



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Minnesota

Capacity and Usage Assessment

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

Summary Assessment

Minnesota's legislature has an especially large variety of tools at its disposal to oversee the state's executive branch. There are abundant staff resources to support legislators' oversight efforts. It has both a legislative auditor and an elected state auditor. There is some competition between the two, and interestingly, the legislative auditor audited the performance of the state auditor. It has an extremely elaborate and well-documented administrative rule review process. The legislature jealously guards its institutional prerogatives to check and balance the executive branch. The executive branch takes a similar approach. This may demonstrate the partisanship of divided government, but it also could reflect a commitment to institutional prerogatives.

Major Strengths

Some "best practices" of the State of Minnesota include active communication between the Office of the Legislative Auditor (OLA) and the legislature and use of joint committees and commissions such as the Legislative Audit Committee (LAC) that allow for the efficient communication of audit reports to both the Senate and the House. Standing committees are actively involved in rule review, confirmation of gubernatorial appointments, and hearings on audit reports and on budget testimony. Oversight also benefits from having equally divided party membership in on the LAC. This committee supervises the Office of the Legislative Auditor (OLA), so this balanced party membership facilitates bipartisan oversight. The OLA produces audit reports that impact appropriations, legislation, appointments, and even state contracts. Performance-based budgeting provides an opportunity to consider how well state agencies carry out legislative intent and how well they serve the public or their clients. In Minnesota this form

of budgeting has evolved to avoid “formulaic” budget decisions, serving rather as a mechanism to identify impediments to agency performance, some of which require increased funding to provide needed resources to poorly performing programs.

Challenges

The use of audits in budget hearings does not appear to be systematic. Information overload connected to performance-based budgeting may deter legislators from adding more reporting to the budget process. So, an assessment of what information might be most valuable could lead to greater use of audit reports. Likewise, sunset review of boards and commissions is inconsistent, with various attempts being abandoned before they become established. The legislature rarely rejects gubernatorial appointees and has turned to the courts for assistance in nullifying gubernatorial executive orders that created policy changes. The legislature has opportunities to participate in administrative rule review, but these prerogatives are apparently underutilized. Minnesota’s legislature lacks authority to monitor state contracts, so it occasionally uses agency audits to surface performance problems that involve state contracts.

Relevant Institutional Characteristics

Minnesota’s legislature is at the median in terms of professionalism, ranking 25th in the nation (Squire, 2017). This is supported by Baugus and Bose’s (2016) findings, that Minnesota is part of a majority of states that provide their legislators with less than full-time pay while assigning them with more than half-time work. In 2018, legislators received \$45,000 per year plus \$66 per day in the House and \$86 in the Senate to cover their expenses. The average per diem received is nearly \$9,000 per representative and nearly \$7,000 per senator.¹ As of 2015, the legislature’s staff included 636 staff members, with 568 of them being permanent.² Although this is among the 10 largest state legislative staffs, it is a smaller number of supporting staff members than in states with highly professional legislatures.³ These supporting staff members include personal staff, committee staff, partisan staff, and non-partisan professionals, from entities such as the Office of the Revisor of Statutes and the Office of the Legislative Auditor.

The duration of Minnesota’s legislative session is roughly 120 days annually (NCSL, 2010). While other state legislatures may be able to call a special session (McCormack & Shepard, 2010)⁴, in Minnesota only the governor has the power to call for a special (sometimes known as extraordinary) session. These occur fairly often, with seven special sessions between 2010 and 2017.⁵ Minnesota is not among the 15 states that have term limits for their legislators.⁶ The absence of term limits allows legislators to spend more time learning the more complex parts of their jobs, including exercising oversight over state agencies.

¹ <https://minnesota.cbslocal.com/2018/01/10/per-diem-payments-mn-legislature/>, accessed 9/11/18.

² <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 7/8/18.

³ California, Florida, New York and Pennsylvania, for example, have more than 1,000 staff members.

⁴ <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssspecses.pdf>, accessed 7/8/18.

⁵ <https://www.leg.state.mn.us/lrl/history/spsess>, accessed 9/11/18.

⁶ <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>, accessed 7/8/18.

Minnesota's governor is also not term limited, and the office is tied for the 17th most institutionally powerful in the country (Ferguson, 2015). The governor has responsibility to develop and propose the state's budget. The legislature can either adopt or revise the budget, and the governor can then sign or veto appropriations bills. The governor can use the item-veto only for appropriation bills, and overriding this veto requires two-thirds of both chambers (Council of State Governments, 2008). We were told there have not been any successful overrides in the past two years (Interview Notes IV, 2018).

Minnesota has one of the smallest bureaucratic workforces among the states. Its state-wide share of employees who work for local and state government is 9.8%, while the national average is at 11.3% (Edwards, 2004). This is consistent with a smaller than average share of the workforce employed in the field of education (5.7% compared to a national average of 6.1%).

Political Context

Since the election of President Franklin Roosevelt in 1932, the state has largely voted for Democrats for president, with the exception of President Eisenhower in 1952 and 1956 and President Nixon in 1972.⁷ Despite this preference for Democratic presidents, partisan control of Minnesota's state government is typically divided between the two political parties. While the legislature tended in the past two decades to lean toward Democratic control, the state regularly elected governors from both political parties. Since 1978, the Republican Party held the governorship from 1979-1983, 1991-1999, and from 2003-2011. Although the governor does not have term limits, based on Minnesota's previous ten governors, it is typical to have a change in governors after four to eight years⁸ and also typical for the state to elect a new governor from the opposite political party. Notably, in 2013, Democrats controlled both legislative chambers and the governorship—the one rare instance of single party control since 1992. Currently, partisan control of the Senate is tied with one vacant seat and the Republicans control the house. Governor Mark Dayton is a Democrat. This persistent partisan competition may contribute to party polarization in the legislature. Recent evidence shows that Minnesota's house is highly polarized (8th nationally) based on differences between median roll call votes for each party in the chamber (Shor and McCarty, 2015).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Minnesota has four analytic bureaucracies that provide information about state government. The Office of the Legislative Auditor (OLA) is primarily involved in overseeing state government (including any program or topic relating to state government). The Office of the State Auditor (OSA), an elected position, is primarily involved in overseeing local

⁷ <https://www.270towin.com/states/Minnesota>, accessed 6/20/18.

⁸ https://ballotpedia.org/Governor_of_Minnesota, accessed 6/20/18.

government.⁹ Finally, a pair of analytic bureaucracies provides economic and fiscal analytic support to the legislature. These are the House Fiscal Analysis Department (HFAD) and the Senate Council, Research and Fiscal Analysis Office (SRFAO). Both these offices provide budget analysis and fiscal information.

The OLA works most closely with the legislature in conjunction with the Legislative Audit Commission (LAC). OLA's statutory authority includes the ability to "audit state agencies, evaluate public programs, and investigate alleged misuse of public money." All public officials or employees are required to cooperate with requests from the OLA related to the use of public funds. Furthermore, the OLA has statutory authority to audit other government entities,¹⁰ such as commissions, courts, charter schools, the Minnesota Zoo, Vocational Education Student Organizations, Minnesota State Colleges and Universities, and the Metropolitan Airports Commission, among others.¹¹ The state appropriates approximately \$6.3 million to support the work of the OLA and its 55 full-time employees¹² (NASACT, 2015).

The OLA is headed by the Legislative Auditor appointed by the LAC. According to s. 3.997, Min. Stats., membership of the LAC consists of six senators (three appointed by the Subcommittee on Committees and three appointed by the senate minority leader) and six representatives (three appointed by the speaker and three appointed by the house minority leader).¹³ The LAC is thus equally divided between the majority and minority party members. The Legislative Auditor oversees two divisions of the office, which includes the Financial Audit Division and the Program Evaluation Division.

