



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Oregon

Capacity and Usage Assessment

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

Summary Assessment

Oregon possesses some useful tools for conducting legislative oversight, but the process involves more collaboration across branches of government than is typical in other states. By all accounts and measures the Secretary of State Audit Division is reasonably active and has in recent years begun conducting performance audits. The legislature appears to take a reasonably active posture in response to Audit Division reports. The senate devotes some attention to gubernatorial appointees.

Major Strengths

We found some evidence of a collaborative approach between the governor, secretary of state, and the legislature when adopting or implementing audit recommendations. Whether this is a byproduct of Democratic trifecta control or an element of Oregonian political culture, the result is a less confrontational approach to oversight than we see in many other states. But oversight of agency performance is still taken seriously as a responsibility of the legislature as well as other government actors. The legislature is heavily involved in designing the audit reports, making requests and asking questions about the scope and methods used in the audit investigation.

Challenges

The location of the central auditing agency in an executive branch office may hinder a more proactive, police-patrol type of oversight on the part of the legislature. Recently, there has been some discussion on whether the legislature should relocate the audit division from the Secretary of State office into a legislative agency (interview notes, 10/26/18). We found evidence that oversight through the appropriations process tends to be reactive rather than proactive. Oversight through the budget appears to be the weakest link with limited use of audit reports. Legislative involvement in administrative rules review is very limited, although the Secretary of State and the Office of the Legislative Counsel work with agencies to improve proposed rules when there are problems.

Relevant Institutional Characteristics

The National Conference of State Legislatures (2017) characterizes Oregon’s legislature as a “hybrid”—neither fully professionalized nor “[p]art-time, low pay, small staff.” Consistent with this, Squire (2017) ranks it as the 23rd most professional legislature in the nation. Oregon’s legislature consists of 60 house members and 30 senators. Districts are nested so that two house districts comprise each senate district. Oregon has a two-year budget cycle, with budget recommendations made in even-numbered years and budget adoption occurring in odd-numbered years. To accommodate this cycle and the part-time hybrid nature of the legislature, a 2010 amendment to the state Constitution limits regular sessions in odd-numbered years to 160 days and in even-numbered years to 35 days.¹ Oregon’s legislators receive an annual salary of \$24,216 plus a \$144 per diem.² This means that in odd-numbered years legislators receive a maximum of \$47,256, but in even-numbered years they only receive a maximum of \$29,256, unless there is a special session or they serve on an interim committee. For reference, the median household income in the state of Oregon is \$53,217, according to the U.S. Census Bureau.³ To support the part-time legislators, in 2015 there were 454 staff members, 301 of whom were permanent staff (NCSL, 2017). At one time, Oregon’s legislature was term-limited, but the Oregon Supreme Court ruled the practice unconstitutional. Therefore, legislators can serve for as many terms as they win reelection.

Both the governor and legislature can call for a special session of Oregon’s legislature. The governor has the power to convene the house and senate, according to Chapter 5 Section 12 of the Oregon Constitution, for “extraordinary” occasions; when the two houses convene the governor must state the purpose for which they were convened.⁴ For the legislature to call a special session there must be a written request from majority of the members of each house; at this time the presiding officers can call the special session.⁵ Given the short length of regular sessions, it is not surprising the special sessions occur regularly, most of which are called by the legislature. From 2013 to 2018, there were eight special sessions called by the legislature.⁶ In contrast, the session called by Gov. Kate Brown in 2018 was the first special session called by a governor since the 2013 special session called by former-Gov. Kitzhaber.

¹ <https://olis.leg.state.or.us/liz/2010S1/Downloads/MeasureDocument/SJR41/Enrolled>, accessed 6/11/18.

² https://ballotpedia.org/Oregon_state_government_salary, accessed 10/23/18

³ https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml, accessed 6/26/18.

⁴ <http://bluebook.state.or.us/state/constitution/const2016.pdf>, accessed 6/27/18.

⁵ <http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx>, accessed 6/27/18.

⁶ <https://www.oregonlegislature.gov/Lists/LegislatorsChronological/Grouped-by-Session.aspx>, accessed 10/20/18.

According to the Council of State Governments (2015) Governors' Institutional Powers Index (GIPI), the office of Oregon governor is the least powerful among the 50 states. Oregon's governor does not appoint as many agency heads as many governors do and also lacks the ability to reorganize state government through executive orders. The Oregon governor does, however, have a line-item veto for budget items and can veto legislation.⁷ Both these types of vetoes can be overridden by two-thirds majority from both the house and senate. The governor's salary is relatively low, \$93,600 in 2018, compared to a median nationally of nearly \$130,000.⁸ Oregon's governor can serve two consecutive four-year terms during any 12 year period, and Oregon has no lieutenant governor.

