



WAYNE STATE  
UNIVERSITY

Center for Urban Studies

## Legislative Oversight in Pennsylvania

### Capacity and Usage Assessment

Oversight through Analytic Bureaucracies:	High
Oversight through the Appropriations Process:	High
Oversight through Committees:	High
Oversight through Administrative Rule Review:	Limited
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

Overall, Pennsylvania is a fairly strong example of effective legislative oversight of the executive branch. The Pennsylvania legislature possesses considerable institutional capacity to engage in oversight of a fairly powerful executive branch. Moreover, there is evidence that legislators make effective use of the tools they possess. Committee hearings and testimony appear to be fairly lengthy and substantial. Some sunset reviews result in regulatory changes. Even though Pennsylvania's auditor general is an elected executive branch official, the auditor appears to work collaboratively with legislative committees to enable meaningful oversight of executive agencies, boards, and committees.

### Major Strengths

The Pennsylvania General Assembly has outstanding staff resources that appear to provide valuable information and support for the work of the Appropriations Committees and the standing committees. Committees meet frequently and legislators appear well prepared to pose tough questions about state agency performance and the work of other public entities under their jurisdiction. Sunset reviews do not seem to be merely pro forma and routinized. Instead, debate and discussion can lead to legislative changes. The legislature structures its oversight committee so that its partisan composition is balanced. This ensures that the minority party in the legislature can raise concerns and participate in oversight. The legislature appears to take its advice and consent responsibilities seriously with respect to gubernatorial appointees.

### Challenges

Pennsylvania's legislature has ceded its rule review authority to an outside commission with the potential to let the governor's appointee to that commission act as the deciding vote on administrative rules. This risk could be high during periods of divided government. This would seem to undermine the purpose of legislative oversight of the executive branch. Despite the current collaborative relationship between the legislature and the state auditor, the auditor officially does not need to work with the legislature. Depending on the partisan politics at play, one can imagine less cooperative relationships. Therefore, the legislature might benefit from having its own audit agency.

## Relevant Institutional Characteristics

Pennsylvania's legislature, which has 203 house members and 50 senators, is considered to be among the most professional in the nation, with Squire (2017) ranking it at 4<sup>th</sup> place in the country. Legislators in Pennsylvania work the equivalent of a full-time job, with ample compensation of approximately \$86,000 a year<sup>1</sup> and sizeable staffs of roughly 2,350 during session.<sup>2</sup> This staff includes personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies like the Independent Fiscal Office, the Legislative Reference Bureau, and the Legislative Data Processing Center. House members serve two year terms, while senators serve four year terms. There are no term limits for legislators.

The Pennsylvania legislature also enjoys an unlimited session length, which essentially affords legislators the ability to convene year-round.<sup>3</sup> The Pennsylvania legislature may also hold special sessions, sometimes known as extraordinary sessions, which may be called by the governor or the legislature "upon petition of a majority of the members elected to each house."<sup>4</sup> Given the legislature's unlimited session length, however, special sessions rarely occur. Since 2007, the legislature has only convened for one special session, which occurred during the 2009-2010 fiscal year.<sup>5</sup>

According to Ferguson (2015), Pennsylvania's governor is the 11<sup>th</sup> most powerful in the country. Haider-Markel (2009) notes that the governor has "considerable formal and informal powers," including line-item veto power for any bill containing spending authorizations. However, line-item vetoes can be overridden by the legislature with a two-thirds vote in both houses. Moreover, the governor "has the authority to not spend funds authorized by the legislature, and the decision to freeze spending is not subject to an override" (Haider-Markel, 2009). The independently elected executive offices of auditor general and treasurer were created in 1968 as a means of checking the power of the governor, and the attorney general's office was similarly converted into an elected office through a constitutional amendment in 1978 (Haider-Markel, 2009).

Only 9.6% of Pennsylvania's workforce is employed in state or local government (Edwards, 2006). Well below the national average, only Rhode Island and Nevada have lower

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<sup>1</sup> <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>, accessed 05/23/18.

<sup>2</sup> <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 05/23/18.

<sup>3</sup> <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx>, accessed 05/23/18.

<sup>4</sup> <http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx>, accessed 05/23/18.