The OLA's Program Evaluation Division (PED) (created in 1975) conducts policy analyses, program evaluation, and "performance audits" (NCSL, 2015). The PED produced seven evaluations during 2016 and six evaluations during 2017, and for 2018 they completed six evaluations.¹⁴ The PED is comprised of seventeen staff members, who include "thirteen full-time professionals with advanced degrees in fields such as economics, law, public affairs, and sociology."¹⁵

The OLA's Financial Audit Division (FAD) has a Deputy Legislative Auditor who supervises a staff of roughly forty auditors, some of whom are CPAs or CISAs (certified information systems auditors).¹⁶ The FAD produced 28 audit reports in 2016 and 19 audit reports in 2017. For 2018 they completed nine audits with eight more in progress.¹⁷ Currently all "works in progress" are internal controls and compliance audits. The FAD also conducts financial statement audits, information technology audits, and special reviews. Additionally, "...each year the division also conducts several unscheduled 'special reviews' in response to allegations that state resources were misused."¹⁸ If funds have been misused, the FAD notifies the attorney general, the county attorney, and the LAC. Finally, the FAD conducts some discretionary audits: "[I]nput from policymakers is the driving factor in the selection of discretionary audits."¹⁹

⁹ <https://www.auditor.leg.state.mn.us/juris.htm>, accessed 6/4/18.

¹⁰ <https://www.auditor.leg.state.mn.us/statu.htm>, accessed 6/4/18.

¹¹ <https://www.auditor.leg.state.mn.us/addsr.htm>, accessed 6/4/18.

¹² This includes support staff.

¹³ <https://www.revisor.mn.gov/statutes/cite/3.97>, accessed 6/4/18.

¹⁴ <https://www.auditor.leg.state.mn.us/ped/ped4.htm>, accessed 6/20/18.

¹⁵ <https://www.auditor.leg.state.mn.us/org.htm>, accessed 6/4/18.

¹⁶ <https://www.auditor.leg.state.mn.us/fad/fadbgd.htm>, accessed 6/18/18.

¹⁷ <https://www.auditor.leg.state.mn.us/fad/aipfad.htm>, accessed 6/4/18.

¹⁸ <https://www.auditor.leg.state.mn.us/fad/fadbgd.htm>, accessed 6/4/18.

¹⁹ <https://www.auditor.leg.state.mn.us/fad/fadbgd.htm>, accessed 6/4/18.

The LAC is responsible for the OLA's Program Evaluation Division and its Financial Audit Division, and the reports they produce. In that capacity LAC approves all evaluation topics for the PED,²⁰ but the LAC accepts suggestions for evaluations from anyone: legislators, legislative staff, an agency, citizens, or even anonymous individuals (Interview III, 2018). Additionally, the legislative auditor can "conduct a special review in response to allegations . . . brought to [his/her] attention . . . [and will conduct] a preliminary assessment in response to each request for a special review to determine what additional action, if any, [the] OLA should take."²¹ LAC members are not involved in any evaluation, audit, or investigation, and do not see reports until they are made public.²² When the report is completed, the LAC may hold hearings to review audit and evaluation reports.²³ Under the supervision of the legislative auditor, the PED reports their evaluations to the LAC and any other committee that may be involved.²⁴ According to an interviewee, the OLA will staff the LAC during its meetings, but it does not provide staff for other standing committee hearings (Interview III, 2018).

Transcripts of LAC meeting minutes and some audio recordings from past meetings are available on its website.²⁵ LAC held seven meetings during 2017, with each meeting lasting up to two hours in length. Although LAC does not meet often (Interview III, 2018), meeting minutes indicate that its members take their oversight responsibility seriously. For instance, at the October 17, 2017, meeting, members selected audit report topics, were told about three recently completed reviews, and received an update on current works in progress by the OLA. Transcripts reveal that the Transit Financial Activity Review, by the PED, found that the Metropolitan Council provided different financial projections to federal officials than those they gave to the Legislature. The LAC chair quizzed representatives from the Metropolitan Council about this. The council explained that their projections were different because the report to the legislature was "limited to current law funding, but the federal report [was] not."²⁶ The transcripts state that, "several members expressed concerns about the difference in the projection reports," and the meeting then moved onto the next review. Although this let the Metropolitan Council know that the LAC is watching their actions, it is not clear that any action was taken. But attention from the committee does signal that the legislature is monitoring this sort of reporting discrepancy.

The OLA spends a substantial amount of time presenting audit findings on executive branch agencies to the legislature (Interview Notes, 2018). When the OLA releases an evaluation report, it is usually released to either the LAC or a standing committee in either chamber,²⁷ but committees of jurisdiction (standing committee) are especially interested in these audit findings and typically want to hear these presentations (Interview III, 2018). The OLA presents, on average, at three committee meetings per program evaluation. Furthermore, the OLA will attend committee hearings if they have bills that relate to an evaluation because the committee might want them to be available for questions or comments. OLA audits are used regularly during committee hearings as well as on chamber floors, although they don't necessarily track when audits are mentioned (Interview III, 2018). One example of the work of the OLA is presented

²⁰ <https://www.auditor.leg.state.mn.us/ped/guide.htm>, accessed 6/20/18.

²¹ <https://www.auditor.leg.state.mn.us/ped/guide.htm>, accessed 6/20/18.

²² <https://www.auditor.leg.state.mn.us/ped/guide.htm>, accessed 6/20/18.

²³ <https://www.auditor.leg.state.mn.us/lac.htm>, accessed 6/4/18.

²⁴ <https://www.auditor.leg.state.mn.us/ped/resmeth.htm>, accessed 6/4/18.

²⁵ <https://www.auditor.leg.state.mn.us/minutes.htm>, accessed 6/4/18.

²⁶ <https://www.auditor.leg.state.mn.us/m101717.htm>, accessed 6/4/18.

²⁷ <https://www.auditor.leg.state.mn.us/ped/resmeth.htm>, accessed 6/20/18.

below, but additional examples of the OLA's collaboration with standing committees are provided in the section on *Oversight Through Committees*, below.

One example of the work of the OLA is provided by a 2017 evaluation of the Perpich Center conducted by the OLA, which found widespread mismanagement and governance problems.²⁸ The Perpich Center for Arts Education was established as a state agency in 1985. The Perpich Center is responsible for various educational institutions including a residential high school, as well as arts education opportunities across the state. The evaluation report recommended numerous changes including enhanced oversight of the agency by the board, an annual assessment of the executive director and an annual evaluation by the board of enrollment and standardized test score trends. The report also recommended that "the Legislature should consider changes in the Perpich Center Board's role, size, and composition...amend state law to include minimum requirements for Perpich Center school administrators...[and] consider whether to change the scope of the agency's duties." The evaluation, which was strongly supported by the legislators, resulted in legislation, a school closure, and leadership changes, including a new board of governors and a new executive director (Interview III, 2018).

Another analytic bureaucracy in Minnesota is the Office of the State Auditor (OSA). Although it is part of the executive branch, the OSA works with the OLA and the legislature. The state auditor is an elected official and can only be removed from office by impeachment (NCSL 2015). The level of funding for the OSA is comparable to the amount for the OLA (\$6.4 million), but instead of a state appropriation, the OSA charges local governments for its services (NASACT 2015). Multiple divisions of the OSA contribute to its oversight responsibilities. The Audit Division performs approximately 150 compliance and financial audits (which includes accounts payable and receivable)²⁹, and reviews approximately 500 single audits per year. The Pension Division reviews investment, financial, and actuarial reporting for approximately 700 public pension plans. The Tax Increment Financing Division oversees approximately 1,700 Tax Increment Financing (TIF) districts and collects and reviews approximately 1,700 annual TIF reports. Additional divisions include the Legal/Special Investigations Division, which investigates allegations of theft or misuse of public funds, and the Government Information Division, which conducts a Best Practices Review of local government, and collects and analyzes local government financial data. This financial data is reported to the legislature (and the public) to "assist the Legislature with planning and policy-making decisions related to local governments."³⁰ According to Chapter 6 of the Minnesota Statutes, the State Auditor is also required to serve on the "State Executive Council, State Board of Investment, Land Exchange Board, Public Employees Retirement Association Board, Minnesota Housing Finance Agency, and the Rural Finance Authority Board" (NCSL, 2015).