Oregon does not have a large state and local government bureaucracy compared to other states. Only 10.5% of its citizens work for state or local government compared to a national average of 11.3%. A much smaller than average proportion of its citizens work in education, 5.3% compared to the national average of 6.1% (Edwards, 2006). This accounts for most of the difference between Oregon and the national average for state and local government employment.

Political Context

Oregon's governorship and both chambers of its legislature are currently (2018) controlled by the Democratic Party. Oregon's House of Representatives has been held by the Democrats since 2007, with the exception of 2011-12, in which the house was split evenly, 30 to 30, between the two parties. The senate has been controlled by the Democrats since 2005. The governorship has been held by the Democrats since 1987.⁹ After the 2016 elections, Oregon was one of the few Democratic trifectas in the country.

According to Shor and McCarty (2015), the state's house Democrats are quite liberal (ranked 6th most liberal in the country) but that chamber's Republicans are not extremely conservative (ranked only 37th most conservative in the country). On the other hand, in the upper chamber Oregon Senate Republicans are only moderately conservative (ranked 26th most conservative), while the chamber's Democrats in 17th, are only moderately liberal (Shor and McCarty, 2015). Consistent with this, the lower chamber is the 14th most polarized in the country while the upper chamber is only the 20th most polarized upper chamber. This could reflect the system the state uses to draw state legislative districts. As noted above, Oregon's state legislative districts are nested so that two house districts comprise each senate district. This could make it harder to gerrymander state senate districts. If, as is often the case, legislators move from the house to the senate, the more moderate of the two house members could be winning the state senate elections by appealing to independents and moderates. This is consistent with the evidence that the upper chamber is somewhat less polarized than the lower chamber.

Oregon is a geographically divided state, which contributes to its political polarization. The Cascade Mountain Range acts almost like a border between the liberal and conservative sides of the state. The majority of the state's population lives on the western side of the Cascades, many from Multnomah County, which includes the city of Portland, and to the south, the city of Eugene. Portland is the state's largest city, and its residents often vote based on urban issues. Those living to the east of the Cascade Mountains have traditionally made their living

⁷ <http://bluebook.state.or.us/state/constitution/const2016.pdf>, accessed 6/27/18.

⁸ https://ballotpedia.org/Oregon_state_government_salary, accessed 10/24/18.

⁹ https://ballotpedia.org/Governor_of_Oregon#Elections, accessed 5/24/2018.

farming and in timber production, and vote based on those issues. These differing environments contribute to the state's polarization.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are three analytic bureaucracies that support the legislature's efforts to oversee the executive branch. First, the Office of the Legislative Counsel participates in administrative rule review. Second, the Legislative Fiscal Office helps in the appropriations process. Third, the Secretary of State's office has an audit division that provides support to the legislature.

Oregon has a non-partisan Office of Legislative Counsel (OLC) that consists of a staff of 15, mostly lawyers and editors, who provide legal advice, research and draft laws, and review administrative rules for the Oregon Legislative Assembly. The Legislative Counsel staff testifies at committee hearings and publishes legislation and other the materials needed by the legislature during sessions. The Legislative Counsel Committee (LCC) oversees the OLC. We return to the role played by the OLC and LCC in the section on Oversight Through Administrative Rule Review.

In Oregon, the Legislative Fiscal Office (LFO) serves as the state's analytic bureaucracy for the Oregon legislature. The LFO was established by statute in 1959, and it conducts research for various joint committees with the majority of its activities pertaining to the preparation and analysis of the budget. Specific duties for the LFO include analyzing the governor's proposed budget and assisting the legislature, including the Joint Interim Committee on Ways & Means, in preparing the legislature's balanced budget.¹⁰

The overall mission of the LFO is to provide facts and recommendations as it relates to state expenditures and fiscal implications for the state and its agencies. Direct requests for such information can be made by the House Revenue Committee, Senate Revenue Committee, Legislative Revenue Officer, other standing and interim committees and members of the legislature.¹¹ While the LFO conducts assorted reports and reviews, it does not conduct audits.

Audits of state agencies are provided through the Division of Audits in the Secretary of State's office. This division is part of a multi-agency oversight system that merges legislative and executive branch units of government to improve state services. The legislative and executive branch actors involved in agency audits are: the elected Secretary of State, the gubernatorial appointee who directs the Department of Administrative Services, and the legislators serving on the Joint Legislative Audit Committee (JLAC), an interim legislative committee. The Oregon Secretary of State's office conducts performance audits of state agencies through its audit division. The JLAC makes recommendations to state agencies to resolve problems identified in these audits. This is described in detail below. The Department of Administrative Services (DAS) reports on its webpage that it is responsible for implementing decisions made by both the governor and the legislature.¹² In this capacity, the legislators on JLAC rely on DAS to ensure that state agencies comply with the committee's audit

¹⁰ <https://www.oregonlegislature.gov/lfo/Documents/LFOAgencyOverview.pdf>, accessed 6/13/18.

