



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Ohio

Capacity and Usage Assessment

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

Summary Assessment

The evidence compiled in this report suggests that the Ohio has an extensive set of analytic bureaucracies that can aid legislators with executive branch oversight. These support agencies and the legislature are not tightly interconnected. For example, there is no mechanism for integrating audit reports into appropriations hearings, and no reports on agency compliance with audit findings. The Legislative Service Commission (LSC) does not conduct performance audits and the Ohio Auditor of State (OAS) conducts a fairly small number of performance audits given the size of its budget and staff resources. The strength of the independently elected auditor appears to diminish the motivation to create a separate legislative audit capacity. On the other hand, there is a relatively effective mechanism of administrative rules review, as well as an extremely active review of rules, state agencies, boards, and commissions. The governor's power to issue executive orders that make policy without a vote from the legislature, however, undermines the state's checks and balances between the executive and legislative branches.

Major Strengths

The Ohio legislature has many resources available to help assist them with oversight, including the Legislative Service Commission and a separately elected Auditor of State. Fiscal analysis of legislation and regulation is comprehensive, even though performance review is not. The vigor with which sunset review of boards, commissions, and rules is pursued is a major strength. The rule review process, at least informally, provides Ohio's legislators with an

opportunity to influence state agency implementation of programs and statutes.

Challenges

Ohio is a term-limited state, with high turnover, which reduces the opportunity for legislators to learn the more complex parts of their job, such as monitoring state agencies. The members' limited institutional knowledge is revealed in questions some legislators ask LSC staff and state agency staff during committee hearings. Audits appear to be rarely used during the budget process or in the appropriations process. Furthermore, state agencies appear to rarely provide testimony in other committee hearings. The Ohio Senate does not appear diligent in its examination of gubernatorial appointments. Furthermore, the governor's power to issue executive orders and to reorganize government without input from the legislature tilts the balance of power toward the executive branch.

Relevant Institutional Characteristics

Ohio's legislature ranks as the 6th most professional in the nation (Squire, 2017). This means that being a legislator in Ohio is the equivalent of a full-time job, with ample compensation (approximately \$61,000/year), and a generous number of supporting staff members (roughly 425 staff during session), including personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies such as the Legislative Services Commission (NCSL, 2009; NCSL, 2017).

The Ohio legislature's unlimited session length essentially allows legislators to convene year-round for lawmaking purposes (NCSL, 2010). Special (sometimes known as extraordinary) sessions may be called by the governor or the legislature. For the legislature to call a special session, a joint proclamation by the presiding officers of the General Assembly must be made (NCSL, 2009). However, given the Ohio legislature's unlimited session length, special sessions occur very rarely. Since 2005, the Ohio legislature has not convened for a single special session (LegiScan, 2017).

Ohio's governor's office is tied with Maryland for the third most powerful in the country, (Ferguson, 2015). Only Alaska and Kentucky have more powerful governors. Ohio is unusual in that it has both a powerful executive and a powerful legislative branch. In many states, a strong governor is paired with a weak legislature, or vice versa. Ferguson (2015) reports that the major source of gubernatorial power in Ohio is control over the budget process.

Despite the power of the governor, the Ohio legislature "is a powerful actor in state politics and policymaking and is able to hold its own against the executive" (Haider-Markel, 2009). However, Ohio is also among the approximately 15 states that currently have term limits for legislators (NCSL, 2015). Given the relative short tenure permitted under Ohio's term limits law (eight years in each chamber), turnover in the legislature is high. Research has indicated that such turnover makes it harder for legislators to exercise effective oversight over the executive powers of the governor (Kousser, 2005; Sarbaugh-Thompson et al, 2010).

Political Context

Over the last 50 years, Democrats controlled both chambers of the Ohio legislature only in the late 1970s and early 1980s. From roughly 1984 until 1994, neither party controlled both legislative chambers. Since 1994, however, Republicans held majorities in both legislative chambers, except between 2008 to 2010 when legislative control was once again split (NCSL, 2017). Recent evidence suggests that the Ohio House of Representatives is not especially polarized along party lines, ranking 20th most polarized in the country (Shor and McCarty, 2011). On the other hand, Ohio's Senate is the 10th most polarized upper chamber based on differences between median roll call votes for each party in each chamber (Shor and McCarty, 2015).

