



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in South Carolina

Capacity and Usage Assessment

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

Summary Assessment

South Carolina presents a mixed picture of legislative oversight. On the one hand, in budgetary matters the General Assembly is clearly dominant and routinely overrides gubernatorial line-item vetoes. Legislative oversight is exercised vigorously through the appropriations process. For a one-party state, there is evidence that the legislature is willing to challenge executive branch agencies when problems arise (fire alarm oversight). The Legislative Audit Council (LAC), meanwhile, provides the legislature with solid performance auditing capabilities. The House Legislative Oversight Committee appears responsive to audit reports.

Major Strengths

Standing committees like the House Legislative Oversight Committee seem to be engaged in genuine and meaningful oversight of agencies when crises arise. Detailed presentations of audit reports are considered by this committee and its subcommittees. The LAC works closely with the legislature to fulfill its requests for information. Likewise the Revenue and Fiscal Affairs Office works closely with the legislature. Also, South Carolina has demonstrated the capacity for massive reorganizations of its budget processes to better monitor appropriations and agency spending. Other staff agencies appear to be providing the legislature with timely information.

Challenges

Legislative audits are sometimes met with aggressive stonewalling on the part of state agencies and are not always backed up with legislative action. Additionally, common sense legislation, such as the criminal penalties for failure to report death of youth in DJJ custody, seems to get stalled in the committee process. Several standing committees do not appear to meet at all regularly. Moreover, we found limited evidence of some types of police patrol oversight. South Carolina's legislature also has very limited power to oversee contracts or check executive orders. Moreover, as a task force's findings suggest, steps could be taken to improve the General Assembly's role in the administrative rulemaking process. The House appears receptive to improving the process for administrative rule review.

Relevant Institutional Characteristics

The National Conference of State Legislatures classifies South Carolina's legislature as a hybrid, meaning that the job takes more than two-thirds of the time that would be expected from a full-time job, even though the pay typically requires a second job.¹ Squire (2017) ranks South Carolina at 39 out of 50 in terms of professionalization. Salary for legislators is \$10,400, with a daily per diem of \$202 while the legislature is in session.² The legislature has 332 staff, 280 of which are permanent.³ Senators are elected to four year terms, and House members to two year terms, with no limits on the number of terms, consecutive or otherwise, a legislator may hold. South Carolina's legislature can remain in session from January until the first Thursday in June.⁴ In 2017 and again in 2018, the legislature was in session for four months—from approximately January 10 to approximately May 10. Thus, legislators would have been paid about \$35,000 for each year. Squire (2017) reports that South Carolina's legislature met for the equivalent of 57 session days in 2013.

South Carolina's legislative branch is unusually powerful. As Haider-Markel (2009) notes, "Despite its part-time nature, the general assembly has historically been the center of political power. The legislature—with its strong budgetary and appointive authority—is preeminent over the state, and the senate is preeminent over the legislature." By contrast, South Carolina grants a below average amount of institutional power to its governor. Ferguson (2013) ranks the state at 47 out of 50 in terms of gubernatorial authority. In part, this is because of the large number of independent executive positions. Governors in South Carolina have few appointive powers, and until recently all appointees were subject to legislative approval. Although the governor does have line-item veto powers, these can be overridden by a two-thirds vote in the legislature (Haider-Markel, 2009).

At 12.6%, the state has an above-average percentage of its workforce employed in state or local government. The difference reflects a higher than average proportion employed in education (6.3% compared to the national average of 6.1%) and especially in welfare (2.2% compared to the national average of 1.5%). The proportion employed in public safety (1.7%) and in services (1.3%) is exactly equal to the national averages (Edwards, 2006).

¹ http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx#side_by_side, accessed 06/26/18.

² <http://www.ncsl.org/research/about-state-legislatures/legislator-compensation-2018.aspx>, accessed 06/26/18.

³ <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 06/26/18.

⁴ <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx>, accessed 06/26/18.