¹¹ <https://www.oregonlegislature.gov/lfo/Documents/LFOAgencyOverview.pdf>, accessed 6/13/18.

¹² <https://www.oregon.gov/das/Pages/index.aspx>, accessed 10/23/18.

recommendations. Therefore, legislative oversight in Oregon involves collaboration by these subunits of the legislature, executive branch, and independently elected state officers. We explain this in detail below.

Oregon has an elected Secretary of State who oversees several divisions, such as the elections division, corporate services division, and, importantly, the audit division. The director of the audit division is appointed by the Secretary of State and is the chief auditor of public accounts. Although most of the audits conducted are financial audits, the chief auditor has “pushed performance audits to new levels” in order to “increase the efficiency of state and local government while generating savings.”¹³

In 2015, the Secretary of State’s Audit Division (SOSAD) had a staff of 63 professionals (NASACT, 2015). In 2016 it produced 37 state audit reports, including seven performance audits of state agencies, 14 financial audits, three IT audits, three information reports, as well as a hotline report, the state’s single audit, and other miscellaneous reports.¹⁴ Although decisions about which agencies to audit are made by the chief auditor (NASACT, 2015), the Joint Legislative Audit Committee (JLAC) has input into these decisions because the legislature can and does pass legislation mandating that the SOSAD performs audits. The SOSAD does not audit local governments, but it can audit any state government entity including the judicial and the legislative units. About 20% of the state agency audits are contracted out to private CPA firms, but the Audit Division selects these firms.

The JLAC hears audit reports and receives updates on audits from the Secretary of State’s Office. Its membership consists of three senators and three representatives whose party affiliation is in proportion to the seats controlled in each chamber. Currently, there are four Democrats and two Republicans on the committee. These legislators include the co-chairs of the Joint Committee on Ways and Means. This committee works in conjunction with the director of the SOSAD to prioritize audit requests from a variety of sources including individual legislators, legislative committees, the LFO, and subunits within the SOS including the SOSAD. When SOSAD releases audits, they are presented to the JLAC, whose members recommend changes to the auditee or remediation based on the audit and then follow up within a year to see whether the agency has complied with these JLAC recommendations.¹⁵ The JLAC relies on DAS to ensure that the auditees comply with its requests.

The JLAC, which is further described under the “Oversight Through Standing Committees” section, provides this oversight by holding periodic hearings during both the regular and interim sessions. In these hearings the legislators that make up the JLAC listen to audit presentations (most of which are program based, as opposed to budget based) from SOSAD staff. In addition to overseeing the work of the state agencies, the JLAC monitors the work of the SOSAD. After listening to the audit presentations, JLAC members followed up with various questions related to the audit’s methodology and purpose directed toward the audit staff. Additionally, these legislators ask agency representatives about substantive audit findings.

For example, in a March 2018 hearing about an audit of the Office of Emergency Management (OEM), legislators questioned the SOSAD staff on the methodology of the audit and how the staff is connecting with other departments, elected officials and organizations to ensure there is follow through on the actions needed to improve Oregon’s preparation and response to catastrophic disasters. Through this dialogue it was evident the legislators tried to

¹³ <https://sos.oregon.gov/Pages/divisions.aspx>, accessed 10/20/18.

¹⁴ <http://sos.oregon.gov/audits/Pages/stateaudits.aspx>, accessed 6/13/18.

¹⁵ <https://apps.leg.state.or.us/liz/201511/Downloads/CommitteeMeetingDocument/80394>, accessed 10/21/18.

hold the SOSAD staff accountable not only for the facts in the audit but also for ensuring action items based on the audit are carried out. In another example, Senate Bills 9 of 2015 required that the SOSAD conduct an audit of all state agencies' responsiveness to public records requests. This piece of legislation is quite specific in its description of the scope and methods to be used in conducting the audit.¹⁶ This dual role of making recommendations to the auditee and monitoring a division of a separately elected officer (SOSAD) appears to arise out of the independence of the audit unit and the practice of passing legislation to require that another unit of government conduct an audit. The JLAC hearing on the substance of this audit is discussed in greater detail in the section on Oversight Through Committees, below

The number of times JLAC meets is influenced by the work completed by the SOSAD. The activity of the JLAC changes over time, with more audits completed in some years than others. The materials provided to committee members for the meetings include a review of the audit presented. Staff members of the LFO write these reviews. During 2017-18, the JLAC met five times, all during the interim session. Legislators are paid at their per diem rate for these extra days of service. During the 2015-16 interim, the JLAC committee met five times. Also during that time the JLAC reviewed several audits conducted by SOSAD and heard testimony regarding the audit process and how the DAS followed up on the audits.¹⁷