Although the OSA does not conduct performance audits, it is responsible for the state's Performance Measurement Program.³¹ This system was created by the Council on Local Results and Innovation, which was created by the legislature in 2010. Essentially, this program is designed "to aid ... state and local officials in determining the efficacy of counties and cities in providing services and measure the residents' opinions of the services."³²

²⁸ http://www.senate.mn/committees/2017-2018/3091_Committee_on_E-12_Policy/Perpich%20Center%20for%20Arts%20Education%20Full%20OLA%20Program%20Evaluation.pdf, accessed 6/20/18.

²⁹ http://www.osa.state.mn.us/other/AccountingDocs/min_pub_req_gaap.pdf, accessed 6/20/18.

³⁰ <http://www.osa.state.mn.us/default.aspx?page=whatwedo>, accessed 6/5/18.

³¹ <https://www.lmc.org/page/1/performancemeasurement.jsp>, accessed 6/15/18.

³² <http://www.osa.state.mn.us/default.aspx?page=20130214.000>, accessed 6/4/18.

The division of authority between the OSA and OLA is complicated. Although their websites clearly state that the OSA handles local auditing (exclusively financial, compliance, and special audits), and that the OLA is responsible for state auditing, the OLA also audits³³ three specific metropolitan agencies.³⁴ Additionally, the OLA can audit charter schools and state universities, while the OSA audits school districts.³⁵ Furthermore, in regard to state-wide single audits (federal grants to state agencies), according to the memorandum on the single audits, the OLA “performs the statewide single audit and prepares the audit report at the state level.” Yet, the OSA’s Audit Practice Division is responsible for reviewing the single audits. In this process, the Minnesota Management & Budget agency (MMB), an agency discussed in the next section, represents all involved state agencies and assists in coordinating the single audit requirements.³⁶

Recently the complicated relationship between OSA and OLA became even more fraught after an OLA review of OSA’s audits of local governments. Although OSA audits of local governments are mandated by state law, counties must pay for these audits. Counties complained to their legislators that OSA annual audits cost too much. Consequently, in 2015, the legislature amended the Appropriations Law so that counties could choose to have their annual audits conducted by either the OSA or a private CPA firm. Moreover, the OLA conducted a review of OSA to “assess the ‘efficiency’ of county audits conducted by the OSA.”³⁷ The 2016 OLA review of OSA concluded that the audits were expensive and that counties should be able to hire CPA firms to conduct the audits, but recommended that OSA should retain the authority to determine whether the audits conducted by CPA firms met the OSA standards.³⁸ The state auditor challenged the legislature’s action in an appeals court case in 2017, but the court upheld the law permitting counties to hire a CPA to conduct these audits.³⁹ This is an interesting case of legislative oversight of executive branch’s analytic bureaucracy.

Finally, as mentioned earlier, there are two other chamber specific analytic bureaucracies: the House Fiscal Analysis Department (HFAD) and the Senate Council, Research and Fiscal Analysis Office (SCRFAO). These assist the legislature with budgets and fiscal analysis. HFAD is comprised of one chief fiscal analyst and 10 fiscal analysts. The chief fiscal analyst oversees the department and serves as one of the two nonpartisan staff on the House Ways and Means committee. The rest of the 10 fiscal analysts serve as staff on the remaining house finance and tax committees (Interview VI, 2018). HFAD is responsible for reviewing legislative and executive spending requests; assisting finance committees in locating budgetary alternatives; “monitoring the fiscal impact of legislative proposals through fiscal notes and revenue estimates as prepared by the executive branch; preparation and review of legislation to implement legislative budget decisions, including supplemental appropriations; tracking legislative budget decisions, and; providing analysis of enacted budgets for legislative oversight.”⁴⁰

Collectively, HFAD provides nonpartisan, confidential assistance to all any house member. The department provides 40 budget-related reports on their website to assist the House finance and tax committees on state budgetary and fiscal issues. These reports include twenty-three budget tracking spreadsheets (consisting of appropriations for past and current legislative

³³ <http://www.osa.state.mn.us/default.aspx?page=faq#AuditFAQs>, accessed 6/4/18.

³⁴ <https://www.auditor.leg.state.mn.us/juris.htm>, accessed 6/4/18.

³⁵ <http://www.osa.state.mn.us/list.aspx?get=67>, accessed 6/4/18.

³⁶ <http://www.osa.state.mn.us/default.aspx?page=description>, accessed 7/8/18.

³⁷ <https://www.auditor.leg.state.mn.us/sreview/countyaudits.pdf> accessed 7/8/18.

³⁸ <https://www.auditor.leg.state.mn.us/sreview/countyaudits.pdf> accessed 7/8/18.

³⁹ <https://www.auditor.leg.state.mn.us/sreview/countyaudits.pdf> accessed 7/8/18.

⁴⁰ <https://www.house.leg.state.mn.us/Fiscal/>, accessed 6/20/18.

sessions as well as proposed executive and legislative budgets), twelve issue briefs (analyzing the fiscal implications of policy and budget proposals), four Money Matters articles entitled: *Summary of Legislative Fiscal Action*, *General Fund Revenue and Expenditure Forecasts*, *Capital Budget and Operating Budget Summaries*, and an *Analysis of Special Legislation*, and one annual summary of fiscal effects on the state general funds.⁴¹ The latter is produced by the House Ways and Means committee after a budget resolution is adopted by the committee. This report is required by House Rule 4.03 to report on the fiscal impact of the bills that move through the Ways and Means Committee. While updates to these reports occur frequently during the legislative session, updates are not always done after the legislative session ends (Interview Notes, 2018). [Note: Ways and Means is a standing committee that does not meet during the interim.] Reports are typically published independently on relevant issues, and committees may be given memos or spreadsheets. HFAD does not typically give full reports to individual legislators (Interview VI, 2018).

In addition to producing these reports, HFAD staff is responsible of keeping track of fiscal issues, and reviewing bills prior to committee meetings to inform members of their fiscal impact (Interview Notes, 2018). In response to inquiries from legislators, fiscal staff will identify policy and funding alternatives. Furthermore, fiscal staff will summarize the history of programs and identify past program issues. Fiscal staff does not typically give presentations on budget issues; instead the sponsors or cosponsors of a bill make any presentations. Fiscal analysts will, however, answer any questions after the presentation. Furthermore, the analysts read OLA financial audit information, notify committee members when that information is available, and then summarize it for the committee members. If legislators want more detailed information, someone from the OLA is called upon. OLA staff might attend a committee meeting for this purpose (Interview VI, 2018).

The comparable fiscal staff agency for the senate is called the Senate Research and Fiscal Analysis Office (SRFAO). It, too, is a nonpartisan office that provides senators with budget tracking spreadsheets and issue briefs, as well as other research and fiscal services. The SRFAO does provide presentations on budget issues for committees.⁴² Together, both the House and Senate fiscal support agencies create joint reports used by the legislature during committee hearings. For instance, during a May 14, 2018, House Ways and Means Committee hearing on amending a budget resolution, a fiscal analyst from each chamber had created multiple spreadsheets analyzing the amounts to be spent in the upcoming fiscal years from the state's general fund per program. These spreadsheets were referenced briefly in the beginning along with the relevant bills. During discussion, when a member asked the committee chair a question regarding possible amendments, the committee chair referred the question to the chief analyst who was present at the meeting. The analyst was able to identify the conditions under which a change in the budget target could be met.⁴³

Apart from the governor's budget, when state departments and agencies need to spend funds from the federal government, contingent on appropriation accounts, or other sources, they may get approval for their requests from the Legislative Advisory Commission (LAC).⁴⁴ This commission was also created by the Legislative Coordinating Commission (LCC) and gets its authority from s. 3.30, Min. Stats. and s. 3.3005, Min. Stats. The commission consists of four

⁴¹ <https://www.house.leg.state.mn.us/Fiscal/>, accessed 6/20/18.

⁴² http://www.senate.mn/departments/office_bio.php?office_id=1007#keyresources_data, accessed 6/20/18.

⁴³ <https://www.youtube.com/watch?v=9rojB7t95ko>, accessed 6/20/18.