Political Context

South Carolina politics have long been characterized as being dominated by one party or the other. Democrats controlled the state legislature from the end of Reconstruction until 1994. By 2002, however, Republicans were ascendant.⁵ The governorship, meanwhile, has alternated between parties more frequently than control of the legislature.⁶ Currently, the House has 80 Republicans and 44 Democrats, while the Senate has 28 Republicans and 18 Democrats. The governorship has most often held by a Republican, with periods of Democratic control from 1979-1987 and 1999 -2003. South Carolina's state legislature is not especially polarized: the House is ranked at 27th most polarized, and the Senate at 31rd (Shor & McCarty, 2015). This likely reflects the tendency of the minority party to move toward more centrist positions when faced with one-party control.

Prior to 1990, South Carolina politics operated under what many South Carolinians refer to as the “good ol’ boy” system, referring to the prevalence of influential lobbies and special interests that dominated state politics. After a major FBI sting operation, “Operation Lost Trust,” during 1990 in which 17 legislators were indicted on a variety of charges, the state implemented some of the “strongest ethics laws in the nation.” These laws regulate campaign contributions and other lobbying behavior and have greatly reduced the influence of lobbyists in the state (Haider-Markel, 2009). Yet, scandal continues to dog South Carolina politics as the recent indictments of South Carolina legislators demonstrate.⁷ This issue of corruption and anti-racketeering laws to reign in nefarious activities by political “consultants” became a campaign issue in the South Carolina gubernatorial election campaigns in 2018.⁸

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

South Carolina has an Office of the State Auditor (OSA), which is an executive branch position appointed by the Budget and Control Board. OSA is comprised of several divisions, including the State Agency division, which “provides a variety of services to ensure reliability of financial information on both a statewide and individual agency level,” including the Comprehensive Annual Financial Report (CAFR) and other financial audits; the Medicaid program, which ensures that “our state’s nursing facilities providing Medicaid services comply with state and federal requirements related to cost reimbursement claims”; and Internal Audit Services, which “performs independent and objective assurance and consulting activities through a systematic and disciplined approach to evaluating governance, risk and compliance.”⁹ All of the audits performed by OSA are financial audits, and the majority of the audits reports released

⁵ <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx#Timelines>, accessed 10/30/18.

⁶ https://www.nga.org/cms/home/governors/past-governors-bios/page_south_carolina.html, accessed 06/26/18.

⁷ <http://www.governing.com/topics/politics/tns-south-carolina-courson-resign.html>, accessed 7/29/18.

⁸ <http://www.statehousereport.com/2018/05/31/bryant-s-c-still-awaits-true-ethics-reform/>, accessed 7/29/18.

⁹ <http://osa.sc.gov/about/divisions/>, accessed 06/26/18.

by the OSA appear to be audits performed by the State Agency division, of which 85 were produced in 2017.¹⁰ The Internal Audit Services division, meanwhile, produced two risk and control assessments and two follow-ups on previous reports in the same period of time. These reports were addressed to the agencies that were reviewed and to the substantive legislative committees that were concerned with the activities of the agency in question.¹¹

The OSA has a staff of approximately 50 professionals and a 2015 state appropriation of \$1.3 million to support its work (NASACT, 2015). It also contracts with outside firms, with a budget of slightly more than \$2 million to pay for this work. The contracts typically cover audits of court fees and collections and municipal governments (NASACT, 2015).

Performance audits in South Carolina are carried out by the Legislative Audit Council (LAC), which is supervised by a governing board “composed of five public members, one of whom must be a practicing certified or licensed public accountant and one of whom must be an attorney. In addition, four members of the General Assembly serve *ex officio*.”¹² Currently these four legislators are all members of the Republican Party, which controls both chambers of the legislature. The LAC Governing Board appoints the LAC director, who is an audit professional, not a legislator. LAC audits can either be requested by members of the legislature or required by state laws; citizens cannot directly request audits, but are encouraged to “bring their concerns or ideas for audits to their local legislators.”¹³ Audit requests are placed on the agenda for the next meeting of the LAC Governing Board, at which time a decision is made about whether to authorize the audit and an audit plan is developed.

The LAC “conducts independent, objective performance audits of state agencies and programs, as requested by the general assembly and mandated by law. The purpose of this oversight role is to provide information that will assist the general assembly and the public in determining whether state agencies are efficiently, effectively, and lawfully managing public resources, and whether agency programs are meeting their intended objectives.”¹⁴ It produces about four performance audits per year.