Oversight Through the Appropriations Process

The state of Oregon operates on a two-year budget cycle. The appropriations process begins with agencies creating their proposed budgets early in even-numbered years and then sending them to the State's Chief Financial Officer. From there, the governor and the CFO review these budget requests and comparing those to the governor's goals, priorities, and the state's policies. Then, the governor submits his or her recommended budget to the Oregon state legislature. It is at this point, at the beginning of an odd-numbered session year, that legislative committees begin to review the recommended budget. Public hearings for each agency are held to ensure feedback is received before each committee's recommendation is drafted. Each committee drafts a budget bill, and all those are combined to create the Legislatively Adopted Budget.¹⁸ It is the Joint Interim Committee on Ways & Means, along with its six subcommittees that are responsible for preparing the Legislatively Adopted Budget.

During this process, each agency has its own bill related to the budget it is requesting. That bill will receive a budget hearing and work session, both of which provide opportunities for the public to testify. In these public hearings the agency director makes the budget presentation, and then, depending on the size of the agency, a program administrator may provide additional presentations or answer questions related to specific programs. In total, there are more than 150 different state agencies and commissions in the State of Oregon, meaning public hearings are extensive, with each agency presenting its proposed budget before a legislative committee at least once. Interest in the agency, and the associated proposed budget, varies.

¹⁶ <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureAnalysisDocument/30950>, accessed 10/25/18.

¹⁷ <https://www.oregonlegislature.gov/lfo/General%20Audit%20Documents/JLAC%20Background.pdf>, accessed 5/28/18.

¹⁸ <https://www.oregonlegislature.gov/lfo/Documents/2011-4%20Oregon's%20Budget%20Process.pdf>, accessed 6/12/18.

Legislators on the JLAC had received an audit presentation on an audit of the Office of Emergency Management. One concern raised in the audit was lack of funding. So we were especially interested in the budget hearings for the OEM. The Joint Committee on Ways and Means Subcommittee on Public Safety did not display a great deal of oversight during the subcommittee's hearing on the Oregon Military Department, which includes the OEM.¹⁹ During the hearing, very little time was spent by legislators discussing or questioning the Military Department's appropriations request. Despite the head of the Military Department, Col. Jenifer Parady, stating that the lack of adequate civilian staff has resulted in a backlog of over 1900 maintenance orders for preventive maintenance operations, no questions were asked of the colonel. In fact, the chair of the subcommittee repeatedly asked her to conclude her presentation. Specific to the OEM, the office director spoke for approximately five to seven minutes and mentioned the need for full funding, but no funding levels were mentioned or discussed. Considering that less than a year after this hearing, an audit report was issued by SOSAD highlighting that a lack of funding has greatly impacted OEM's preparedness levels, little mention was made of OEM's funding requests. Overall, there were very few questions asked, and none with any substance, suggesting two possibilities related to oversight through the appropriations process. First, the budget request hearings are mere formalities and the real questioning of these requests is conducted informally behind the scenes by legislators and staff. Second is the possibility that the appropriations process is not being used to aggressively conduct preventive or police patrol type oversight. Nothing in this hearing suggests proactive oversight of key agencies like OEM.

The Committee on Ways & Means also schedules committee hearings in communities around the state, specifically to receive public testimony on the state budget, knowing there will be interest from a wide range of citizens and interest groups. It is not uncommon to receive up to 75 individuals providing testimony from both the public and lobbyists at these meetings, according to a staff member of the LFO. It is the LFO's practice to provide a day and time for public testimony on each agency budget. This is not required by statute or by rule.²⁰

Oversight Through Committees

In the state of Oregon there are various house and senate standing committees and joint committees that meet during the interim. As noted earlier, the Joint Committee on Legislative Audits (JLAC) hears audit reports. Between 2017 and 2018 there were four different meetings of this committee. In a September 2017 meeting of the Joint Committee Hearing on Legislative Audits, the audit director of the Secretary of State reported there had been no audits of the legislature or the governor's office in 20 years. Also during this committee hearing, legislators questioned staff from the Secretary of State about their auditing process, its impact, and whether audits from the department were based more on philosophy or fact.

Later, during a May 2018 Joint Interim Committee hearing on Legislative Audits received a review on the Office of Emergency Management, titled, "The State Must Do More to Prepare Oregon for a Catastrophic Disaster" from the Secretary of State's audit team. During this JLAC hearing, legislators questioned Secretary of State staff members about how they defined an

¹⁹ http://oregon.granicus.com/MediaPlayer.php?clip_id=5df20bd8-c9a9-48df-8881-686367b37b4c&meta_id=6aead8a2-ee5d-4c52-82c5-383dc00d6c47, accessed 10/24/18.