Like the legislature, the Ohio governorship has predominantly been held by the Republican Party. Beginning in 1992, Republicans have continuously controlled the executive branch, with the exception of one four-year term from 2007 to 2010. Additionally, the Republican Party had a trifecta from 1994 to 2007 and again from 2011 until the present (2018).¹ In Ohio, the Democratic Party has not had majority control of both chambers of the legislature and the governorship since 1978, except for less than one year in the early 1980s (NGA, 2017).

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

A key contributor to the legislative oversight conducted by the Ohio legislature is the Legislative Service Commission (LSC).² The responsibilities of the LSC are outlined in Chapter 103, Ohio Revised Stats., with its primary powers and duties discussed in s. 103.13, Ohio Revised Stats. In brief, the LSC must “conduct research, make investigations, and secure information on any subject and make reports thereon to the General Assembly.” Furthermore, the LSC must, “ascertain facts and make reports concerning the state budget, the revenues and expenditures of the state, and the organization and functions of the state, its departments, subdivisions, and agencies.”³ These duties correspond to the two divisions within the LSC: budget and fiscal analysis and research and drafting services. The LSC appears to be very active on Twitter (*@lscOhio*), with anywhere from five to 50 tweets every week regarding any materials they have developed.

The LSC is headed by a director appointed by a 14-member governing authority from the general assembly consisting of individuals from both parties of both chambers. Members include both the house speaker and senate president. The partisan composition of this commission reflects the number of Ohio General Assembly seats held by each of the two major political parties. This means that from 2015 to 2017 there were four Democrats and 10 Republicans. The director of the LSC hires additional professionals and support staff, including 17 budget analysts and 6 economists, among the 30 LSC staff members.⁴ Members of the LSC staff all the standing committees, which includes the finance committees.

The LSC division staffs appear to collaborate to produce budget and fiscal analysis and legislative research and drafting services. A nonpartisan research staffer will develop a bill

¹ https://ballotpedia.org/Party_control_of_Ohio_state_government, accessed 8/11/18.

² <https://www.lsc.ohio.gov/pages/general/aboutus.aspx?active=idA>, accessed 8/15/18.

³ <https://www.legislature.ohio.gov/laws/ohio-codes>, accessed 7/19/18.

⁴ <https://www.lsc.ohio.gov/documents/budget/documents/budgetserviceguide.pdf>, accessed 10/12/18.

summary, and a nonpartisan fiscal staffer will develop a fiscal note for bills that go to committee hearings; they do not cover bills that are introduced but not heard by committees (interview, 2018). There are also statutory reporting requirements utilized by the Ohio General Assembly “which may be instituted to monitor an agency’s expenditures of state and federal funds.” Some boards and commissions are even created with the standard provision that they must “prepare and submit an annual spending report to the General Assembly.” Both of these are mentioned in Chapter 7 of the Guidebook for Ohio Legislators (2014).

The LSC is also actively involved in administrative rule review processes. Agencies cannot adopt rules for at least 65 days after notifying the LSC and sending it, and the secretary of state, a rule summary and fiscal analysis.

The second important component of the analytic bureaucracy is the Ohio Auditor of State (AS). The AS has ample resources, with \$28,200,000 in state appropriations and a staff of 770 (NASACT, 2015). According to s. 117, Ohio Revised Stats., the AS is a term-limited elected official who can serve up to two four-year terms. The AS is responsible for auditing all public offices, as well as auditing the specific funds or accounts of private institutions, associations, boards, and corporations into which public money from a public office has been deposited. The AS can require any of these entities to submit an annual report using whatever format it desires.⁵

The Ohio AS conducts various types of audits, including financial audits, performance audits, and special audits for fighting fraud.⁶ During fiscal year 2016, the Ohio AS has developed 204 basic audits, 1,826 financial audits, 16 performance audits of local governments and school districts, four audits of state agencies, and zero special audits. According to s. 117, the Ohio AS “shall audit each public office at least once every two fiscal years.” Furthermore, ORC s. 117.46 “provides that the AS shall conduct performance audits of at least four state agencies each budget biennium.”⁷ For 2016-17 the agencies audited were the Bureau of Workers’ Compensation, the Department of Agriculture, and the Department of Health. The OAS is required by law (ORC 117.46) to audit at least four state agencies every two years.

The target of these audits may be made on the initiative of the AS or by request from the governor or legislature, and some are mandated by law. For example, a performance audit of the Ohio Department of Transportation (ODOT) conducted during fiscal year 2016 indicates that the AS selected the ODOT for audit in consultation with the governor and the speaker and minority leader of the House of Representatives, and the president and minority leader of the Senate (Yost, 2016). The AS publishes the results of its audits, as well as other activities, on its website.⁸ Like the LSC, the AS is active on Twitter (*@OhioAuditor*), soliciting tips on government malfeasance and advertising results of its activities.