A scathing January 2017 audit of the South Carolina Department of Juvenile Justice (SCDJJ), which included 74 recommendations for agency change, led to the resignation of the SCDJJ director. The 134 page report is exceptionally thorough and demonstrates the high quality work that LAC produces. It has not, however, resolved the agency’s problems with accountability, according to media reports of unreported fights at the facilities.¹⁵ The audit was conducted at the request of the general assembly after media reports of serious problems at SCDJJ, including the death of two teenagers at institutional SCDJJ facilities that were not investigated or reported to any outside authorities and became known when a county coroner’s report surfaced. Hearings on this audit by the House Oversight Subcommittee on Law Enforcement and Criminal Justice are discussed in detail below in the section, Oversight Through Committees.

The Revenue and Fiscal Affairs Office (RFA) staff provides support to legislators with respect to fiscal matters. In 2014, the legislature took three units that were previously part of the Budget Control Board and combined them to create the RFA. These three are the Board of

¹⁰ <http://osa.sc.gov/reports/>, accessed 06/26/18.

¹¹ <http://osa.sc.gov/internal-reports/>, accessed 06/26/18.

¹² <http://lac.sc.gov/Pages/GoverningBoard.aspx>, accessed 06/26/18.

¹³ <http://lac.sc.gov/Pages/RequestanAudit.aspx>, accessed 06/26/18.

¹⁴ <http://lac.sc.gov/Pages/default.aspx>, accessed 06/26/18.

¹⁵ <https://www.fitsnews.com/2018/06/20/scdjj-new-scandals-no-accountability/>, accessed 7/25/18.

Economic Advisors, the Office of Research and Statistics, and the Office of State Budget. This newly formed unit is governed by the three appointed members of the Board of Economic Advisors and provides assistance and support to the House Ways and Means Committee and the Senate Finance Committee. The original reasoning for this restructuring of revenue and fiscal affairs was an effort to give the governor a bigger role in the maintenance of the budget throughout the year and to modernize South Carolina's "archaic" budget and revenue process.¹⁶ RFA staff participates in budget hearings and provide support during these committee hearings. These analysts produce fiscal impact statements for all legislation for both legislative chambers. Eight RFA staff members are listed as part of the House Ways and Means Committee. No senate committees list staff. The key tasks of the RFA are to provide staff support, conduct fiscal impact statements, and forecast revenue to keep the budget in balance.¹⁷ Fiscal impact statements are an important "cog" in the both the evaluation of agency budget requests and non-revenue bills.¹⁸ Legislators utilize impact statements to great effect during the budget process and when considering other non-budgetary bills, with the RFA essentially acting like the Congressional Budget Office.¹⁹

Finally, South Carolina's Inspector General, appointed by the governor, has a staff of five members to direct toward investigation of state entities. The list of audits indicates that the attention of this office is focused on boards, commissions, and other quasi-governmental organizations, such as the conservation bank, charter schools, universities, and so on.²⁰ These audits are occasionally mentioned during committee hearings.

Oversight Through the Appropriations Process

South Carolina's budget process has been criticized as "secretive" and "bizarre,"²¹ a process in which "citizens have almost no control over the shape and size" of the budget that gets passed.²² While state law requires the governor to submit an executive budget to the legislature,²³ in practice this appears to happen rarely. According to the South Carolina Policy Council, "Gov. Mark Sanford (2003-2011) was the first governor, at least in recent history, to submit full executive budgets to the legislature at the outset of the legislative session. Unfortunately, the legislature invariably ignores the executive budget."²⁴ Instead, the budget "is written from scratch in an array of appropriations subcommittees. In general, lawmakers base their decisions on the previous year's budget, adding a little and subtracting a little. The budget doesn't take any kind of coherent shape as a spending plan until it's passed by the House Ways and Means committee. The governor has no practical role in the process."²⁵

This is not to say, however, that the governor is completely powerless in the appropriations process. In June 2017, for example, Gov. Henry McMaster, the current governor,

¹⁶ Interview notes 12/14/18

¹⁷ Interview notes 12/14/18

¹⁸ Interview notes 12/14/18

¹⁹ Interview notes 12/14/18

²⁰ <https://oig.sc.gov/reports>, accessed 7/24/18.