²⁰ LFO staff email, received 6/12/18.

emergency and who they included among stakeholders. Later, they directed questions at the department staff about who was responsible for an inadequate resilience management plan and who were the responsible parties for regional emergency management planning. Office of Emergency Management staff was also questioned extensively during that audit hearing about the appropriation of resources, how funds are leveraged and spent and what the real priorities of the department were and will be.²¹ That audit found that the OEM was seriously underfunded and poorly prepared to potential disasters. To provide context, the OEM misspent federal homeland security money and faced \$3 million in penalties, which it is currently appealing.²² It appears that these funds were spent for facilities and other department needs—not used for extravagant or personal expenses. This could further indicate a department that is underfunded and spending federal money on necessary items to maintain its capacity and infrastructure. Despite the audit report that OEM is underfunded, it is not clear that the governor or the legislature plan to increase its budget. The 2017-19 Legislatively Adopted Budget indicates that OEM received \$268 million dollars.²³ It remains to be seen whether that amount increases in the next biennial budget.

Further inspection of the funds appropriated from the OEM revealed that the Public Safety Subcommittee of the interim Joint Ways and Means Committee approved a federal grant application for National Earthquake Hazard Reduction at its September 9, 2017 meeting. The required 50% state matching dollars would be provided by the Department of Administrative Services through a resiliency building fund, and the state's financial office sent a staff member who testified that they recommended approval. The OEM would manage the grant. The grant submission was unanimously approved. The committee members asked no questions.²⁴ This would probably provide more money for OEM, but the lack of committee questions indicate that there is little knowledge among legislators on the Public Safety Subcommittee with respect to the larger questions swirling around the OEM.

A search of the Summary of Legislation 2018²⁵ prepared by the Legislative Policy and Research Office for the 79th Legislative Assembly finds only one instance in which the word *audit* appeared in the description of actions taken by all session and interim committees of both legislative chambers during 2018, even though there are seven performance audits listed on the Secretary of State webpage.²⁶ This sole reference to *audit* mentioned audit of the OEM. The Senate Interim Committee on Veterans and Emergency Preparedness attempted to pass legislation to require that OEM report quarterly to the legislature on its progress in addressing the deficiencies identified in the audit report—lack of an adequate preparedness plan and misuse of federal funds. The bill was not enacted. Additionally, the committee proposed a bill to require OEM include marine and rail operators in its emergency planning process, especially to address oil train spill prevention. None of the emergency preparedness bills introduced in the 2018 Legislative Assembly were enacted (pp. 62-65).

In contrast to the appropriations hearing of the Public Affairs Subcommittee, the Senate Interim Committee on Veterans and Emergency Preparedness asked specific questions about

²¹ http://oregon.granicus.com/MediaPlayer.php?clip_id=24915, accessed 10/17/18.

²² https://www.oregonlive.com/politics/index.ssf/2018/01/oregon_disaster_prep_agency_fa.html, accessed 10/21/18.

²³ http://oregon.granicus.com/MediaPlayer.php?clip_id=24915, accessed 10/17/18.

²⁴ http://oregon.granicus.com/MediaPlayer.php?clip_id=24175, accessed 10/22/18.

²⁵ <https://www.oregonlegislature.gov/lpro/summlleg/2018%20Summary%20of%20Legislation%20Combined%204-24-18.pdf>, accessed 10/25/18.

²⁶ <https://www.oregonlegislature.gov/lpro/summlleg/2018%20Summary%20of%20Legislation%20Combined%204-24-18.pdf>, accessed 10/25/18.

catastrophic planning and emergency preparedness. At its January meeting²⁷ the committee received an update on state rail and barge catastrophic planning. The Department of Transportation, OEM, and the Office of the State Fire Marshall presented information to committee members. This was, as listed in the agenda, an informational session with these agencies. There were several questions from legislators. These queries focused on clarifying information. The chair, however, asked very specific hypothetical questions about how rapidly the emergency response system would work under various scenarios. The official from the Department of Transportation said that much of that would depend on how well the private partners (i.e. rail companies) were able to respond, but that his estimate was days if not weeks. The chair also asked the fire marshal after his presentation how he saw the fire marshal's office integrated into the response: what specific actions would you have to do with the integration of rail and barge services? Another committee member asked how the fire marshal would interact with OEM on nuclear energy if something catastrophic happened in the state. He deferred to OEM, who explained that the Department of Energy is in charge of nuclear materials. And again, the bottom line was that the public sector would have to depend on the various private actors who would be transporting materials at the time of a disaster because public agencies would not necessarily know what was on various trucks moving through the state. The presenter repeatedly mentioned "self-help." The chair asked, with respect to the self-help category, have we reached out to the private sector partners with heavy rail or barge capability to ask what they can do, would you like to participate in our planning/training exercises? The OEM gave a very lengthy response that boiled down to yes, but we could do more. The chair challenged the presenters by saying the he and other committee members and staff had attended events with the potential private partners (the maritime folks and the rail folks) and asked them if they'd ever been invited to an emergency planning or training event and that their answer was no across the board. The chair instructs the OEM to send invitations to its next quarterly planning event to the private sector partners. The chair offers to go invite private partners too. This hearing clearly demonstrated well-informed, solution-driven assertive oversight.