Oversight Through the Appropriations Process

Legislative oversight during the appropriations process is largely conducted by the House and Senate Finance Committees, and their respective standing subcommittees. During this process, there appears to be regular communication between the House and Senate Finance

⁵ <https://ohioauditor.gov/about.html>, accessed 7/19/18.

⁶ <https://ohioauditor.gov/> accessed 7/19/18.

⁷ <https://ohioauditor.gov/publications/2017cafr%20FINAL.pdf>, accessed 8/11/18.

⁸ <https://ohioauditor.gov/publications.html>, accessed 7/19/18.

Committees, their respective subcommittees, and possibly other committees as well. The General Assembly's role in the budget process begins after the governor presents the executive budget between January and the middle of March.⁹ The LSC is responsible for drafting legislation for the governor and for the House and Senate Finance Committees, turning the budget into bills that are then introduced in the House.¹⁰ Next, the House will hold subcommittee hearings on bills, and if the subcommittee recommends changes, these changes will appear as substitute bills. These substitute bills may be amended by the full committee and are sent to the chamber floor for further consideration.¹¹ LSC not only drafts these bills for the committees but serves as committee staff during the hearings.

When passed by the House, the bills are then forwarded to the Senate to be reviewed in a similar fashion.¹² As a part of this budget process, the House and Senate Finance subcommittees and non-finance committees conduct hearings to examine annual agency revenue and spending, and relay that information to the House and Senate Finance Committees. Usually, there are discrepancies between the House and Senate final bills, in which case a conference committee is established to reconcile differences between the bills. The conference committee can also hold hearings,¹³ and will forward a report to both chambers. The bill will become law once reviewed by the appropriate executive branch agencies and signed by the governor.¹⁴

During 2017, the House Finance Committee held 24 hearings and the Senate Finance Committee held 17 hearings. The Ohio legislature's website provides information pertaining to these House and Senate Finance Committee's hearings. This includes important documents, testimony, and meeting minutes dating back more than 20 years.¹⁵ Several agency administrators gave lengthy testimony at these hearings. For example, the Director of the Public Safety agency and the Superintendent of Education both testified at these budget hearings, as did the Director of the Office of Management and Budget. Other agency administrators testified as well, such as the Director of the Department of Transportation and the Director of the Turnpike and Infrastructure Committee.

The LSC Director was among those testifying at the House Finance Committee. The LSC provides the Office of Budget and Management with a briefing document pertaining to items under review during each session.¹⁶ The LSC is tasked with creating multiple budget-related reports to be used by the general assembly, including a budget in brief, a budget in detail (including fiscal year 2017 actual expenditures), a comparison document, fee changes, and a final analysis.¹⁷ The House Finance Committee's website lists the budget in brief and the budget in detail as documents for the meeting held on February 9, 2017, which was one of the several budget hearings.¹⁸ In an earlier meeting, held on February 1, 2017, an LSC forecast book—also available on the committee's website—was presented to the committee by the Director of the LSC. The testimony was followed up with various questions, one of which was, "Is there a

⁹ <http://guides.osu.edu/c.php?g=833016&p=5947899>, accessed 7/17/18.

¹⁰ <http://guides.osu.edu/c.php?g=833016&p=5947899>, accessed 7/17/18.

¹¹ <http://guides.osu.edu/c.php?g=833016&p=5947899>, accessed 7/17/18.

¹² <http://guides.osu.edu/c.php?g=833016&p=5947899>, accessed 7/17/18.

¹³ <http://guides.osu.edu/c.php?g=833016&p=5947899>, accessed 7/17/18.

¹⁴ <http://guides.osu.edu/c.php?g=833016&p=5947899>, accessed 7/17/18.

¹⁵ <http://www.ohiochannel.org/?0>, accessed 7/17/18.

¹⁶ <https://ecb.ohio.gov/Public/MeetingsAndAgendas.aspx>, accessed 7/19/18.

¹⁷ <https://www.lsc.ohio.gov/pages/budget/current/CurrentGA.aspx?Budget=MainOperating&ID=MainOperating&Version=contentFI>, accessed 7/17/18.