<sup>5</sup> <https://legiscan.com/PA>, accessed 05/23/18.

percentages. 5.3% of Pennsylvanians work in K-12 education, a much smaller proportion of than the national average of 6.1%. The proportion of Pennsylvanians working in other sectors of state and local government employment, such as safety, welfare, services, are much closer to the national proportions.

## Political Context

Over the last 50 years, neither legislative chamber was dominated by the Democratic Party. From 1978-1992, party control over the legislature was split. However, since 1994, the Republican Party has enjoyed control of both chambers, with the exception of 2008-2012, when legislative control was again split.<sup>6</sup>

Although legislative control has tended to favor the Republicans over the last 50 years, the same cannot be said about the governorship, which has alternated between the Republican and Democratic parties roughly every five to 10 years since 1979. While the Democratic governors have not enjoyed a trifecta at any time in the last 50 years, Republican governors have done so several times: from 1995-2003 and again from 2011-2015.<sup>7</sup> Recent budget battles between the current Democratic governor and the Republican-dominated legislature have highlighted the consequences of partisan politics in Pennsylvania. Yet, recent evidence suggests that both chambers of the Pennsylvania legislature are not that polarized along party lines (Shor and McCarty, 2015). Pennsylvania's house has been ranked as the 32<sup>nd</sup> most polarized lower legislative chamber, while Pennsylvania's Senate has been ranked as the 31<sup>st</sup> most polarized upper chamber, based on differences between median roll call votes for each party in each chamber.

## Dimensions of Oversight

### Oversight Through Analytic Bureaucracies

Pennsylvania has an elected auditor general, who can serve up to two four-year terms. The Pennsylvania Department of the Auditor General (PDAG) is responsible for ensuring that state money is spent legally and properly. To do this, PDAG conducts three types of audits: financial audits, performance audits, and attestation engagements.<sup>8</sup> The PDAG audits a wide array of state and local entities, including school districts, district courts, universities, municipal pension plans and volunteer firefighters' relief associations, as well as state programs and state-owned facilities. The Pennsylvania Department of the Auditor General consists of 29 audit managers, 45 audit supervisors, 70 upper level auditors, 199 mid-level auditors, 12 entry-level auditors, six IT auditors, 16 other audit staff, two non-audit professional staff, and 95 support staff for a total of 474 staff (NASACT, 2015). The DPAG personnel and operational expenses

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<sup>6</sup> [http://www.ncsl.org/documents/statevote/legiscontrol\\_2002\\_2014.pdf](http://www.ncsl.org/documents/statevote/legiscontrol_2002_2014.pdf), accessed 05/25/18.

<sup>7</sup> <https://www.nga.org/cms/FormerGovBios>, accessed 05/25/18.

<sup>8</sup> <http://www.paauditor.gov/about-the-department>, accessed 05/25/18.

for 2017-18 totaled \$51.2 million.<sup>9</sup> Over the course of 2017, the Auditor General produced approximately 2,446 audit reports and 14 performance audit reports.

Many of these audits are mandated by law, but the PDAG also conducts audits at the request of the governor and at the discretion of the auditor general. Despite the fact that the state legislature lacks formal authority to request audits (NASACT, 2015), evidence from committee hearings indicates that the auditor general works collaboratively with the legislature. Transcripts of committee hearings also show that audits do sometimes result in legislative action. For example, during a hearing at which the auditor general was giving testimony about underfunded municipal pensions, a longstanding problem in the state,<sup>10</sup> one committee member noted that he had introduced a bill during the previous legislative session that was intended “to address the issues of the municipal pension plan under-funding and plan management.” Although the committee member lamented that the bill “didn’t gain any traction,” it does indicate a relationship between the activities of the auditor general and those of legislative committees.