⁴⁴ <https://mn.gov/mmb/budget/legadcomm/>, accessed 6/20/18.

permanent members: a designee or the Senate Majority Leader, the Senate Finance Committee chair, a designee or the Speaker of the House, and the House Ways and Means Committee chair. Based on the funding requests, one member from the Senate and one from the House are also members of the commission.⁴⁵ The commissioner of the Minnesota Management & Budget agency (MMB), as the LAC secretary, keeps a permanent record of their meetings. But the minutes of these meetings have not been updated since 2015.⁴⁶

Oversight Through the Appropriations Process

Minnesota's budget operates within a biennium, and the governor is required to propose the budget in odd-numbered years. According to s.16A.11, Min. Stats., the governor submits the proposal in three parts to the Legislature: a budget message, a detailed operating budget, and a capital expenditure budget. The first two parts are presented together in odd-numbered years, and part three is presented in even-numbered years.⁴⁷

After the governor proposes his/her budget, the legislature initiates a set of appropriations bills through which the revenues and expenditures are agreed upon and become law. There is no single unified budget bill.⁴⁸ The appropriations process is largely conducted by the House Ways and Means Committee and the Senate Finance Committee with the assistance of the fiscal analysts of both chambers. The Ways and Means Committee's authority is described in Rule 4.03 of the Minnesota House Rules, which states that the committee "must hold hearings as necessary to determine state expenditure and revenues for the fiscal biennium."⁴⁹ Currently, the House Ways and Means Committee consists of approximately 20 members from both majority and minority parties, based on the proportion of legislative seats held by each political party.

Minnesota uses performance-based budgeting (discussed further below), so the performance report of each agency is used as a basis for the budget as well as a mechanism for oversight within the executive branch. Minnesota's version of performance-based budgeting analyzes the societal benefits and not just the program's inputs and outputs. Consistent with this use of performance-based budgeting, Chapter 16A.10 of Minnesota statutes requires that governors include agency and program performance data in their budget proposal.⁵⁰ The Minnesota Management & Budget agency (MMB) helps guide agencies by providing them with guidelines for reporting their performance measures. Agencies are required to provide "performance-based budget plans." The MMB can also "require agencies to submit other periodic performance reports." According to the report, the goal is to "encourage agencies to

⁴⁵ <https://www.lcc.leg.mn/lac/>, accessed 6/15/18.

⁴⁶ <https://www.lcc.leg.mn/lac/meetings.htm>, accessed 6/15/18.

⁴⁷ <https://mn.gov/mmb/budget/state-budget-overview/budprocess/>, accessed 6/4/18.

⁴⁸ "The release of the governor's budget sets the legislative component in motion. Budget proposals are introduced in the legislature and make their way through the legislative process in a number of individual appropriations bills. Once they are approved and passed by the legislature, each law is sent to the governor who can accept the law by signing it, veto the entire law, or veto portions of the law. The final budget passed by the legislature does not appear in a single law but is made up of a number of separate appropriations laws. The state budget can also be modified, under certain circumstances, by the governor through the power of unallotment"

<https://www.leg.state.mn.us/lrl/guides/guides?issue=budget>, accessed 8/18/18

⁴⁹ <https://www.house.leg.state.mn.us/cco/rules/permrule/403.htm>, accessed 6/4/18.

⁵⁰ <https://www.revisor.mn.gov/statutes/cite/16A.10>, accessed 7/8/18.

develop clear goals ... for their programs and strengthen accountability by illuminating whether state government is providing effective and efficient services.”

Rather than relying on an appropriations committee with a series of subcommittees responsible for appropriations for individual state agencies, the Minnesota House has standing committees that are responsible for financing various state activities. Some of these address both policy and finance. For example, there are committees for Public Safety and Security Policy and Finance, Job Growth and Energy Affordability Policy and Finance, and Higher Education and Career Readiness Policy and Finance. Finance and policy are separated into two committees for some of the larger departments, such as Health and Human Services, which has both a Finance Committee and a Health and Humans Services Reform Committee, with subcommittee on Aging and Long-term Care and on Childcare Access and Affordability. The House Ways and Means Committee coordinates the work of these committees with respect the budget and appropriations process. In addition to the House Ways and Means Committee, there are two committees on state taxes: the Taxes Committee, and the Property Tax and Local Government Finance Division.

During the appropriations process, there appears to be regular communication between the House Ways and Means Committee (a standing committee), the House Taxes Committee (a standing committee), and the other standing committees with jurisdiction of financial issues. The House Taxes Committee and the multiple finance committees conduct hearings to examine annual agency revenue and spending, and to relay that information to the House Ways and Means Committee. Brief meeting minutes and audio/video files from past meetings held by other finance standing committees are available on the Minnesota Legislature’s website and on YouTube. We use the House Education Finance Committee as an example. The website reveals that it held 23 meetings during 2017, with each meeting lasting anywhere from one to four hours in length.⁵¹

During one of these meetings the House Education Finance Committee listened to a presentation from the state’s commissioner of education about the governor’s budget recommendations for the Minnesota Department of Education (MDE) and presentations on various programs administered by the MDE. The meeting held on January 19, 2017, involved an overview of several education programs, including concurrent enrollment, postsecondary enrollment options (PSEO), and the Advanced Placement and International Baccalaureate programs.⁵² A House legislative analyst was there to present an overview of the programs. Experts from educational institutions and organizations testified about various programs. Video archives for a meeting held on January 25, 2017, reveal that members of the committee asked very specific questions of the agency’s commissioner about the governor’s budget.⁵³

The following illustrates the depth of the questions asked by legislators. The committee chair asked for more information about the department’s progress on paperwork reduction with respect to special education student assessment and planning documents. Additionally, she asked about whether local school districts would need to pick up costs for a proposed state data collection system. The commissioner of education said she would check with the agency staff to provide precise numbers for both those issues. The chair also inquired about the amount of money Minnesota spends, which is one of the largest per pupil amounts in the country, and the persistence of an achievement gap. The education commissioner and the chair engaged in a lengthy discussion of whether more spending on current programs was better than additional

⁵¹ <http://www.house.leg.state.mn.us/cmte/Home/?comm=90006>, accessed 6/15/18.

⁵² <https://www.youtube.com/watch?v=d-Rll65gF3Y>, accessed 6/4/18.

⁵³ <https://www.youtube.com/watch?v=8jMGLHf-ihc>, accessed 6/4/18.

reforms to fix the problem. The commissioner explained that most of the recent reforms concentrate on preschool education, so there would be a lag before results would become evident. In her questioning, the committee chair referred to specific state statutes and demonstrated command of education programs. She insisted that doing the same thing and expecting change was not a plan to close the persistent achievement gap. The commissioner was equally firm in her view that it takes time for reforms to have an impact. Another committee member asked about whether voluntary pre-K was producing results. The commissioner responded that the program was only six months old, so it was not possible to tell yet. Another committee member asked about the impact of a specific reading proficiency initiative and a teacher evaluation program. The same committee member asked why there was no money requested for training principals and then continued with questions about the governor's position on school choice. The commissioner responded that 90% of students in the state "chose" public schools even though the state has charter schools, open enrollment in any public school, support for private schools, and opportunities for home schooling. The committee member persisted in asking why the governor was not pursuing a voucher program for private schools through foundations and donors. The commissioner described the lower performance of Wisconsin with vouchers compared to Minnesota without them. Also, the commissioner pointed out problems with accountability and standards for private schools. The committee member then challenged the commissioner about the American Indian Contract Schools, saying that they had the same accountability problems that private schools have, but with support from the governor—a double standard according to the committee member. The commissioner said that the Indian American Contract Schools did participate in federal testing programs, but she would check further on their standards. American Indian Contract Schools are district, charter, and tribal contract schools that the MDE (Office of Indian Education) provides resources to and oversight over. These schools are either responsible for or assist in running educational programs, such as the Minnesota Indian Teacher Training Program (MITTP), that provide educational opportunities to Native Americans and support their cultural identity.⁵⁴ The last question at this hearing was the only Democratic Farmer Labor (DFL) party member on the committee who had the opportunity to ask a question. She requested information on what the MDE was finding about the outside factors likely to affect school performance.