¹⁸ <http://www.ohiohouse.gov/committee/finance>, accessed 7/17/18.

means by which to measure—when we pass a tax change—whether or not we are able to accomplish what we are trying to accomplish? For instance, rather than just being aware that money is being put back into the market place, is there an example of that having a positive outcome?” The director explained that this information is not a part of the forecast, and that the forecast is based on aggregate measures of items that would indicate increased wealth. Furthermore, the director explained that the LSC does not have the history and the resources to account for that information in their forecast.¹⁹ This suggests that the legislature would like to have more information to assess program performance than LSC can provide. Although executive branch staff members testify at House Finance Committee hearings, the questions asked by legislators tend to relate to the specifics of how a bill operates versus more inquisitive questions regarding a bill’s effectiveness.

This is typical for legislators in a state with term limits. Due to the high turnover, institutional knowledge among legislators tends to be lower. But it is not as effective in holding officials accountable for agency performance. Several examples of the questions follow.

In one instance, from the February 2, 2017, House Finance Committee meeting, the director of the Ohio Department of Public Safety (DPS) was questioned for roughly an hour. The director explained that collaborative efforts, including intelligence operations and the Ohio State Hub, have saved lives from bomb threats to suicide attempts to human trafficking. One particular question asked by a committee member was, “. . . [are these resources] available to . . . all of the other law enforcement throughout the state?” The director confirmed that they are available due to the need of such services. During a meeting held on June 26, 2018, committee members questioned the Administrator of the Division of Power and Water. One of the committee members asked the administrator, “You state that H.B. No. 602 interferes with municipal home rule . . . [H.B. No. 602] makes state funding appropriated by the general assembly contingent upon certain things . . . Do you believe that home rule, under the Ohio constitution, prohibits the legislature from controlling how it spends state funding if it wants to appropriate it with a clause that would say, that cities can’t discriminate against other Ohioans that pay into the tax funds that fund your system through the Water Development Authority?” The administrator demurred, saying it was a legal question beyond his authority. These questions ask about how government works rather than how effective it is.

On the other hand, some legislators asked questions that probe agency performance. For example, a legislator asked, “Why do you charge outside residents a higher rate simply for being outside residents as opposed to using it on a basis of usage or any of the factors you described?” The administrator said it is due to the various risks of providing water to the outside community, and the rates are bonds that support the facilities; if there was a fault on the outside community it would fall on them.²⁰ This is an example of a question that moves a bit closer to an inquiry into the performance and effectiveness of the program.

In addition to the House and Senate Finance Committees, the Controlling Board—which is part of the Office of Budget and Management (OBM)—has significant influence on the budget. The Controlling Board consists of seven members: two members each from the House and the Senate (one from each party), the chairs of the House and Senate Finance Committees, and an employee, usually the director or a deputy director from the Office of Budget and Management, which is part of the executive branch.²¹ The Controlling Board’s authority

¹⁹ <https://www.ohiochannel.org/video/ohio-house-finance-committee-2-1-2017?9>, accessed 7/17/18.

²⁰ <http://www.ohiochannel.org/video/ohio-house-finance-committee-6-26-2018?129>, accessed 7/17/18.

²¹ <https://ecb.ohio.gov/Public/About.aspx>, accessed 7/19/18.

specifically includes legislative oversight of the executive in the areas of operating and capital budget preparation, purchasing, and other areas.²² The Controlling Board typically meets twice per month and reviews requests related to the release of funding, waivers to competitive selection, or the transfer of funds from one entity to another. Review of published agendas and minutes suggests that most requests are approved without discussion, and those that are discussed are typically approved without objection.²³

Knowledgeable sources say that the legislature does use the Auditor of State's audits to inform their funding decisions (interview, 2018). When the OAS is aware of fiscal stress, they will notify the legislators who represent the relevant district or area and inform the legislators what the office is doing to resolve the issue. However, members of the OAS do not typically go to committee hearings during budget deliberations to testify on their audits. Questions related to the budget may be answered by an audit, but typically the Ohio legislature does not request budget information from the OAS. The Office of Budget and Management (part of the executive branch) typically assists the legislature in the budget process (interview, 2018). And, as described on the LSC webpage, its staff assists legislators by preparing fiscal notes, budget footnotes, and a catalog of budget line items and by serving as staff during budget hearings.²⁴