The Senate Interim Committee on Veterans and Emergency Preparedness followed up on the audit report again at its May 22 meeting based on a question that a committee member asked as the end of the previous meeting on this audit. The legislator's question focused on whether the Military Department, which houses OEM and the executive branch were communicating with each other. The Military Department pointed out that a 2013 audit produced 13 findings and that 11 had been resolved through OEM actions taken. OEM reported that unannounced emergency drills would begin in the near future, and that a three-state subduction zone practice drill is being planned in collaboration with the states of Washington and Idaho. The chair commented at the end of the presentation that the military department and OEM ask every budget cycle for more funds and that the legislature in every recent budget cycle has cut them, and then the state asks them to be ready for the unexpected tomorrow morning. He said that he did not think it was any surprise to anyone that there are problems. Although the chair defended OEM, he said that it is helpful to have the Secretary of State's office audit help set priorities for scarce resources. The chair complains that media covers the negatives and not the positives despite that fact that OEM has made progress regardless of the cuts to their funding.

Next, the chair asked the Deputy Director of the Military Department about awards that the department had made using grants that the legislature had funded to provide quick connect

²⁷ http://oregon.granicus.com/MediaPlayer.php?clip_id=08362030-1d3e-417d-b311-f94696c9a3e0&meta_id=72d82e4c-707c-4e4e-b58c-3ea5faa312dd, accessed 10/15/18.

ports for generators. These quick connect generators can be used if there is no power. In an emergency these generators could be used to pump fuel for the National Guard or first responders, the deputy reported. They were able to award grants to 24 fuel facilities who applied for money to help connect the generators. The chair supplied that fact that there were 71 applications. He asked how many were valid applications. The response was all of them. The chair then asked whether that means that there were 47 eligible but unfunded applicants. The response was that that was true. The chair told the other committee members that he would be reaching out to the co-chair of Ways and Means for emergency funds. The chair stated, with emphasis, “as you know the single largest choke point we have is fuel for emergency responders” (minute 1:47).²⁸ The chair was clearly very knowledgeable about the problems faced by OEM. He was the only committee member who asked questions, but those questions were designed to enhance OEM’s access to funding and to improve state preparedness.

Oregon’s standing and interim committees conduct oversight, but the quality of that oversight appears to depend on the knowledge of individual legislators. The chair of the Senate Interim Committee on Veterans and Emergency Preparedness mentioned that he had co-chaired this committee previously in 2005, so he has depth of knowledge on the topic. That he explicitly instructed the OEM to invite private partners to the next quarterly planning event demonstrates a capacity for vigorous oversight. On the other hand, in the subsequent committee hearing, it is clear that the chair is quite supportive of the mission of OEM and is using any leverage he has to secure more resources for actions they take, such as awarding grants for generators to pump fuel in an emergency. Therefore, we conclude that when legislators chose to perform oversight, they appear to have the institutional resources to do so. But, it does not appear that very many committees spend very much time addressing issues raised in audit reports.

Oversight Through the Administrative Rules Process

In Oregon, when an agency adopts a rule it sends it to Secretary of State, who within ten days sends the rule to the Office of the Legislative Counsel (OLC). As described earlier, the OLC is a non-partisan agency that drafts bills and provides legal services to the Oregon Legislative Assembly, but it is also a central player in Oregon’s administrative rule review process.

The OLC has the discretion to review any rule that an agency submits, but it must review a rule if a legislator asks it to do so. If an affected person asks the OLC to review a rule, it can use its discretion about whether to conduct a review. The OLC has the power to issue a “negative determination” only if the rule violates the constitution or is inconsistent with legislative scope or intent.²⁹ After the OLC issues a negative determination, the agency has an opportunity to resolve the concerns. If its concerns are not resolved, the OLC formalizes the negative determination and transmits the rule to an interim committee that the OLC decides will be responsible for the rule. That interim committee must schedule a meeting with the agency to review the rule. At this meeting, a Legislative Counsel attorney typically presents the rationale for the OLC determination and the agency presents its position.³⁰ If the interim committee decides that the OLC determination is correct, then the agency can appeal the decision to the Oregon Court of

²⁸ http://oregon.granicus.com/MediaPlayer.php?clip_id=24907, accessed 10/25/18.

²⁹ <https://www.oregonlaws.org/ors/183.720>, accessed 10/24/18.

³⁰ <https://www.oregonlegislature.gov/lc/Pages/ARRs.aspx>, accessed 10/24/18.