The quality of the questions committee members asked generally reflected a solid grasp of issues and previous activities involving education in the Minnesota. Members appeared to be able to quiz the commission of education effectively about specific topics. On the other hand, there are indications that this was a partisan, albeit respectful, probe of MDE. This is indicated by the party affiliation of the committee members recognized by the chair, who is Republican. Republicans held the floor for the vast majority of the time allocated for questions, with only one DFL party member asking one question. Although it is possible that only one DFL member requested an opportunity to ask a question, it is also possible that this was a partisan allocation of committee time. The DFL committee member asked her question in the final minutes of the hearing.

When the legislature passes each of the series of appropriations bills that make up Minnesota's budget, the governor can veto the entire act or just veto specific portions of each act.⁵⁵ Even after signing the series of appropriations acts, the governor can also use the power of

⁵⁴ <https://education.mn.gov/MDE/fam/indian/>, accessed 10/8/18.

⁵⁵ <https://mn.gov/mmb/budget/state-budget-overview/budprocess/>, accessed 6/4/18.

“unallotment” to cut specific appropriations in the state budget in the case of an emergency.⁵⁶ Also, the Legislature can modify the budget in the “off-year” legislative session. According to MMB’s website, “[a]s a result of state forecasts and other changes, it has become common for the legislature to enact annual revisions to the state’s biennial budget.”⁵⁷ Gov. Pawlenty’s use of unallotment to cut General Assistance Medical Care triggered lawsuits by the legislature to test the constitutionality of unallotment.⁵⁸ Through these legal actions the legislative branch successfully asserted its power to check the executive branch. In 2010, the Minnesota Supreme Court ruled that “use of the unallotment power to address the unresolved deficit exceeded the authority granted to the executive branch.”

As this discussion demonstrates, the Minnesota legislature has abundant staff resources to support its budget work. Currently, it appears that the primary entities involved in the appropriations process are the House Ways and Means Committee, the MMB, the Legislative Advisory Commission, the OLA, the chamber fiscal analysts, and to a very minimal extent, the Legislative Commission on Planning and Fiscal Policy. However, the LCC has very recently established a Legislative Budget Office to be implemented on January 8, 2019. The LBO will receive its authority via Chapter Four of Minnesota Session Laws. Its website states that it will, “provide the House of Representatives and Senate with nonpartisan, accurate, and timely information on the fiscal impact of proposed legislation, without regard to political factors.”⁵⁹ Although audit reports are occasionally mentioned in conjunction with the budget process, there does not appear to be a systematic formal interface between audit compliance and action on agency budgets. The use of audits appears ad hoc. Yet, with performance-based budgeting, agency actions may already be thoroughly explored in the agency’s budget request.

Oversight Through Committees

Minnesota has several joint committees that are called commissions that are important to the legislative oversight process. Several of these were introduced in the section on the analytic bureaucracy: the Legislative Advisory Commission, the Legislative Audit Commission, and the Legislative Budget Office Oversight Commission, newly created in 2018. These commissions post minutes of meetings that occur during the interim and appear to provide continuity when the legislature is not in session. Minutes of standing committees indicate that they meet frequently, but only during the legislative session. As noted in the section, *Oversight Through the Appropriations Process*, Minnesota’s legislature has standing committees responsible for finance and also for policy for some of the large state agencies. For example, in addition to a committee on Agriculture Finance, there is a committee on Agriculture Policy. Likewise, there is a committee on Education Finance, in addition to a separate committee on Education Innovation Policy, as well as a similar pair of committees for Health and Human Service Finance and Health and Human Services Reform. Committee minutes also reveal that there are occasional joint meetings in which both the finance and the policy committees associated with a particular agency meet together. These joint meetings often involve a presentation by state agency leaders.

⁵⁶ <https://www.leg.state.mn.us/lrl/guides/guides?issue=unallotment>, accessed 6/20/18.

⁵⁷ <https://mn.gov/mmb/budget/state-budget-overview/>, accessed 6/15/18.

⁵⁸ <https://www.leg.state.mn.us/lrl/guides/guides?issue=unallotment>, accessed 7/10/18.

⁵⁹ <https://www.leg.state.mn.us/lrl/agencies/detail?AgencyID=2301>, accessed 6/4/18.

As we discussed in the section on analytic bureaucracies, the legislature often takes action in response to OLA audits and evaluations. The various standing policy committees and standing finance committees hold hearings and take action in response to OLA audits and other reports. The OLA’s March 2018 evaluation of the Department of Health’s investigative division, the Office of Health Facility Complaints (OHFC) triggered such a response. The evaluation found the OHFC had inadequate oversight over senior care homes, with one recommendation being to “implement an electronic case management system.”⁶⁰ The commissioner of the Department of Health responded to the evaluation in a letter, saying that the department had implemented a “new paperless system,”⁶¹ and that the department would work with legislators to implement the report’s recommendations.⁶² This letter was explicitly mentioned in Section 60 of a recently passed omnibus bill (HF3138). Section 60 reads: “. . . the Commissioner of Health must submit a report . . . on the progress toward implementing each recommendation of the Office of the Legislative Auditor with which the commissioner agreed in the . . . letter . . . dated March 1, 2018.”⁶³ The chair of the House Health and Human Services Finance Committee (who sponsored the bill), said in response to criticism, that the bill was in part a response to an “audit” conducted by the OLA on the elder abuse reporting system.⁶⁴ Furthermore, according to an article, the governor’s proposed budget was also inspired by an eldercare-related report made by the OLA (OLA, 2016). This audit of the OFHC did in fact change an item in the governor’s proposed budget to improve the OFHC (Interview III, 2018). The same audit influenced many other bills (Interview III, 2018). It is clear from news articles and these experts that OLA audit information is utilized by standing committees of the legislature.

Oversight Through the Administrative Rules Process

Minnesota has elaborate procedures for rule making with many opportunities for legislators to influence administrative rules, but legislators must compete with Administrative Law Judges (ALJ) and the executive branch for influence in this arena. Despite multiple opportunities to review rules, the LCC cannot suspend a rule without passing legislation. Short of passing legislation, its tools are objection and delay. The governor can veto rules after they are adopted, but rarely does so (Schwartz, 2010). Likewise, it appears that legislative review of rules is less common than the available procedures would imply.⁶⁵ There are, however, instances in which the legislature uses these tools to insert itself into the rulemaking process. Moreover, sunset review of administrative rules creates a systematic mechanism for eliminating obsolete rules—a procedure we describe in the section on *Automatic Mechanisms for Oversight*.

Administrative rules review over the years has been conducted by various legislative entities. These include the LCC, which established the Legislative Commission on Administrative Rules Review, and the Subcommittee on Administrative Rules. In addition, there are the House and Senate standing committees that review the rules within their jurisdiction.

⁶⁰ <https://www.auditor.leg.state.mn.us/ped/pedrep/ohfc.pdf>, accessed 6/4/18.

⁶¹ <http://www.health.state.mn.us/news/pressrel/2018/statement030618.html>, accessed 6/4/18.

⁶² <http://www.health.state.mn.us/news/pressrel/2018/statement030618.html>, accessed 6/4/18.

⁶³ https://www.revisor.mn.gov/bills/text.php?number=HF3138&version=3&session=ls90&session_year=2018&%20session_number=0, accessed 6/15/18.

⁶⁴ <http://www.house.leg.state.mn.us/SessionDaily/Story/13309>, accessed 6/15/18.

⁶⁵ Paul Marinac, Deputy Revisor of Statutes, reported in Schwartz (2010), p. 275.

Chapter 3 of the Minnesota Statutes and Article IV of the Minnesota Constitution provides some authority over administrative rules for standing committee chairs, and committee chairs sometimes prepare rulemaking notes (Konar-Steenberg and Beck, 2014).