Pennsylvania’s legislature has an analytic support bureaucracy attached to the Legislative Budget and Finance Committee (LBFC), a joint legislative committee. The Legislative Budget and Finance Committee (LBFC) is a bipartisan, bicameral committee that receives its authority from Act 195 of 1959, as amended, 46 P.S. §70.1-70.6, which grants them the power to “conduct studies and make recommendations aimed at eliminating unnecessary expenditures, promote economy in the government of the Commonwealth, and assure that state funds are being expended in accordance with legislative intent and law.” Committee members consist of six senators and six representatives drawn equally from the two major political parties, including the top caucus leaders from each political party for each chamber. The LBFC staff is headed by an executive director, who is appointed by the legislators serving on the committee. At the end of 2017, the executive director managed a staff of 11.<sup>11</sup>

The LBFC is authorized to “conduct a wide range of research activities pertaining to the operation and performance of state-funded programs and agencies.”<sup>12</sup> The targets of audits and evaluations are dictated by legislative acts and resolutions, and over the last decade or so, the Legislative Budget and Finance Committee produced roughly 10 financial audits and program evaluations per year. The committee is also charged with sunset review—recommending to the legislature programs and expenses that are no longer necessary. Its reports are distributed to the legislature, to the governor, and to the auditor general. The target of recommendations can be either legislature (recommended statutory changes) or the agency (recommended changes to administrative procedures). Although these recommendations are advisory only, sources within the state report that they do result in statutory or administrative changes, and it is difficult to keep track of these impacts because it may take a while for the changes to occur (interview notes, 2018). No official count or tracking of recommendations is available, however. In both 2017<sup>13</sup> and 2018,<sup>14</sup> the National Legislative Program Evaluation Society awarded certificates recognizing state agencies for “documenting public policy impact within their respective states.”

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<sup>9</sup> <https://www.paauditor.gov/department-expenses-2017-2018>, accessed 10/15/18.

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[http://www.paauditor.gov/Media/Default/Reports/Updated%20Municipal%20pension%20special%20report\\_01142015\\_FINAL.pdf](http://www.paauditor.gov/Media/Default/Reports/Updated%20Municipal%20pension%20special%20report_01142015_FINAL.pdf), accessed 06/06/18.

<sup>11</sup> <http://lbfc.legis.state.pa.us/Staff.cfm>, accessed 10/15/18.

<sup>12</sup> <http://lbfc.legis.state.pa.us/About.cfm>, accessed 05/25/18.

<sup>13</sup> <http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESImpactWinners2017.pdf>, accessed 10/10/18.

<sup>14</sup> [http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESawards-ReportsRecognized2018\\_30717.pdf](http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESawards-ReportsRecognized2018_30717.pdf), accessed 10/10/18.

The LBCF was one of 26 offices to receive recognition in 2017 and one of 27 offices to receive the recognition in 2018.

LBCF staff regularly makes presentations to the committee. For example, in February of 2017, the executive director made two presentations: one investigation of overtime in the Department of Corrections and one performance audit of a state-funded legal aid program. The latter was a mandatory review to determine if the program was still needed—a sunset review. In March, she made two more presentations, both about state agencies. There were no presentations made in April, but in May she made three presentations: “Commonwealth Board and Commission Member Compensation and Expenses,” “Public Charter School Fiscal Impacts on School Districts,” “The Impact of Tavern Gaming on the Pennsylvania State Lottery.” Only one presentation occurred in June: “PA’s Program for Beneficial Use of Biosolids.” The next two 2017 presentations did not occur until October, and those were the final presentations. This demonstrates that the LBCF staff analyzes a wide range of programs that vary by level of government (i.e. local and state) and by topic, including public safety, environment, and education. Given the small size of this staff (11 members plus the executive director), this is an impressive number of reports and presentations.

Finally, the Pennsylvania legislature benefits from the work of a nonpartisan Independent Fiscal Office, created in 2010 by Act 120. Its mission is to perform fiscal analysis, provide revenue projections, and to analyze economic and budget issues for the legislature and the citizens of Pennsylvania. It works collaboratively with both the legislative and executive branches. It has a staff of nine and produces information that assists with budget decisions, such as a report on Pennsylvania Natural Gas Royalties and bi-monthly Pension Actuarial Notes.