²¹ <https://www.scpolicycouncil.org/research/budget/budget-process-remains-secretive>, accessed 06/26/18.

²² <https://www.scpolicycouncil.org/research/budget/scbudgetlaw>, accessed 06/26/18.

²³ <http://www.scstatehouse.gov/code/t11c011.php#11-11-70>, accessed 06/26/18.

²⁴ <https://www.scpolicycouncil.org/research/the-state-budget-process-law-vs-reality>, accessed 06/26/18.

²⁵ <https://www.scpolicycouncil.org/research/budget/scbudgetlaw>, accessed 06/26/18.

vetoed over \$56 million from the budget,²⁶ and budget vetoes have even been described as “a rite of passage for governors in South Carolina.”²⁷ McMaster’s predecessors in office, Govs. Mark Sanford and Nikki Haley, also “took pride in striking out state spending that was approved by state lawmakers.” In the face of the willingness of South Carolina governors to make use of their line-item veto powers, however, the general assembly has demonstrated little hesitance to override such vetoes: a proposed gas tax increase vetoed in 2017 was overridden by large margins (32-12 in the Senate and 95-18 in the House). The governor also vetoed two separate expenditures totaling \$20.5 million intended to replace a fleet of “fire-prone” school buses, but both the House²⁸ and the Senate²⁹ overwhelmingly voted to override both of those vetoes as well. This situation is not uncommon in South Carolina: in 2012 the New York Times described how Gov. Haley “marched through the new state budget, cutting spending on teachers’ salaries, the arts, rape crisis centers, and even a program to control head lice,” but wound up being stymied by legislative overrides.³⁰

Some vetoes have been allowed to stand. Gov. McMaster, for example, vetoed “a proviso that strips authority from the Commission on Higher Education to monitor public colleges and universities spending on non-academic projects and facilities. His staff says the CHE should not be debated within the state’s budget, that the debate should take place outside of the fiscal plans for next year.”³¹ CHE, whose members are appointed by the governor and approved by the Senate,³² has long been controversial: “In theory, the commission oversees South Carolina’s public colleges and universities. However, historically, the commission has been weak—by legislative design. Now, legislators have grown frustrated at the commission’s shortcomings, including its inability to curb rising college costs.” According to its own leadership, CHE has in recent years totally failed to “complete 58 of the 160 tasks it is required to do by state law,” including “intensive reviews of colleges and their programs to measure the state’s return on investment, and data-driven vetting of capital projects, including classroom buildings and stadiums.”³³

But, while the CHE has been criticized for having “no real teeth to provide . . . oversight,” and its leadership has in fact acknowledged that it “rubber stamped” \$534 million in building projects,³⁴ the legislature’s decision to remove it from the spending process was decried as an unnecessary abdication of oversight powers.³⁵ Some lawmakers thus supported the governor’s veto, arguing that “if you remove the oversight of the universities and all of their building, the significant deep oversight, then it’s going to be costly in the long run and taxpayers

²⁶ <http://governor.sc.gov/ExecutiveBranch/Documents/H3720.pdf>, accessed 06/26/18.

²⁷ https://www.postandcourier.com/news/s-c-gov-mcmaster-vetoes-million-from-budget-restores-power/article_e7992f50-4f80-11e7-8e6c-af68318a78f2.html, accessed 06/26/18.

²⁸ <https://www.thestate.com/news/politics-government/article193807349.html>, accessed 06/26/18.

²⁹ <https://www.greenvilleonline.com/story/news/education/2018/01/10/state-senators-delay-vote-mcmaster-school-bus-veto/1020825001/>, accessed 06/26/18.

³⁰ <https://www.nytimes.com/2012/07/19/us/gov-nikki-haleys-budget-ax-is-blunted-by-legislators.html>, accessed 06/26/18.

³¹ <http://www.wistv.com/story/35643735/mcmaster-targets-school-buses-arts-parks-money-in-first-vetoes>, accessed 06/26/18.