The House Government Operations and Elections Policy Committee and the Senate Government Finance Committee have jurisdiction over any bill that “delegates rulemaking authority to, or exempts from rulemaking, a department or agency of state government.”⁶⁶ Merely because the two chambers are controlled by different political parties, both political parties in 2018 had input into the rule review process. In 2018, the House Government Operations and Elections Policy committee was comprised of eighteen members; eleven Republicans and seven Democrats. As of 2018, the Senate Government Finance and Policy and Elections committee consists of ten members; six Republicans and four Democrats.

The revisor of statutes provides an overview on their website called *Rulemaking in Minnesota: A Guide*.⁶⁷ Published in 2014, this guide reflects the Minnesota Administrative Procedure Act (APA) and other relevant statutes. The guide is split up into four sections that focus on these four different processes: “adopting permanent rules, with or without a public hearing; exempt rules; and expedited rules.” A rule or a rule change may be required by statute or petitioned by any person. Agencies must respond and can also choose to hold a hearing according to s. 14.05 to 14.28, Min. Stats.

The processes for promulgating new rules and altering existing rules in Minnesota are similar (Interview II, 2018). Therefore, we describe the procedure for adopting new rules after a public hearing in detail and only briefly touch on the variations to this process. *Rulemaking in Minnesota: A Guide*⁶⁸ cites eleven steps that agencies must take to propose a new rule:

- (1) Agencies must publish, with 60 days’ notice, a request for public comments on the rule in the State Register (s. 14.101, Min. Stats.). Before the first notice, agencies can appoint committees to comment on a rule. It appears that agencies do utilize this opportunity, and that committee input often impacts the agency’s proposed rules before the public hearing (Interview II, 2018). Alternatively, an agency can request feedback from the Office of Administrative Hearings (OAH). Next, an ALJ will approve or reject the plan for reviewing the rule. If the plan is rejected, the judge provides reasons so that the agency can modify the review plan.
- (2) When the notice of hearing is mailed, the agency must provide the Legislative Reference Library with a statement of need for the rule and reasonableness of the rule. This statement is available to the public.
- (3) Next, the agency must submit the rule(s) to the revisor of statutes for approval; review and approval takes about a week.
- (4) The agency must submit a request for a hearing with the OAH, where an Administrative Law Judge (ALJ) will be appointed to approve the hearing notice.
- (5) Once approved, the agency can publish the notice of hearing. Then, the agency must forward the notice of the proposed rule to any affected persons, and “the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule.” Furthermore, agencies must keep a rulemaking docket of each adopted rule during the previous year and submit this

⁶⁶ <https://www.house.leg.state.mn.us/cco/rules/permrule/413.htm>, accessed 6/15/18.

⁶⁷ https://www.revisor.mn.gov/static/office/2014_all_rulemaking_guide.pdf, accessed 7/8/18.

⁶⁸ https://www.revisor.mn.gov/static/office/2014_all_rulemaking_guide.pdf, accessed 7/8/18.

annually, by January 15th, to these individuals within the legislative policy and budget committees with the relevant jurisdiction.

(6) The agency will, at the public hearing, explain why the rule is needed.

(7) The ALJ determines whether the rule should be adopted. If the ALJ does not believe the rule satisfies a need and the chief ALJ affirms this finding (s. 14.26, sub. 3, Min. Stats.), the agency can take corrective changes. Or if an agency rule is disapproved by the ALJ, agencies can try to get the legislature to enact the rule enacted as law. According to an interviewee, it is more common for agencies to adjust their rule to satisfy the ALJ (Interview II, 2018).

(8) The agency will submit approved rule(s) to the OAH to file with the Secretary of State (SOS).

(9) The SOS will forward a copy to the governor who has fourteen days to veto all or select portions of a rule. If the governor chooses to veto all or part of a rule, he or she must notify the chairs of the legislative committees with the relevant jurisdiction.

(10) If there is no gubernatorial veto, the revisor of statutes will prepare a notice of adoption.

(11) The agency then submits the notice to the State Register.

The process for rules that are adopted without a public hearing has nine primary steps. The first step is the same as the above, except instead of publishing a notice of hearing or dual notice, the agency will publish a notice of, “intent to adopt a rule without a public hearing.” Step 4 is to publish the notice of intent to adopt a rule without a hearing and to communicate the notice to the public and the legislature. If, at this time, twenty-five or more requests are received for a public hearing, the agency must proceed as they would with steps 4-11 in the previous process. If not, the agency will submit any modifications of the rule to the revisor of statutes for approval. Then, the agency will “submit [the] rule as adopted to the OAH for review, and notify . . . all persons who have requested to be informed of this fact.” Steps 7-9 in this process are roughly the same as steps 9-11 in the previous section, except, when the OAH files the approved rules, the filing must be “prompt,” as opposed to having no time constraints at all.

Although rule reviews that require a public hearing and ones that do not are both common, more attention is paid to rules with public hearings (Interview II, 2018). Public hearings are primarily for rules that are more complicated and require more time. Additionally, Minnesota Statutes 3.843⁶⁹ empower a legislative commission (including the LCC themselves) by majority vote to request that an agency to hold a public hearing. This is a way for the commission to make recommendations to the agency on a rule.

Experts involved in this process say that an agency will propose a rule without a hearing if the topic at hand is technical and not controversial; sometimes these rules can go through the expedited or exempt process. The exempt process may also be utilized if the rule does not require a lot of subjective decision making for the agency. However, even under the expedited process, after a certain number of public hearing requests are received, a public hearing will occur. Sometimes, agencies will go into an expedited process, or a process without a public hearing, expecting it to be shorter but will then be required to have a public hearing. The rest of this process resembles steps 7-11 for rules adopted after a public hearing.

The expedited rulemaking process is similar to the exempt rulemaking process, except “a hearing [will occur] if required by law and if a sufficient number of hearing requests are

⁶⁹ <https://www.revisor.mn.gov/statutes/cite/3.843>, accessed 7/8/18.

received” (Konar-Steenberg & Beck, 2014). All emergency rules of the Department of Natural Resources are reviewed by the Attorney General. Otherwise, exempt rules must be submitted to the OAH where the ALJ will either approve or disapprove the rule. Once approved, they are, “in effect indefinitely or for only two years.”

In any rules process, the agency must “submit its notice of adoption, amendment, or repeal of rules to the State Register.” If an agency fails to do this within 180 days of the ALJ’s report, or at the end of the comment period, the rule is withdrawn, and according to s. 14.19, Min. Stats., the agency must report its failure and the reason for it to the LCC (Konar-Steenberg & Beck, 2014). Agencies then must file an annual report of improper rules (Tharp, 2001). According to 14.05, the LCC, governor, revisor of statutes and the policy and funding committees with the relevant jurisdiction receives the annual report of obsolete rules of the agency.

Clearly, these elaborate review processes provide several opportunities for Minnesota’s legislators to review administrative rules. The LCC may review a rule, and when they do they hold one or more commission meetings on the rule. Based on Minnesota Statutes 3.841 and 3.305, sub. 6, the LCC may establish legislative commissions and subcommittees to assist it with its duties, which include administrative rules review. These commissions and subcommittees must be renewed every two years (Konar-Steenberg & Beck, 2014). Although some of these subcommittees continue to be renewed, they do not actively meet even though their chairs could call a meeting any time they wanted to. The LCC does not often oversee administrative rules (Konar-Steenberg & Beck, 2014). This is consistent with meeting minutes, audio, and video evidence from two meetings held in 2017 by the LCC.⁷⁰ When the LCC does not review the rule, the Administrative Rules Subcommittee will conduct the review under the authority granted to them by statutes 3.842 and 3.843.

It is primarily the House and Senate standing committees that conduct administrative rules review for agencies within their jurisdiction (Interview I, 2018). Senate and House committees with jurisdiction over governmental operations may hold hearings publicly if appropriate, and may request the OAH to hold the public hearing if a rulemaking hearing did not occur before the adoption of the rule, (Interview II, 2018). If the committees believe the rule is beyond the authority (procedural or substantive) of the agency, it can, by a majority vote, object to a rule under s. 14.15, sub. 4, Min. Stats. Or s. 14.26, sub. 3, Min. Stats. This objection is filed with the SOS, who will forward a copy of the certified objection to the agency and the revisor of statutes. Then, “the commission or committee publishes the objection in the State Register, and when the rule is published in the State Register, the rule will indicate the existence of the objection” (Konar-Steenberg & Beck, 2014).