## Oversight Through the Appropriations Process

The budget process in Pennsylvania begins in August, when budget guidelines are issued to agencies who submit budget requests by October. By the beginning of February, the governor prepares an official budget, which is then submitted to the legislature for review. According to a document by the Office of the Budget outlining Pennsylvania’s budget process, committee members question department representatives and request additional information or clarification. At the conclusion of these hearings, a general appropriation bill is introduced in the general assembly for discussion and debate.”<sup>15</sup> The legislature is assisted during the budget process by the nonpartisan Independent Fiscal Office, which “provides revenue projections for use in the state budget process along with impartial and timely analysis of fiscal, economic, and budgetary issues.”<sup>16</sup>

Transcripts of public hearings held by the House Appropriations Committee are available at the legislature’s website.<sup>17</sup> In 2017, the House Appropriations Committee held a total of 30 meetings, the majority of which occurred in February and March and consisted of budget presentations by various executive agencies. Transcripts for these meetings reveals that members of the House Appropriations Committee often questioned individuals from agencies thoroughly

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<http://www.budget.pa.gov/PublicationsAndReports/Documents/OtherPublications/Budget%20Process%20In%20PA%20-%20Web.pdf>, accessed 05/25/18.

<sup>16</sup> <http://www.ifo.state.pa.us/about.cfm>, accessed 06/05/18.

<sup>17</sup> <http://www.legis.state.pa.us/cfdocs/cteeInfo/index.cfm?Code=4&CteeBody=H>, accessed 05/25/18.

and asked them specific questions regarding the activities of the agency. For example, transcripts from a meeting held on February 23, 2017, during which the auditor general gave testimony, suggest that members of the House Appropriations Committee closely reviewed reports produced by the auditor general and were able to pose meaningful questions about audits. Legislators inquired about numerous issues, including municipal pension funding, charter and public school performance and funding, health benefit insurance plan finance, and auditing fraud and abuse.

Additionally, committee members inquired about the PDAG's use of funding for technology upgrades, which had previously been requested by the auditor and approved by the committee. In addition to making upgrades to the department's website and implementing new secure WiFi infrastructure, the funding made it possible for audit staff to work remotely. During the hearings, the auditor argued that this made his department more efficient, since they were able to close several branch offices throughout the state and thereby reduce the size of the state's automobile fleet. While legislators voiced concerns that employees working from home might not actually be working while on the clock, the auditor replied that employees were required to check-in and verify their time worked. He also pointed out that since the new system was implemented, the department's output had increased by 33%, which seemed to satisfy members of the committee that the IT appropriations were justified.

Transcripts also exist for House Appropriations Committee hearings regarding the governor's budget proposal. These transcripts indicate that the committee is actively exploring ways to increase its ability to exercise oversight of executive branch agencies. One example is to require people giving testimony to provide answers to questions in a timely manner, which had not always been the case previously. As the committee chair noted, "[i]n the past [people] have answered that they don't know on some questions that members have asked and that they will get back to the Committee. Sometimes, those answers have taken weeks, months to get back to our committee on the answers to questions . . . So in the interest of transparency, I reserve the right to recall testifiers and/or the budget secretary to appear before this committee within 48 hours to respond to these questions."<sup>18</sup>

With respect to the use of checks and balances between the legislative and executive branches, governors exercise their authority to freeze spending as a tool to influence the appropriations process. For example, in 2012, former-Gov. Tom Corbett froze \$156 million dollars in response to budget shortfalls.<sup>19</sup> In 2016, Gov. Tom Wolf froze personnel spending in state agencies to address major gaps in the budget.<sup>20</sup>

This tactic, however, does not always work. In August 2017, Gov. Wolf again threatened to freeze spending in the state if the legislature was unable to pass a balanced budget in the face of a \$2.2 billion budget deficit.<sup>21</sup> He used this threat to persuade Republicans in the house to agree to certain tax increases passed by the senate. By early October he was forced to "raise \$1.2 billion in cash by borrowing against future anticipated payments from the Pennsylvania Liquor Control Board" in order to maintain government services. The possibility was also left open for future spending freezes.<sup>22</sup> Ultimately, "after months of stalemate pitting [Governor] Wolf, Senate

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<sup>18</sup> [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0003T.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0003T.pdf), accessed 06/05/18.

<sup>19</sup> <https://www.pennbpc.org/governor-announces-157-million-budget-freeze>, accessed 06/05/18.

<sup>20</sup> [http://www.pennlive.com/politics/index.ssf/2016/12/wolf\\_administration\\_freezes\\_pe.html](http://www.pennlive.com/politics/index.ssf/2016/12/wolf_administration_freezes_pe.html), accessed 06/05/18.

<sup>21</sup> <http://www.witf.org/state-house-sound-bites/2017/08/wolf-planning-for-spending-freeze-if-budget-isnt-passed.php>, accessed 06/04/18.