³² http://www.che.sc.gov/CHE_Docs/ExecutiveDirector/SCHigherEdSummary.pdf, accessed 06/26/18.

³³ <https://www.thestate.com/news/politics-government/article126218549.html>, accessed 06/26/18.

³⁴ <https://www.thestate.com/news/politics-government/article126218549.html>, accessed 06/26/18.

³⁵ https://www.postandcourier.com/opinion/editorials/right-move-on-higher-ed-oversight/article_858ba292-4fb8-11e7-bd99-bf81074d012f.html, accessed 06/26/18.

are going to pay for it and so is the tuition of students.”³⁶ Thus, on the grounds that, despite its flaws, keeping CHE in place would better serve the cause of oversight than abolishing it would, the governor’s veto was not overturned, and the commission retained its influence over higher education spending.

The House Ways and Means Committee archives video recordings of its full committee and its subcommittee hearings online.³⁷ An example from the unfunded pension liability and a proposed plan to produce solvency demonstrates that committee staff are instrumental in the hearings, making a presentation and explaining details for the proposal to the committee.

Oversight Through Committees

According to state law, standing committees in South Carolina are legally required to engage in oversight: “Beginning January 1, 2015, each standing committee shall conduct oversight studies and investigations on all agencies within the standing committee’s subject matter jurisdiction at least once every seven years.”³⁸ These investigations are intended to determine whether or not agencies are acting in compliance with the law and whether they should be continued or eliminated.

Many committees, therefore, are quite active in oversight matters. The website of the House Legislative Oversight Committee states that it aims “[f]or South Carolina agencies to become, and continuously remain, the most effective state agencies in the country through processes which eliminate waste and efficiently deploy resources thereby creating greater confidence in state government.” To achieve this, the committee works to “[d]etermine if agency laws and programs are being implemented and carried out in accordance with the intent of the General Assembly, and whether they should be continued, curtailed or eliminated. Inform the public about state agencies.”³⁹ A summary of the committee’s activities since 2014, as well as full meeting documents, are posted on the website.⁴⁰

The committee and its various subcommittees meet fairly frequently, sometimes as often as four times per month. Video of these meetings is archived on the legislature’s website.⁴¹ While some meetings are relatively brief, consisting of the approval of minutes, discussion of recommendations for future studies, and general administrative matters, the majority of the Oversight Committee’s meetings are between one to two hours; one meeting on June 26, 2018, lasted for nearly four and a half hours. These sessions included testimony from representatives from state agencies, presentations by investigators from the Office of Inspector General, and questions from legislators. These questions tended to be substantive and informed, and suggested that legislators took the oversight process seriously.

There is also evidence that these hearings serve as the basis for legislative action. For example, one of the matters considered during a June 26, 2018, meeting of the House Legislative

³⁶ <http://www.wistv.com/story/35643735/mcmaster-targets-school-buses-arts-parks-money-in-first-vetoes>, accessed 06/26/18.

³⁷ <https://www.scstatehouse.gov/video/archives.php>, accessed 7/24/18.

³⁸ <http://www.scstatehouse.gov/code/t02c002.php>, accessed 06/26/18.

³⁹ <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>, accessed 06/26/18.

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[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/Committee%20Timeline%20\(June%2025,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/Committee%20Timeline%20(June%2025,%202018).pdf), accessed 06/26/18.

⁴¹ <http://www.scstatehouse.gov/video/archives.php>, accessed 06/27/18.

Oversight Committee pertained to the John de la Howe School,⁴² which “offers education programs, operates a therapeutic wilderness program in addition to offering residential services” for at-risk students.⁴³ An investigation by the Office of the Inspector General, which was requested by lawmakers, revealed gross mismanagement at the school, including a lack of internal controls and documentation for requisitions and inventory, uncollected tuitions, molding and decaying buildings, and an approximately \$6 million budget, despite the fact that no more than 30 students are enrolled there at any given time.⁴⁴ Another problem that was identified pertained to the Board of Trustees, who are appointed by the governor. At the time of the hearing, there were three vacancies on the nine member board, and three currently serving members had poor attendance records, present only for 61%, 41%, and 11% of the meetings held during a three-year period from 2016 to 2018. One committee member subsequently wrote a letter to the governor urging him to “take action sooner rather than later with regards to the composition of the John de la Howe School Board of Trustees” and informing him that the Oversight Committee’s Education and Cultural Affairs Subcommittee was recommending explicitly authorizing the governor to remove trustees at any time should they fail to regularly attend meetings.⁴⁵