If the objection is to a proposed rule, it cannot be officially filed until the rule is adopted.⁷¹ The agency has fourteen days after the filing of an objection to respond, and it is then up to the committee to change or eliminate its objection. The committee has two years after the objection is filed to “petition for a declaratory judgement to determine the validity of a rule objected to by the commission or committee.” This forces the agency to defend the rule.

Alternatively, committees can vote to delay a rule “any time after the publication of the rulemaking notice,” as provided by s. 14.126, Min. Stats. (created in 2001).⁷² The committee must publish their resolution to delay a rule in the State Register and notify the agency, Revisor

⁷⁰ <https://www.lcc.leg.mn/>, accessed 6/15/18.

⁷¹ <https://www.revisor.mn.gov/laws/2000/0/469/>, accessed 6/20/18.

⁷² <https://www.revisor.mn.gov/statutes/cite/14.126>, accessed 6/15/18.

of Statutes, and the chief ALJ. This prevents the agency from adopting the rule until the end of the annual legislative session.

The first use of this power to delay a rule occurred in 2018 (Interview II, 2018). The Minnesota Department of Agriculture proposed a rule (the Groundwater Protection Rule) in the spring of 2018 to decrease nitrates in drinking water.⁷³ The agriculture committees of both chambers notified the governor that they would move to delay this rule if a specific agriculture bill did not pass. Nonetheless, the governor vetoed the bill, and both chambers' Agriculture Committees moved to delay the rule (Dunbar, 2018).⁷⁴ The resolution was officially submitted and published in the State Register, officially delaying the rule until May 2019 (Interview II, 2018).⁷⁵ The current governor is serving the last year of his current term and so the delay thwarts his input on the rule. The governor called the legislature's actions "unconstitutional," suggesting that this may end up in court,⁷⁶ providing perhaps another instance of the courts settling disputes over check and balances in Minnesota's government.

Oversight Through Advice and Consent

According to the Council of State Governments, Minnesota's governor has the authority to appoint, with senatorial confirmation, the adjutant general, the heads of the departments of Agriculture, Civil Rights, Commerce, Corrections, Economic Development, Education, Emergency Management, Environmental Protection, Finance Health, Highways, Information Services, Labor, Natural Resources, Revenue, Solid Waste Management, Transportation, the Commissioner of Human/Social Services (who oversees Mental Health and Retardation and Welfare), as well as other administrative personnel. Without senatorial confirmation, the governor can appoint the five commissioners of the Public Utilities Commission (the Council of State Governments, 2014). For the PUC, by law, a maximum of three commissioners can be of the same political party.⁷⁷

The advice and consent power of the Minnesota Senate is defined in the Rules of the Minnesota Senate and s. 15.066, Min. Stats.⁷⁸ In brief, appointments that require senatorial confirmation are submitted by the governor and referred to the appropriate committee by the president of the Senate. Once the appointment has been referred to a committee, the committee has sixty legislative days to report to the Senate. If no report has been made within sixty legislative days, it is withdrawn from the committee and placed on the confirmation calendar for consideration by the Senate before adjournment of the regular session. As opposed to a rejection, confirmations can be reported out of committee with no recommendation.

Confirmation of the appointment requires the affirmative vote of a majority of the whole Senate. An interviewee noted that some appointments do not require any legislative action and that others require the vote of both chambers (e.g., Campaign Finance and Disclosure Board).

⁷³ <https://www.mprnews.org/story/2018/03/07/mn-moves-to-eliminate-nitrates-in-groundwater-environmentalists-wait-wonder>, accessed 7/8/18.

⁷⁴ <https://www.mprnews.org/story/2018/05/23/dayton-veto-brings-counterpunch-to-governors-groundwater-legacy>, accessed 7/8/18.

⁷⁵ <https://www.rfn.com/2018/06/11/minnesotas-groundwater-protection-rule-delayed/>, accessed 6/21/18.

⁷⁶ <https://blogs.mprnews.org/capitol-view/2018/06/legislature-formally-delays-daytons-nitrogen-rule/>, accessed 7/8/18.

⁷⁷ <https://mn.gov/puc/about-us/our-team/commissioner/>, accessed 6/15/18.

⁷⁸ <https://www.senate.mn/rules/2017/tempsenaterules2017.pdf>, accessed 5/31/18.

Statutes determine when and if senatorial approval is required (Interview V, 2018). For some positions, both chambers must confirm the appointment within a specific time period or the appointment will be terminated.⁷⁹ In one case, an appointment passed in the Senate, but died in House (Interview VII, 2018).

The Minnesota Senate's website details information about Minnesota senatorial confirmations.⁸⁰ On this webpage, there are lists of appointees by the Minnesota governor rejected by the full Senate, rejected by Senate committee, and appointees who resigned or were fired before confirmation.⁸¹ The most recent appointee rejected by the full Senate occurred in 2018. The second most recent appointee rejected by the full Senate occurred in 2013. That person was also rejected in the same year by the relevant senate committee. Also, the most recent appointee who resigned or was fired before confirmation was in 2004. This evidence suggests that the Minnesota Legislature does occasionally exercise their advice and consent power as a form of legislative oversight over the executive branch. However, it also demonstrates that occurrence is rare.

The governor can use executive orders for reorganization of the executive branch and to create agencies. These orders are, however, subject to legislative review (Council of State Governments, 2014). Formal provisions also allow executive orders to be used to create advisory, coordinating, study, or investigative committee/commissions and to respond to federal programs and requirements (Council of State Governments, 2014). According to statute, any task force, council, or committee created by an executive order will expire two years after the order or ninety days after the governor leaves office, unless the order or a statute specifies an earlier date.⁸² The commissioner of the Department of Administration also has the power to "transfer personnel, powers, or duties from a state agency to another state agency" with approval from the governor. These transfers must be submitted to the chairs of the governmental operations committees of both chambers (s. 16B.37, Min. Stats.). According to the same statutes, any reorganization of the Housing Finance Agency or the Pollution Control Agency must be ratified by concurrent resolution or enacted into law before it can be effective.

The reorganization power of the governor and the oversight the legislature has over this reorganization is laid out in s. 16B.37, Min. Stats. Knowledgeable sources say that "the Legislature has the power of the purse; if an appropriation has been given to one entity, it is problematic for the executive branch to reorganize" (Interview V, 2018). Not many executive orders (at least recently) have incited a great deal of interest; the best example would be the litigation that occurred regarding childcare unionization. "None of [the reorganization] requires legislative approval, but "[there are] oversight hearings and [the] legislative power of the purse. Maybe [the Legislature is] not able to reshape things in legislation, but if they are unable to provide the funding, that is how that [oversight] works" (Interview VII, 2018). Furthermore, it appears that an agency cannot be eliminated, although the governor can rearrange it through the executive order process. As with executive orders, the legislature cannot reject it. They can only use legislation to change it, although this is difficult" (Interview VII, 2018).

The governor has the statutory authority to issue executive orders for civil defense disasters, public emergencies, energy emergencies and conservation, and to transfer funds during an emergency, and other emergencies. According to formal provisions, the governor's executive

⁷⁹ <https://www.leg.state.mn.us/lrl/history/confirmations>, accessed 6/27/18.

⁸⁰ <https://www.senate.mn/confirmations/confirmations.php?ls=>, accessed 6/20/18.

⁸¹ <https://www.leg.state.mn.us/lrl/history/confirmations>, accessed 6/20/18.

⁸² <https://www.revisor.mn.gov/statutes/cite/15.0593>, accessed 6/15/18.

orders are subject to filing and publication procedures, the Administrative Procedures Act, and to legislative review. The governor can also “assign duties to lieutenant governor and issue writs of special election.” Via executive order, the governor cannot appoint state administrative personnel (Council of State Governments, 2014).