<sup>22</sup> [http://www.pennlive.com/politics/index.ssf/2017/10/gov\\_tom\\_wolf\\_angry\\_about\\_budge.html](http://www.pennlive.com/politics/index.ssf/2017/10/gov_tom_wolf_angry_about_budge.html), accessed 06/05/18.

Republican leaders and Democratic lawmakers against the House Republican majority's huge conservative bloc," the legislature did pass what was described as "Frankenstein-like" budget "that flew through the Legislature."<sup>23</sup> Faced with the prospect of continuing budget battles or a government shutdown, the governor signed the appropriations bill without the tax increases that he and other Democrats wanted.<sup>24</sup>

## Oversight Through Committees

The rules of the Pennsylvania House of Representatives and of the senate outline the oversight authority of committees. The House rules state that "each standing committee or subcommittee shall exercise continuous watchfulness of the executive of administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee or subcommittee."<sup>25</sup> Standing committees, subcommittees, and select committees also have the authority to conduct public hearings, and in the case of an investigation, have the power to issue subpoenas. The Senate rules state that standing committees must "review the work of agencies concerned with their subject areas and the performance of the functions of government within each subject area, and for this purpose to request reports from time to time."<sup>26</sup> Furthermore, each standing committee is empowered to inspect and investigate any public agency. Like House committees, Senate standing committees have may hold public hearings and issue subpoenas.

Although these committees do not hold oversight hearings as often as the House Appropriations Committee does, recordings<sup>27</sup> indicate that the oversight conducted by these committees is often rigorous. One standing committee that meets regularly is the House State Government Committee,<sup>28</sup> which currently has transcripts available for eight meetings in 2017-18. During these meetings, the committee typically considered testimony related to a variety of issues, such as giving full police powers to sheriffs and deputy sheriffs and concerns about regulatory overreach by the Susquehanna River Basin Commission (SRBC). Moreover this committee considers general issues regarding state government regulations, procedures to improve oversight, and ways relieve regulatory burdens.

These House State Government Committee hearings tended to be lengthy and involved committee members posing specific, oversight-related questions to individuals from agencies. For example, transcripts from a committee meeting about regulatory overreach by the Susquehanna River Basin Commission (SRBC) demonstrate that legislators on this committee actively exercise oversight of agencies and commissions under their purview. Regarding the SRBC, for example, one member of the committee noted that when the commission was formed in 1970, "there was no legislative oversight built in whatsoever." This lack of monitoring subsequently resulted in substantial overreach by the SRBC, causing serious problems for municipalities that were suddenly being charged exorbitant fees for decades-old wells under the

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<sup>23</sup> <https://www.nbcphiladelphia.com/news/local/Tom-Wolf-Pennsylvania-Budget-453856263.html>, accessed 06/05/18.

<sup>24</sup> <https://www.reuters.com/article/us-pennsylvania-budget/pennsylvania-governor-signs-revenue-bills-to-wrap-up-stalled-budget-idUSKBN1CZ2PN>, accessed 06/05/18.

<sup>25</sup> <http://www.house.state.pa.us/rules/2017HouRules.pdf>, accessed 05/29/18.

<sup>26</sup> <http://www.pasen.gov/rules/2017SenRules.pdf>, accessed 05/29/18.

<sup>27</sup> Transcripts of these hearings are available at <http://www.legis.state.pa.us/>. Accessed 05/30/18.

<sup>28</sup> <http://www.legis.state.pa.us/cfdocs/cteeInfo/index.cfm?Code=36&CteeBody=H>, accessed 05/29/18.

commission's regulatory control. According to the transcripts, when the House State Government Committee began to look into the SRBC's activities, "What we found literally made the hair stand up on the back of my neck."<sup>29</sup> After a meeting with the SRBC, which was intended to shed light on the issues that were uncovered, one committee member decried "the arrogance of this commission and how most of what we had to say was shrugged off." After local news reports<sup>30</sup> about the meeting were aired, "calls and emails started to roll in from all over the Susquehanna Valley . . . to complain about the overreach and abuse of the SRBC." At that point, the decision was made to hold official hearings about the commission's activities. Legislators called for a full audit of the commission by the PDAG to determine what it was doing with the money.<sup>31</sup>

These examples demonstrate that standing committees in the Pennsylvania legislature often exercise meaningful oversight of executive agencies, boards, and commissions. Additionally, these committees collaborate with an elected auditor general to ensure that these government entities are functioning as intended.