Oversight Through Committees

Standing committees in the Ohio legislature appear to meet regularly, most having held between five to 15 meetings during the fiscal year 2017.²⁵ LSC provides information to standing committees in the Ohio legislature. Specifically, the LSC may disseminate their reports to various committees and may work in conjunction with committees. Moreover, LSC staff attends any standing committee hearings, not just finance committee hearings. Furthermore, the LSC produces a fiscal note and local impact statement and a bill summary when a bill goes to a hearing and updates it as changes to the bill are made during the legislative process. It is standard to have a bill summary prepared by the first hearing and a fiscal note prepared by the second hearing (Interview, 2018). The bill summary and fiscal note are available during committee hearings, and legislators do refer to LSC reports during these hearings depending on the question or point at hand (Interview, 2018). Analyses will not be updated unless a bill makes it to floor and is then changed on the floor. Legislators can request additional versions, and the LSC may create a comparison of versions if legislators are considering a substitute bill (Interview, 2018). The LSC staff will answer questions regarding amendments during a hearing or contact the legislature later in response to any additional questions (Interview, 2018).

It does not appear, however, that state agencies frequently provide testimony to non-finance standing committees or subcommittees. The minutes for the House Health Policy Committee for 2017-2018 do not list any testimony from state agency officials, despite testimony from numerous advocacy groups and other witnesses. The Senate Energy and Natural Resources Committee held 16 hearings between September 2017 and August 2018. The State Department of Natural Resources testified at only one of these hearings. Again, numerous advocacy groups, cities, commissions, and others, testified at most of these hearings. During the 20 meetings of the

²² <https://ecb.ohio.gov/Public/Authority.aspx>, accessed 7/19/18.

²³ <https://ecb.ohio.gov/Public/MeetingsAndAgendas.aspx>, accessed 7/19/18.

²⁴ <https://www.lsc.ohio.gov/>, accessed 10/12/18.

²⁵ <https://www.legislature.ohio.gov/committees/committee-directory>, accessed 8/11/18.

Senate Education Committee, the Ohio Department of Education and the Superintendent of Education testified at two separate hearings. Numerous local school districts, education associations, charter school associations, and other interested parties testified at almost all these hearings.

On the other hand, joint committees that include the word “oversight” in the committee’s name do appear to regularly include testimony from the specific agency under their jurisdiction. For example, the Joint Medicaid Oversight Committee regularly took testimony from the Ohio Department of Medicaid at the twelve meetings it held from September 2017 through August 2018. Minutes of the House Finance Subcommittee on State Government and Agency Review document agency testimony on a range of substantive issues including manufactured homes (a.k.a. trailer parks or mobile homes) and net profits on municipal income tax collection. The March 14, 2017, meeting of this committee includes a document describing the rebuttal by the Department of Taxation to comments from other “interested parties” presented to the committee. It refers to audit reports, but these are financial rather than performance audits.²⁶ There are no audio or video recordings of hearings for this committee, so it is not possible to assess the quality of the questions asked by legislators on this committee. But there is evidence that the agency and the committee are interacting regularly.²⁷

Legislators also consult their own staff about specific policy questions. During a hearing held on June 5, 2018, by the Senate Health, Human Services, and Medicaid Committee, a member of the LSC assisted the committee in explaining amendments to S.B. No. 295. Near the end of the hearing, the LSC staff member relayed the history, implications, and other relevant characteristics of the provision to the committee members.²⁸

Compared to the limited use of OAS audits during the budget process, standing committees make greater use of audits. The auditor’s staff occasionally reports findings to the legislature in a press conference, and these findings “will inform their legislative decisions” (interview, 2018). Occasionally, legislators also ask the OAS to answer particular questions (interview, 2018). For instance, the OAS was asked to speak to the Joint Medicaid Oversight Committee on the practice of pharmacy benefit managers (PBMs) (OPA, 2018).

Although audit findings are brought up during standing committee hearings, it is rare for this information to be used to question witnesses (interview, 2018). During the previously mentioned June 5, 2018, meeting, however, findings by the OAS were mentioned by a committee member during questions and answers with a witness. The member stated that they agreed to sponsor S.B. 218 at the request of the Auditor of State, a bill intended to decrease Medicaid fraud by requiring certain providers to “maintain a surety bond and to complete training” (DDC, 2018). The OAS reported that, “84% of Medicaid fraud in the state is coming from transportation companies . . . so if you have any other suggestions . . . as to how we can address this serious issue of fraud in this field, please share that with me.” As the question was specific to surety bonds and the fear of running out family-owned businesses, the opponent responded that they shared those same concerns due to the way the bill was currently written.²⁹ The OAS was repeatedly mentioned by witnesses and in questioning of the witnesses, but it is

²⁶ <http://www.ohiohouse.gov/committee/finance-subcommittee-on-state-government-and-agency-review>, accessed 8/14/18.