Appeals, which could decide that the rule is constitutional and consistent with statutory scope and intent.

The OLC does not review rules to assess their reasonableness, and there is no assessment of the economic impacts or the costs and benefits of having a rule (Schwartz 2010). He describes the level of involvement of the legislature in the review of new administrative rules in Oregon as minimal. According to LFO staff, it is extremely rare that an interim committee is required to get involved in the review of an agency rule process.³¹ The Legislative Counsel webpage lists only one negative rule determination that was not resolved, and it dates from May 25, 2010.

The legislature is not involved at all in the review of existing rules. State agencies are required to review their own rules every five years to assess whether the rule has had the intended effect, whether the rule is still needed, and whether the anticipated fiscal effects were accurate. The public can petition the agency to repeal a rule or to amend it, but the legislature is not part of this process.

Oversight Through Advice and Consent

High-level executive branch officials (e.g. secretary of state, attorney general, et. al.) are elected by popular vote in the state of Oregon. But Oregon's governor appoints people to lead many state agencies and to hold other top executive branch positions. Almost all of these require senate confirmation.³² In total, there are 20 appointments made by the governor that require senate approval and eight direct appointments by the governor that do not require senate approval.³³ According to a staff member of the LFO, there have been no recent senate rejections of appointed officials at the state level.³⁴ Despite this, the senate appears to perform its advice and consent duties regularly even though the volume of nominees precludes in-depth assessment of each individual. The governor is responsible for the appointments and compiles a list for the senate, which is reviewed by members informally, usually for 21 days, prior to any hearings (interview notes, 10/26/18). This allows the governor and senators to work out any controversial candidates well in advance of hearings or floor votes (interview notes, 10/26/18).

The committee responsible for screening nominees prior to a vote of the full senate is the Senate Interim Committee on Rules and Executive Appointments. For the 2017-18 Legislative Session this committee has met five times. Of those meetings, four primarily focused on appointments to various state boards, ranging from the Oregon Liquor Control Commission to the Oregon Board of Psychology. As demonstrated in the May 22, 2018, Senate Interim Committee on Rules and Executive Appointments public hearing, the legislators questioned potential appointees on their experience and philosophy related to the board/commission on which they would serve.³⁵ The recording log for this hearing includes 2.5 single-spaced pages of names of nominees and the commissions, boards or similar entities to which they had been nominated. The remainder of the recording log consists of three more single-spaced pages of names of nominees that the committee moved to approve en bloc, sending them to the senate floor for a confirmation vote. It is clear, given the number of nominees that even with a three-

³¹ LFO staff email, received 7/19/18.

³² <http://www.oregon.gov/das/Policies/50-060-01.attachment.pdf>, accessed 5/24/18.

³³ <https://www.nga.org/cms/management/powers-and-authority>, accessed 6/26/18.

³⁴ LFO staff email, received 6/12/18.

³⁵ http://oregon.granicus.com/MediaPlayer.php?clip_id=24900, accessed 10/24/18.

hour hearing, there was little time spent investigating individual nominees. Nominees introduced themselves, stated why they wanted to serve, and “questions” from legislators appear to be comments about how wonderful the nominee is. Some nominees phoned in their statement to the committee hearing. In other words, this confirmation process appears to be pro forma.

While the confirmation process is largely pro forma, conflicts can and do arise when there are perceptions by senators that boards or commissions are becoming unbalanced, either by geographical representation of the board or through a lack of industry representation (interview notes, 10/26/18). Unlike other states, many of Oregon’s boards and commissions are required by statute to have representation from each of Oregon’s major geographical regions and be economically diverse in their membership. Approximately 40 boards have geographical requirements in their organizing statutes (interview notes, 10/26/18). In the case of the Liquor Control Commission, each congressional district must be represented on the board. Most recently, there were objections to three new members the governor had appointed to the State Board of Forestry. Concerns were raised that despite all three members being competent to serve, their addition altered the delicate balance between regions and left the logging industry underrepresented on the board (interview notes, 10/26/18). These concerns were voiced by several senators on the floor prior to confirming the nominees and were reflected in a much closer confirmation vote, 17 to 13 on a straight party vote, than normally experienced for gubernatorial appointments.³⁶

The governor cannot affect agency reorganization or create a new agency by executive order (Council of State Governments, 2017, Table 4-5). Rather, agency reorganization inherently exists in the hands of the legislature due its budget authority. However, as part of the budget process, there is an agreement between the LFO and CFO that proposed internal agency reorganizations will be reviewed by both agencies. If there is a disagreement, the agency up for discussion, or the executive branch itself, can introduce a bill through the budget process requesting reorganization. The legislature can decide whether to pass the bill or not. The legislature can reorganize agencies or create them through the budget or additional legislation. These are then subject to gubernatorial approval.³⁷

The governor has neither constitutional nor statutory authority to enact executive orders. Rather, such authority is only implied. During 2018, Gov. Brown issued 26 executive orders. All but four of these dealt with wildfires, droughts, algae blooms, and other public emergencies. These sorts of executive orders typify the conditions under which speed and a streamlined process are valued over checks and balances. But the Oregon governor also uses executive orders to make policy, albeit infrequently.