## Oversight Through the Administrative Rules Process

Pennsylvania has a two-track administrative rule review process, in which the Independent Regulatory Review Commission (IRRC) plays a central role. The IRRC is an independent commission established through the Regulatory Review Act of 1982 to "review Commonwealth agency regulations . . . to ensure that they are in the public interest."<sup>32</sup> The IRRC consists<sup>33</sup> of five commissioners and a staff of 10. The following officials each appoint one commissioner: governor, president pro tempore of the senate, the minority leader of the senate, the speaker of the house, and the minority leader of the house.<sup>34</sup> Commissioners may not be state employees or hold a concurrent elected or appointed position in state government.<sup>35</sup> This structure has raised constitutional issues, and despite the word independent in its name, some critics note that the commission is lobbied heavily by special interests (Schwartz, 2010).

When an agency wishes to propose a new rule or amend an old one, it must deliver the proposal to the IRRC to pertinent legislative committees and to the Legislative Reference Bureau, after which there is a minimum 30-day public comment period. Next, both the IRRC and legislators have time to comment on the proposed rule. The IRRC has 30 days to comment on the rule, and legislative committees can issue comments at any time before the final version of the rule is submitted.

After the IRRC returns its verdict on the original version of the proposed rule, agencies can make amendments and submit a response within two years for further inspection. At this point, the IRRC can review the amended rule and either approve or disapprove it, either with or

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<sup>29</sup> [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0064T.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0064T.pdf), accessed 05/30/18.

<sup>30</sup> <http://wjactv.com/news/local/susquehanna-river-basin-commission-under-fire-over-fees>, accessed 05/30/18.

<sup>31</sup> [http://www.abc27.com/news/fiscal-watchdog-to-audit-delaware-susquehanna-river-basin-commissions\\_20180327041025143/1081488729](http://www.abc27.com/news/fiscal-watchdog-to-audit-delaware-susquehanna-river-basin-commissions_20180327041025143/1081488729), accessed 05/30/18.

<sup>32</sup> [http://www.irrc.state.pa.us/contact/what\\_is\\_irrc.cfm](http://www.irrc.state.pa.us/contact/what_is_irrc.cfm), accessed 05/30/18.

<sup>33</sup> <http://www.irrc.state.pa.us/commission/>, accessed 10/12/18.

<sup>34</sup> <http://www.irrc.state.pa.us/contact/faqs.cfm>, accessed 10/12/18.

<sup>35</sup> Ibid.

without approval by the pertinent legislative standing committee. Annual reports of the IRRC's activities are available on its website.

In 2017, the IRRC reviewed 53 regulations, including 31 proposed and 22 final regulations. Of these 75 regulations, three were disapproved. The commission received more than 230 public comments on pending regulations, and 32 members of the house and senate submitted comments on these regulations, while standing committees submitted formal comments on only one proposed rule. The annual report also indicates that the commission issued comments 34 times, did not issue comments five times, has yet to issue comments twice, and was unable to issue comments due to a rule withdrawal or other reason 10 times. In 2017, there were 23 finalized regulations, and all but five received comments. We are told by sources close to the issue that legislative comments are typically adopted in the IRRC's comments, and agencies do make a good faith effort to consider the IRRC's comments (interview notes, 2018).

The IRRC also has the power to review existing regulations that have been in effect for at least three years. These reviews "may be undertaken either at IRRC's own initiative or at the request of any person or member of the general assembly." Moreover, "[i]f a Committee requests the review, IRRC must assign it a high priority."<sup>36</sup> In reviewing existing rules, IRRC only plays an "advisory role" insofar as it can only recommend that an agency change the rule or recommend that the general assembly make statutory amendments.

IRRC staff appears to be instrumental to the rule review process. Schwartz (2010) reports that they tour "farms, mines, industries, and other parties effected by Pennsylvania's regulations" to increase their knowledge of the impact of rules and regulations under review (348). IRRC staff also meets with state agencies and tries to educate the public and government officials about rules and rule review criteria.

