Although the senate does not seem to regularly block cabinet-level gubernatorial appointments, questioning nominees during senate hearings can be a form of oversight (interview notes 2018). After a hiatus in which no senator confirmation hearings were held, the senate has held several hearings in the past couple years both for agency directors and for appointees to commissions and boards. Notably this occurred under one-party government. Asking nominees about their plans for an agency is seen as a useful way set the agenda and to

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<sup>51</sup> <http://michiganradio.org/post/bills-create-mdeq-oversight-panels-their-way-snyders-desk>, site accessed 6/22/18.

<sup>52</sup> <http://michiganradio.org/post/nestle-manager-joins-board-can-rewrite-environmental-laws-maine-could-happen-mich>, site accessed 6/22/18.

<sup>53</sup> <http://michiganradio.org/post/mi-bills-aim-follow-indiana-s-lead-where-businesses-have-power-shape-environmental-rulemaking>, site accessed 6/22/18.

<sup>54</sup> <https://www.newspapers.com/newspage/207134410/>, site accessed 2/16/18

<sup>55</sup> <http://www.crainsdetroit.com/article/20100709/BLOG096/307099988/governor-appoints-and-appoints-again-will-the-senate-bounce-again>, site accessed 2/16/18.

<sup>56</sup> [http://www.michigan.gov/formergovernors/0,4584,7-212-57648\\_21974-112420--,00.html](http://www.michigan.gov/formergovernors/0,4584,7-212-57648_21974-112420--,00.html), site accessed 2/16/18.

establish a relationship with an executive branch actor, such as the state treasurer (interview notes 2018).

Michigan's governors appear to issue more executive orders when their political party does not control the legislature. Under Gov. Granholm, a Democrat facing a Republican legislature, there were more than 50 executive orders issued in a single year, while under Gov. Snyder, who worked with a legislature controlled by his own Republican Party, the number of executive orders varied from about 10 to 25 annually.<sup>57</sup>

Except when government reorganization is involved, Michigan's legislature has no power to review gubernatorial executive orders. Michigan's governor can issue executive orders to reorganize state government, and many of these orders in recent years were reorganization orders. These executive reorganization orders are subject to legislative approval. If both chambers of the legislature do not reject the reorganization order within 60 days, then the reorganization takes effect. Even with divided government, Michigan's legislature has never blocked gubernatorial efforts to reorganize state government, although it nearly did so in 2003 when newly elected Gov. Granholm tried to create a combined Department of Labor and Economic development. Reportedly several business interest groups objected to changes in the way workman's compensation would be handled and so the Republican-controlled legislature was poised to reject the order. An eleventh hour compromise between house Republicans and the governor led her to withdraw the executive order and reframe with in a way that satisfied house Republicans.<sup>58</sup> So, it appears that Michigan's legislature can, although it rarely does, oversee government reorganization.

## Oversight Through Monitoring of State Contracts

As noted above, the Michigan OAG spends somewhere between 40 and 50 percent of its time conducting mandated financial audits, but monitoring specific contracts does not appear to be part of its mission. Contract monitoring is performed within the executive branch. Specifically, the Michigan Department of Technology, Management and Budget (DTMB), established through the Management and Budget Act, PA 431 of 1984, includes the State Administrative Board, which monitors state contracts and leases. This is a board comprised of the governor, lieutenant governor, secretary of state, attorney general, the state treasurer, the superintendent of public instruction, and the director of the Department of Transportation. In turn, the DTMB is responsible for several (roughly 30) of the boilerplate reports, described in the section on oversight through the appropriations process. Most of the boilerplate reports produced by the DTMB are assigned to the Subcommittee on General Government, but only a few of these reports monitor contracts, vendors, or services for individual departments, such as transportation or environmental quality. The legislative committees on Government Oversight discuss bills that would alter or establish general procedures for monitoring contract and lease arrangements, but we did not see evidence on the committee calendar that anyone is monitoring the work of DTMB, the executive branch contract monitor.

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<sup>57</sup> [http://www.legislature.mi.gov/\(S\(lt3t3jakxgcbrvsqpcyvmno4\)\)/mileg.aspx?page=executiveorders](http://www.legislature.mi.gov/(S(lt3t3jakxgcbrvsqpcyvmno4))/mileg.aspx?page=executiveorders), accessed 10/7/18.

<sup>58</sup> <https://mitechnews.com/archive/gov-granholm-michigan-house-appear-to-reach-compromise-on-new-department-of-labor-and-economic-development/>, accessed 10/7/18.

## Oversight Through Automatic Mechanisms

Michigan allows its legislature to add sunset provisions to pieces of legislation, but it is not required nor is it a common addition to Michigan's laws (Baugus and Bose 2015). As part of its mission of "simplify Michigan's regulatory environment", the Office of Regulatory Reinvention (ORR), an executive branch unit that is active in administrative rules review. It says that it rescinds obsolete and burdensome rules. Between April 25, 2011 and January 11, 2019, ORR rescinded 3,188 rules. This is an executive branch unit, and rescinding these rules does not appear to involve input from the legislature. So it is not legislative oversight of the executive branch.

## Other Oversight Mechanisms

In Michigan, state agencies also conduct internal audits through the Michigan Department of Technology, Management, and Budget (DTMB). There is a collaborative relationship between the OAG and DTMB. This relationship includes information sharing and sometimes DTMB follows up on findings from OAG reports (interview notes 2018). DTMB reports are not public, but the OAG can and does post them on its website as a service to DTMB.

## Methods and Limitations

Michigan archives recordings of committee hearings. It has easily accessible material on the legislature's webpage to examine oversight practices. We interview 9 people out of 11 that we contacted.

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