The most recent governor issued 30 executive orders during his first year in office (2011). This raised red flags in both legislative chambers about whether the governor was minimizing legislation and undermining the separations of powers. One senator stated that executive orders are “intended for [the] tweaking of things. Legislation is what’s needed to change law.” The executive orders ranged from child care unionization to environmental permits. A Republican representative said that the governor does have a large amount of authority, but it is concerning when it is used to assert a political point of view (Pugmire, 2011).

Although the governor argued that his lawyers confirmed that all of the orders were constitutional, a year later the executive order on child care unionization was nullified because, as the judge said, it exceeded the governor’s authority, violated the legislature’s right to create or change law, “and as such is a violation of the Separation of Powers doctrine” (Jimrags, 2012). The order was challenged by anti-union child care providers not by the legislature (Steward, 2012), but the legislature submitted a brief that was influential. The court enjoined the executive order, “though in the legislative process there is no statute that allows the legislative branch to reject an executive branch [order]” (Interview VII, 2018). The legislature can pass a law that is in conflict with an executive order, and that should supersede the executive order. “This happens more from one governor to the next [as the governor must sign such a law] (Interview V, 2018).”

Oversight Through Monitoring of State Contracts

Minnesota’s legislature lacks formal authority to monitor state contracts. The primary actors responsible for monitoring state contracts are the attorney general and the commissioner of administration, as provided in Chapter 16 of Minnesota Statutes.⁸³ In brief, the commissioner is responsible for approving contracts, and the attorney general is responsible for reviewing a sample of these contracts to ensure statutory compliance. However, auditors, including both the OSA and OLA, do have the power to audit the activities of a state contract. The legislature receives these audit reports but there is not a standard procedure to review and follow up on them (Interview VI, 2018).

In 2014, the Minnesota Legislative Reference Library released a guide that describes how state agencies use Professional/Technical Contracts (P/T contracts) and provides resources about contracts for the legislature. Sources cited by the guide include the MMB, the Materials Management Division of the Department of Administration, and the OLA.⁸⁴ The guide explains that reports available in the Legislative Reference Library and the Department of Administration archives include annual accumulations, which entail “approved contract amounts by department; approved contracts by department; approved contracts by vendor; and approved single source contracts by department.” When an agency completes a contract over \$25,000, they are required to submit a Vendor Performance Evaluation to the Department of Administration. Vendor Performance Evaluations include amount spent, purpose, and the work done under the contract.

⁸³ <https://www.revisor.mn.gov/statutes/part/ADMINISTRATION%2520AND%2520FINANCE>, accessed 7/8/18.

⁸⁴ <https://www.leg.state.mn.us/lrl/guides/guides?issue=contracts>, accessed 6/20/18.

The same rules apply to the legislature. So, when the LCC, the House, and the Senate enter into contracts themselves, they submit a list of all P/T contracts they have engaged, including their cost, duration, tasks, and parties involved to the Legislative Reference Library (s. 3.225, Min. Stats.)⁸⁵.

The guide also lists additional reports that address P/T contracts. Executive agencies must prove that they cannot use their own staff before hiring outside consultants or services in a report to the commissioner of administration (s. 43A.047, Min. Stats.)⁸⁶ Subsequently, the Senate Finance and House Ways and Means Committees receive these reports documenting the agencies' justification for hiring outside consultants or services.⁸⁷ These reports are rarely discussed during a House Ways and Means committee hearing, although sometimes individual finance committees might discuss one (Interview VI, 2018).

Recently, in January 2018, the Financial Audit Division released an internal control and compliance report on the P/T contracting activity of the state from July 2014 to February 2017. The goal of the audit was to confirm statutory compliance and “whether state agencies had adequate internal controls over . . . expenditures.” This audit examined various departments, including the Department of Administration’s Office of State Procurement. The audit found that this office had “adequate oversight over their use of P/T contracts.” The Financial Audit Division found that the departments of Corrections, Education, Human Services, Transportation, and the Pollution Control Agency generally complied with the law in selecting and executing contracts; “accurately paid for services received,” and “properly recorded the expenditures in the state’s accounting system.” However, these departments had occasional instances of weak internal control and noncompliance.⁸⁸

This demonstrates that the legislature, especially the OLA, has the means to oversee state contracts through audits by its analytic support agencies and utilizes this tool when necessary. But the OLA does not conduct audits on contracts specifically. Rather, the contract is examined if it is a part of another audit (interview notes 2018). Committees rarely hold hearing on agency contracts due to the low number of relevant audits. The typical issue with a state contract is why the job cannot be done by state employees or whether it cost too much. Contracts are not typically discussed unless there is such an issue, which has not occurred in about ten years (Interview VI, 2018).

Oversight Through Automatic Mechanisms

The Minnesota Sunset Act of 2011 was repealed in 2013. Currently, the Sunset Advisory Commission’s website states that the law sets the schedule for executive branch agencies to be reviewed from 2012-2022,⁸⁹ however, the commission ceased to exist in 2013. According to one interviewee, the commission “never really got started” (Interview VI, 2018). Responsibility for any remaining sunset reviews is shared between the LCC and the House and Senate governmental operations committees. But, in practice, such reviews are mainly conducted by the latter (Interview I, 2018). The Legislative Commission on Policy and Fiscal Services (LCPFP),

⁸⁵ <https://www.revisor.mn.gov/statutes/cite/3.225>, accessed 7/8/18.

⁸⁶ <https://www.revisor.mn.gov/statutes/cite/43A.047>, accessed 7/8/18.

⁸⁷ <https://www.leg.state.mn.us/docs/2009/mandated/090545.pdf>, accessed 6/20/18.

⁸⁸ <https://www.auditor.leg.state.mn.us/fad/pdf/fad1802.pdf>, accessed 7/8/18.

⁸⁹ <https://www.commissions.leg.state.mn.us/sunset/>, accessed 6/15/18.

which primarily aids the legislature on fiscal policy, was tasked with conducting sunset reviews in 2013 when the sunset act was repealed. The LCPFP's most recent and available meeting was held on December 18, 2013. They have not met since 2013-2014 for either their fiscal nor sunset purposes (Interview VI, 2018). Moreover, the LCPFP does not have a legally required reporting schedule for sunset reviews (Interview, 2018).

An interviewee explained that the LCPFP had a broad set of responsibilities (specifically, the interviewee referenced the analysis the LCPFP provides to the legislature on projected state revenues and [tax] expenditures). The LCPFP's website states that when the legislature is considering the commission's fiscal projections, the commission is also responsible for "[gauging] the Legislature's role in state expenditures and consider the long-term needs of the state, while not duplicating work done by standing committees of the House and the Senate." Therefore, sunset reviews are currently, for the most part, conducted by House and Senate committees that have jurisdiction over the sunset topic.

According to another interviewee, current practice dictates that for any sunset review of commissions, those commissions can be extended if a committee chair determines the commission has been useful. Furthermore, the interviewee said that there is not a formal process that is called a "sunset review" in Minnesota, so there is no way to track the reviews. However, committee chairs informally conduct "sunset reviews" in the sense that they will formally determine whether an entity is needed or not. The interviewee continued that "it is not so much about expiring and extending. In its own way, it is sort of a sunset review" (Interview II, 2018). A separate interviewee said there is currently not any use of sunset or renewal requirements for continuing appropriations. The same interviewee continued, saying, "there are no standards like, 'Each program gets reviewed every six years' or something like that. There are programs that are set to expire at a certain point of time, but that's only because it only takes that amount of time for them to do what they need to do" (Interview VI, 2018).

Finally, Minnesota has a sunset procedure for existing administrative rules. Agencies are required to report rules that are obsolete, non-obsolete, and the status of any rules identified as obsolete in the previous year to the governor, the LCC, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, annually by December 1. Agencies must explain why rules are or are not obsolete.

Methods and Limitations

Minnesota's legislature provides extensive video archives of committee hearings. These can be searched by committee and by year. Agendas for committee hearings are posted on this link to the recording. Other resources about the legislature are similarly well organized and accessible. We contacted 17 people in Minnesota and were able to talk to 12 of them about legislative oversight in the state.

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