Legislators often transmit public comments to agencies proposing rules and, even though the legislature has little power to reject a rule, agencies appear to be sensitive to legislators' concerns (interview notes, 2018). It appears that final rules are often altered to resolve these concerns. The IRRC also appears to be sensitive to concerns expressed by the public (interview notes, 2018). This information is reinforced by descriptions of rules governing the sale of raw milk and of hypodermic needles described by Schwartz (2010).

Although the legislature has delegated part of its rule review authority to the IRRC, it appears to play an informal role in the review process. Moreover, the IRRC, especially its staff, appear to be highly engaged in understanding the impact of rules on various groups of citizens and types of businesses in the state. The IRRC webpage and annual report provide abundant information about rules, the comments, and the final vote—a level of transparency that is noteworthy compared to other states' rule review processes. The IRRC's process is not, however, legislative oversight of the executive. And one can easily image scenarios in which governor's appointee casts the deciding vote over and over. This would in effect provide a gubernatorial veto over legislative oversight of administrative rules. The most valuable feature of this system appears to be a large staff of 10 professionals dedicated to rule review, and that is something that could easily be recommended as a best practice to other legislatures.

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<sup>36</sup> <https://senate.texas.gov/cmtes/82/c510/0410BI-PIRRC-Process.pdf>, accessed 05/31/18.

## Oversight Through Advice and Consent

According to Senate Rule 28, all gubernatorial nominations are referred to the Committee on Rules and Executive Nominations. Nominees are also referred to a pertinent standing committee “for the purpose of holding a public hearing to scrutinize the qualifications of nominees and to report its recommendations.”<sup>37</sup> Interviewees report that the process involves three stages. The relevant standing committee receives the nominee’s paperwork and that committee interviews and questions the nominee at a public hearing. Next, the committee votes on whether to approve the nominee. Lastly, nominations approved by the committees receive a confirmation vote on the senate floor (interview notes, 2018). According to the state constitution, all nominations must be acted upon within 25 legislative days of submission, and if the Senate does not act within the specified time, the nominee takes office (Constitution of Pennsylvania § 8). Rejection of gubernatorial nominees does not appear to be very common. A review of Senate votes on appointments during the 2017-18 legislative session shows that the majority of votes on executive nominations are nearly unanimously in favor of confirming nominees. The senate does its due diligence, and two committee staff work on reviewing appointments (interview notes, 2018). Senators try to work out any differences with the governor before the nomination gets to a vote (interview notes, 2018).

Pennsylvania’s governor has constitutional and statutory power to issue executive orders. There are no provisions for formal legislative review of such orders. The governor does not have the power to reorganize the government through executive orders. In the past, this has meant that proposals, such as one to merge the state’s Department of Health and the Department of Human Services into a combined Department of Health and Human Services have been successfully opposed by the legislature.<sup>38</sup> In that case, the reorganization was touted as a cost-cutting measure<sup>39</sup> that would not result in cuts to services.<sup>40</sup> However, legislators expressed numerous reservations about the proposal: “At a state Senate hearing . . . some legislators questioned whether such a large agency would deliver better services, or if certain issues—particularly the concerns of senior citizens and those facing addiction—would become lost in a mega-bureaucracy.”<sup>41</sup> Ultimately, while legislators signaled a willingness to consider the merger, their misgivings were enough for the plan to fail to make it through budget negotiations in 2017.<sup>42</sup> In 2018, however, the governor again declared his intention to try to convince the general assembly to approve the merger.<sup>43</sup> These kinds of negotiations suggest that a fair degree of oversight is exercised by the legislature in matters of government reorganization.

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<sup>37</sup> <http://www.pasen.gov/rules/2017SenRules.pdf>, accessed 05/31/18.

<sup>38</sup> [http://www.pennlive.com/politics/index.ssf/2017/01/wolf\\_administration\\_announces.html](http://www.pennlive.com/politics/index.ssf/2017/01/wolf_administration_announces.html), accessed 06/01/18.

<sup>39</sup> <http://www.post-gazette.com/news/state/2017/02/08/New-PA-Department-of-Health-and-Human-Services-would-have-90-million-savings-officials-project/stories/201702080031>, accessed 06/01/18.

<sup>40</sup> <http://www.post-gazette.com/news/politics-state/2017/01/30/Pennsylvania-Governor-Tom-Wolf-says-merger-of-four-health-departments-won-t-bring-cuts-in-service/stories/201701300137>, accessed 06/01/18.