²⁷ <http://www.jmoc.state.oh.us/meetings>, accessed 8/11/18.

²⁸ <http://www.ohiochannel.org/video/ohio-senate-health-human-services-and-medicare-committee-6-5-2018?122>, accessed 7/17/18.

²⁹ <http://www.ohiochannel.org/video/ohio-senate-health-human-services-and-medicare-committee-6-5-2018?122>, accessed 7/17/18.

important to note that the discussion topic was of the creation of an auditing system for Medicaid. Interestingly, this bill was promoted on the OAS website (OAS, 2018) and some of the testimony was shared on their Twitter page.³⁰

Overall, it appears that joint committees with oversight specifically in the committee name do more oversight of state agency and program performance than do regular standing committees. Both the OAS and the LSC appear to assist these committees, but only the OAS conducts performance audits. And, both of these staffs appear to work with legislators to craft legislation to improve agency performance. But, both the OAS and the LSC are more heavily focused on fiscal accountability and performance than they are on service delivery performance. As we noted earlier, OAS only performs about three or four performance audits per year, and the LSC does not conduct performance audits. Therefore, evidence-based oversight of agency service delivery performance is constrained by this lack of information. However, fiscal accountability and oversight are strongly supported by these staff agencies.

Oversight Through the Administrative Rules Process

The Ohio legislature possesses a Joint Committee on Agency Rule Review (JCARR), which provides it with an opportunity to oversee executive branch agency rule making. The JCARR is a statutory committee that receives its authority from s. 106.02, Ohio Stats. Under this statute JCARR's powers are limited to providing advice to the entire legislature. JCARR consists of 10 members, five of which come from the Senate and five from the House. Membership must include representatives from both majority and minority parties.³¹ In 2018, with Republicans in control of both chambers, there were two Democrats and three Republicans from the House and two Democrats and three Republicans from the Senate. The committee has four dedicated staff members to assist it with its work.

The rule review process is initiated when an agency submits a proposed rule to the LSC, which produces a fiscal analysis of the rule. The proposed rule is simultaneously sent to the secretary of state and published in the *Ohio Register*. Although JCARR does not have the power to invalidate rules, it can recommend that the entire legislature reject an administrative rule. There are, however, only four reasons that JCARR can recommend invalidating a rule: (a) it exceeds statutory authority, (b) it conflicts with an existing rule, (c) it conflicts with legislative intent, and (d) the agency failed to provide complete and accurate analysis of the impact of the rule or failed to provide other information about the rule (Schwartz, 2010). In order for a rule to be rejected, a resolution to that effect must pass in both chambers of the General Assembly.³² If a rule is rejected, the agency cannot reintroduce that rule again, even in revised form, until the next two-year legislative term. JCARR can work with an agency to make changes in the information submitted about a rule or to revise a rule prior to a vote by the chambers to invalidate the rule (Schwartz 2010). JCARR is empowered to determine what information must be included in the analysis of the proposed rule.

After a rule is adopted, the Legislative Services Commission's Administrative Rules Unit has 30 days to review it. This review is designed to identify any errors in the previous review conducted prior to the adoption of the rule. Also, if it has time, the LSC Administrative Rules

³⁰ <https://twitter.com/OhioAuditor/status/996473338829602819>, accessed 7/17/18.

³¹ <https://www.legislature.ohio.gov/publications/rules-of-the-house>, accessed 4/25/18.

³² <http://www.jcarr.state.oh.us/frequently-asked-questions>, accessed 7/19/18.

Unit can review any proposed rules, but this LSC action is not mandated by statute as is the case for adopted rules. Given that legislative inaction means that a rule is adopted, this requirement is an insurance “policy” that prevents rules from slipping through the cracks when the legislature is especially busy with its other duties.

Additionally, JCARR participates in a five-year review of every existing rule (Council of State Governments, 2016). This participation consists of insuring that agencies comply with the following four requirements for continuing a rule: the rule reflects original intent, the rule provides local flexibility, the rule avoids unnecessary paperwork, and the rule prevents duplication of rules or conflicts with other rules (Schwartz, 2010). If the agency wishes to retain the rule, it notifies JCARR and provides a summary and analysis of its justification of the rule. JCARR provides the public with four weeks’ notice of these reviews. Rules affecting small businesses, people more than 60 years old, and environmental rules all have additional analyses that are required prior to their adoption.