One of Gov. Brown’s four non-emergency related executive orders, No. 18-05, rescinded a previous order from 2016 that triggered legislative action and an audit of state agencies’ response to public records requests. This order is part of a multi-year policy making effort that combined gubernatorial actions (executive orders), legislative action (bills passed), independent executive branch actors (the attorney general and the secretary of state), and the Department of Administrative Services. The timeline in the executive order clarifies the collaboration between branches of government that occurred through the vehicle of an SOSAD audit. This audit, which was mentioned earlier in the section on Oversight Through Analytic Bureaucracies, was initiated through Senate Bill 9 of 2015. The audit reported on state agencies’ responses to public records

³⁶ http://oregon.granicus.com/MediaPlayer.php?clip_id=0e6adb51-bb57-475d-b8f9-2cfbc5b6584e&meta_id=0c4c409c-dbc3-4da8-8577-25d76f39d4b8, accessed 10/28/18.

³⁷ LFO staff email, received 6/12/18.

requests. As a result of an audit finding that showed that although state agencies handled routine requests well, they struggled to fulfill complex public records requests, Gov. Brown issued a prior executive order, No. 16-06, which ordered the Oregon Department of Administrative Services (DAS) to implement the audit recommendations. This demonstrates the process described in the section on Oversight Through Analytic Bureaucracies in which we described the multi-agency involvement in Oregon’s audit process. The executive branch, through DAS, follows up on agencies to ensure compliance with audit recommendations. To carry out the audit findings, the legislature passed a series of four bills that created a public records advocate on the state archives staff, created a committee to review exemptions to public records availability, and set deadlines for providing records requested. The bills passed in 2017 in response to the audit constitute, in the governor’s words, “the most significant public records reform since the public records law passed in 1973.”³⁸ The media confirmed her assessment.³⁹

As the timeline in Executive Order 18-05 demonstrates, the audit process involves a multi-branch coordinated effort that, in this case, culminated with gubernatorial action. Although this is an example of policy making through executive orders, it is not a unilateral process that occurred under the radar, as we found in some states, especially Ohio. The legislature was closely involved at all steps in this reform effort. While the lack of oversight opportunities for the legislature is not problematic currently with a Democratic trifecta in Oregon, it is plausible that the absence of legislative oversight of executive orders could become a problem under divided government.

Oversight Through Monitoring of State Contracts

The executive branch, or the governor’s office, administers contracts through the Department of Administrative Service. According to Administrative rule 137-45-010, no legislative oversight is required for governing contracts. The attorney general’s office provides additional oversight within the executive branch by reviewing contracts that require “legal sufficiency approval.”⁴⁰

Oversight Through Automatic Mechanisms

Automatic oversight mechanisms are used on a discretionary basis in Oregon, according to the Council of State Governments (2016, Table 3-27), particularly as it relates to sunset legislation. The state has what Baugus and Bose (2015) describe as discretionary sunset provisions. This means that the state can choose which agencies and statutes to review or which bills will include a sunset clause. In the Summary of Legislation 2018, a search for the word “sunset” revealed only about five instances in which the word was included in legislation out of

³⁸ https://www.oregon.gov/gov/Documents/executive_orders/eo_18-05.pdf, accessed 10/25/18

³⁹ https://www.oregonlive.com/politics/index.ssf/2017/07/oregon_adopts_public_records_r.html, accessed 10/25/18.

⁴⁰ https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=8W-cvMO7LP2AaBPPfVcUj5F4oI90By2EUEqTvmIFBGmCs6n2vm72!-924259904?selectedDivision=296, accessed 6/26/18

the hundreds of bills described in this 165 page report.⁴¹ Therefore, although the legislature could include sunset provisions in legislation, it appears that they do so very rarely. The legislature in 2018 introduced a bill to establish a sunset review task force, but the bill died in committee. An audit conducted when Gov. Brown was the secretary of state recommended more oversight of boards and commissions. It is, therefore, possible that Oregon will create a more systematic review of government entities at some point in the future. But at this point, it is among the states that rarely use sunset review.

Methods and Limitations

Oregon's legislature provides archival recordings of its committee hearings that are easy to access for its webpage. We contacted three people to ask for interviews, but were able to interview only one of them.

⁴¹ <https://www.oregonlegislature.gov/lpro/summleg/2018%20Summary%20of%20Legislation%20Combined%204-24-18.pdf>, accessed 10/25/18.

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