<sup>41</sup> <http://www.post-gazette.com/news/state/2017/03/30/Pa-health-human-services-merger-tom-wolf-proposal/stories/201703300065>, accessed 06/01/18.

<sup>42</sup> [http://www.pennlive.com/news/2017/10/health\\_human\\_services\\_merger.html](http://www.pennlive.com/news/2017/10/health_human_services_merger.html), accessed 06/01/18.

<sup>43</sup> <http://www.post-gazette.com/news/state/2018/02/05/PA-Gov-Tom-Wolf-Health-Human-Services-merger/stories/201802040073>, accessed 06/01/18.

## Oversight Through Monitoring of State Contracts

Pennsylvania's legislature does little to no oversight of state contracts either by hearing or through audits (interview notes, 2018). The Bureau of Procurement of the Department of General Services is responsible for the administration of contracts. The state's Procurement Handbook also notes that "the using agency's comptroller shall review and approve all contracts for services for that using agency . . ." <sup>44</sup> There are three criteria for reviewing contracts: fiscal responsibility, budgetary appropriateness, and availability of funds. It does not appear that there is any system in Pennsylvania that routinely determines the quality or at least adequacy of services delivered by contracts for services such as juvenile justice facilities run by private contractors.

## Oversight Through Automatic Mechanisms

Pennsylvania is classified as having a regulatory sunset regime, meaning that the state allows its legislature to review only licensing and regulatory boards (Baugus and Bose, 2015). At times the sunset process can become contentious. A recent example is the upcoming sunset of a \$2-per-ton fee on waste that helped to fund recycling programs in the state. While the law itself is not up for review, the fee is set to expire in 2020, leaving municipalities with the responsibility of funding recycling from other sources. Certain legislators, however, see the fee sunset as an opportunity to revisit the entire recycling law, which is opposed by many stakeholders.

According to the executive director of the state's Independent Waste Hauler's Association, "if they open it up, it's going to be a nightmare. So many people will want to do so many different things. There's [sic] many things that could be changed. We know for a fact there are things that should be changed in there, but we know how things go in government. God knows what will happen if they do open it up." <sup>45</sup> According to the original drafter of the law, the fee is essential to the existence of the law. Some analysts therefore argue that the fee should simply be renewed, while others suggest that it should be made permanent and increased to account for inflation.

These were some of the viewpoints that were represented when the Joint Legislative Conservation Committee held hearings about the potential fee repeal. Among other stakeholders and agency representatives, the Deputy Secretary of the Department of Environmental Protection gave testimony, arguing that the sunset provisions for the fee should be abolished. <sup>46</sup> In the end, these hearings resulted in an amendment to the original law that repealed the sunset clauses and made the existing fee permanent. <sup>47</sup>

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<sup>44</sup> <http://www.dgs.pa.gov/State%20Government/Materials-and-Services-Procurement/Procurement-Handbook/Pages/default.aspx#part1>, accessed 06/01/18.

<sup>45</sup> <http://triblive.com/local/valleynewsdispatch/11968800-74/as-pennsylvanias-recycling-mandate-nears-expiration-state-eyes-overhaul>, accessed 06/04/18.

<sup>46</sup> [http://jcc.legis.state.pa.us/resources/ftp/documents/Reports/Transcript%20%20Act%20101%20of%201988%20\(6-13-17\).pdf](http://jcc.legis.state.pa.us/resources/ftp/documents/Reports/Transcript%20%20Act%20101%20of%201988%20(6-13-17).pdf), accessed 06/04/18.

<sup>47</sup> <http://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1988&sessInd=0&smthLwInd=0&act=101&chpt=7&sctn=1&subsctn=0>, accessed 06/04/18.

## Methods and Limitations

Pennsylvania is among the states with the lowest levels of archival recordings for its state legislature.<sup>48</sup> Therefore, it is difficult for us to be confident of our assessment of the quality of oversight in Pennsylvania. Of the nine people we contacted for interviews, we were able to conduct interviews with four people.

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<sup>48</sup> <http://www.ncsl.org/research/telecommunications-and-information-technology/legislative-webcasts-and-broadcasts.aspx>, accessed 1/10/19

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