Typically, there is informal communication between the agency proposing the rule and JCARR to iron out problems with the rule prior to formal action by JCARR (Schwartz 2010). Although most rules are not controversial, those that are elicit strong interest groups and partisan participation in JCARR hearings. The JCARR minutes for its March 6, 2017, meeting indicate that some of these controversial rule changes do receive careful consideration, which includes public testimony and responses from the agency proposing the rules, as well as probing questions from the legislators on the committee. The rule under consideration changed the reimbursement fees for pharmacies. The crux of the questions from committee members involved whether the state agency could set fees rather than one fee. The state agency wanted to aid low volume pharmacies by providing a tiered fee structure—fees rather than one fee. As the minutes state, “the Department is willing to continue conversations in regard to what rates are in statute and what rates are not in statute.”³³ This supports the reported willingness of state agencies to work with JCARR informally to resolve problems with rules (Schwartz, 2010) as well as demonstrating influence by JCARR over agency rule making.

JCARR’s meeting dates and minutes are available on its website.³⁴ JCARR was scheduled to meet 20 times during 2017, but only met 14 times. Examination of the meeting minutes and testimony documents does not indicate that legislators are especially knowledgeable about executive branch agencies and the proposed new and amended rules that they are proposing. For the most part, legislators posed relatively generic questions in their review of proposed new and amended rules.³⁵ Schwartz (2010) describes Ohio’s rule review process as inconsistent due to turnover on the committee—a result of term-limits and high turnover in Ohio’s legislature. Moreover, he claims that Ohio’s rule review processes focus on costs rather than balancing the costs and benefits of proposed and existing rules.

Oversight Through Advice and Consent

Senate Action on Gubernatorial Appointments

³³ <http://www.jcarr.state.oh.us/assets/gen/march-6-2017-jcarr-meeting-minutes-584>, accessed 8/14/18.

³⁴ <http://www.jcarr.state.oh.us/meetings/132nd-general-assembly>, accessed 7/19/18.

³⁵ <http://www.jcarr.state.oh.us/assets/gen/january-31-2017-jcarr-meeting-minutes-581>, accessed 8/12/18.

The powers of the Ohio Senate to confirm gubernatorial nominees are defined in Rules 101 and 102 of the Rules of the Ohio Senate.³⁶ These appointments are referred to the Committee on Rules and Reference, which then refers them to the appropriate standing committee. When the governor makes an appointment, the nominee immediately starts working in the position, despite the need for the consent of the Senate. A nominee is confirmed by a simple majority vote of the senators. Nominees are not routinely brought in for questioning by Senate committees, although they are free to do this (Interview, 2018).

From 2010 through 2018, no appointees were rejected (interview, 2018). The following are typical examples of the confirmation process. On July 10, 2018, the Senate held a meeting lasting roughly an hour, to confirm several gubernatorial appointments. The Senate confirmed all the appointments without any objections.³⁷ In a meeting of the Senate Health, Human Services, and Medicaid Committee, held on April 10, 2018, the Director of Health was confirmed without the appointee being present.³⁸

In 2010, however, the Senate rejected 78 of the governor's appointees, including the entire bipartisan casino commission. This is the largest number of appointees rejected since 1990—the previous record being 13 (Guillen, 2010). This use of advice and consent by a Republican Senate occurred during the lame duck tenure of a Democratic governor. It seems likely that the motivation was partisan—to preserve the opportunity for an incoming Republican governor to fill these positions—rather than to assess the qualifications of the nominees.³⁹

Gubernatorial Executive Orders and Government Reorganization

Ohio's governor has statutory authority to issue executive orders in the case of emergencies. Additionally, according to the Council of State Governments (2015) Table 4.5, Ohio's governor has implied powers to issue executive orders in administrative areas, such as personnel administration and government reorganization. The approval of the legislature is not necessary for these executive orders, including those reorganizing the government.

Ohio's Gov. John Kasich has passed numerous executive orders—32 of them in 2011, his first year in office. Although he has passed fewer executive orders per year since, Gov. Kasich continues to use executive orders to establish and alter state policies and procedures. Examples from the 19 executive orders he issued in 2012 include authorizing the “Expenditure of TANF Funds for Certain Initiatives of the Governor's Office of Faith-Based and Community Initiatives” and prohibiting “Drilling for Oil and Gas From and Under the Bed of Lake Erie.”⁴⁰ These clearly are issues that might generate some intense debate in the legislature, but by using executive orders, the governor side-stepped legislative involvement for the duration of his administration. Interestingly, Gov. Kasich used executive order 2015-14K to suspend the usual rule-making procedures to adopt 27 rules that affect the Ohio Department of Agriculture's ability to regulate soil and water conservation due to government reorganization moving a program from the Ohio Department of Natural Resources to the Department of Agriculture.⁴¹ So, in effect, government reorganization (without any input from the legislature) led to an executive

³⁶ <https://www.legislature.ohio.gov/publications/rules-of-the-senate>, accessed 7/19/18.

³⁷ <http://www.ohiochannel.org/video/ohio-senate-7-10-2018>, accessed 7/17/18.

³⁸ <http://www.ohiochannel.org/video/ohio-senate-health-human-services-and-medicaid-committee-4-10-2018>, accessed 7/17/18.

³⁹ <http://www.ohiochannel.org/video/senate-session-december-21-2010-part-2>, accessed 7/17/18.

⁴⁰ <http://governor.ohio.gov/Media-Room/Executive-Orders#9124-2012>, accessed 8/14/18.

⁴¹ <http://governor.ohio.gov/Portals/0/pdf/executiveOrders/Executive%20Order%202015-14K.pdf>, accessed 8/14/18.

order (which does not require legislative approval) that circumvented legislative oversight of the rule-making process. We conclude that Ohio’s governors can and do make robust use of their executive order authority to take action that might be more challenging to undertake if the legislature were involved.

Oversight Through Monitoring of State Contracts

Oversight of state contracts is handled by the Office of the Inspector General (OIG), a state agency that was created initially by a gubernatorial executive order in 1988 and permanently established in the legislature in 1990. The OIG, described as an independent fact finder, is charged with investigating allegations of wrongdoing in state agencies or by state officials.⁴² The inspector general is appointed by the governor and has a staff of 17 professionals.

Even though this is an executive branch unit, it appears that the OIG works collaboratively with the legislature to improve the state’s contracting process. One recent case involved the lack of oversight over state spending on information-technology consultants and contract workers. Following the results of that investigation, the legislature passed legislation that requires all IT contracts to be competitively bid and also approved by the Controlling Board, described in the section on Ohio’s analytic bureaucracies (Borchardt, 2017; Ludlow, 2017). Furthermore, agencies that wish to obtain a waiver of the competitive bid requirement must produce a written justification for review by the Controlling Board (Meyer, 2017). Although the Controlling Board is part of the Office of Management and Budget in the executive branch, six of its seven members are legislators. Therefore, Ohio’s legislature has some leverage that it can use to oversee the state contracting processes and procedures.

Oversight Through Automatic Mechanisms

Ohio requires its legislature to review all statutory agencies on a preset schedule (Baugus and Bose, 2015). According to s. 101.83-101.87, the Sunset Review Committee “shall schedule for review each agency in existence on the first day of January in the year of the first regular session of the General Assembly.” In evaluating the usefulness, performance, and effectiveness of agency, “the sunset review committee shall hold hearings to receive the testimony of the public and of the chief executive officer of each agency scheduled for review.”⁴³ Furthermore, each agency is required to submit a report containing specific information outlined in s. 101.86, Ohio Stats., and each agency has “the burden of demonstrating to the committee a public need for its continued existence.” The statute goes on to list 12 different criteria that the Sunset Review Committee will consider in determining whether an agency has demonstrated that need.

Ohio reviews significantly more boards, committees, and laws than any other state. Between 2005 and 2010, Ohio conducted 274 reviews, eliminating 79 boards or laws. To provide a basis for comparison Texas was the next highest on the list. It conducted 79 reviews between 2006 and 2013 and declined to renew 14 boards or laws (Baugus and Bose, 2015). The Sunset

⁴² <http://www.watchdog.ohio.gov/AboutUs/AboutTheOffice.aspx>, accessed 7/19/18.

⁴³ <http://sunset.legislature.ohio.gov/>, accessed 8/15/18.

Review Committee's members include three representatives, three senators, and three members chosen by the governor. Given that two thirds of this committee consists of legislators, it seems reasonable to classify it as a mechanism of legislative oversight of the executive branch even though it is not entirely comprised of legislators.

Methods and Limitations

Ohio maintains archival recordings of committee hearings and has meeting minutes and other material readily accessible on its website. We interviewed six individuals who were knowledgeable about the legislature.

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