The June 2018 hearing was not the first time that the John de la Howe school had been considered by the committee. The school had actually been the subject of controversy for several years, and in May 2018, after having held nine hearings on the institution since January 2017, the South Carolina House of Representatives passed legislation⁴⁶ that would have merged John de la Howe with Clemson University. The state senate, however, “disagreed . . . and changed the bill⁴⁷ to have Clemson look at the school, work with the board and prepare a plan to implement the purposes of de la Howe’s will. The plan is to be turned in by September 2018, according to the amendment. Lawmakers would then look at the plan and take action on it.”⁴⁸

The Legislative Audit Council (LAC), working on behalf of the legislature, has also been instrumental in bringing public attention to malfeasance on the part of state agencies. In 2015, for example, legislators “requested the Legislative Audit Council to conduct a review of the South Carolina Department of Agriculture’s (SCDA) relocation, revenues, expenditures, and leases” related to a state-funded farmer’s market.⁴⁹ The market came to legislators’ attention because in 2015 the State Ports Authority.⁵⁰ Chairman Bill Stern, who is also an influential real

⁴² <http://delahowe.k12.sc.us/about-us/>, accessed 06/27/18.

⁴³ <https://www.greenvilleonline.com/story/news/local/south-carolina/2018/05/10/should-clemson-take-over-200-year-old-john-de-la-howe-school/595118002/>, accessed 06/27/18.

⁴⁴

https://oig.sc.gov/sites/default/files/Documents/Limited_Review_of_the_John_De_La_%20Howe_School_Operations_and_2017_Feasibility_Report.pdf, accessed 06/28/18.

⁴⁵

https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DNR/6.26.18_Meeting_Packet_LOC.PDF, attendance at board meetings, p. 427. Accessed 06/27/18.

⁴⁶ http://www.scstatehouse.gov/sess122_2017-2018/prever/596_20180509.htm, accessed 06/27/18.

⁴⁷ http://www.scstatehouse.gov/sess122_2017-2018/prever/596_20180510.htm, accessed 06/27/18.

⁴⁸ <https://www.greenvilleonline.com/story/news/local/south-carolina/2018/05/10/should-clemson-take-over-200-year-old-john-de-la-howe-school/595118002/>, accessed 06/27/18.

⁴⁹ http://lac.sc.gov/LAC_Reports/2015/Documents/State_Farmers_Market.pdf, accessed 06/27/18.

⁵⁰ It is worth noting that the SPA itself has been under investigation on allegations of “money laundering, influence peddling and other misconduct,” and that these investigations have involved several members of the South Carolina General Assembly. However, this probe is being conducted by the State Law Enforcement Division and the FBI, and so does not necessarily involve the subject of legislative oversight. See:

estate mogul, sold a parcel of land to the Department of Agriculture⁵¹ for the purpose of relocating the farmers market from its former location, a move that was supported by a resolution of the general assembly.⁵²

The LAC report noted that the land was purchased in 2010 for a price of \$1.57 million and subsequently sold to the Department of Agriculture for \$6.07 million. While Stern contended that he had added value to the property in the form of capital improvements, the auditors found that the Department of Agriculture did not have multiple assessors provide their written assessments of the property, nor did it seek documentation on the properties revenue generation, simply relying on Stern's word. Moreover, the auditors found that Stern had actually made financial contributions to the Commissioner of Agriculture's election campaigns, which was not disclosed prior to the conclusion of the deal. Finally, the auditors found that the Department of Agriculture had subsequently mismanaged the site, leading to meagre revenues, confusion among owners of private property at the farmer's market site, and a failure to collect rents, assess fees, or even outline formal policies and procedures for doing so.⁵³

The Department of Agriculture responded vigorously to the report, rejecting most of its findings and claiming that a previous audit on the farmer's market, the basis for the 2015 report, was fraught with "numerous errors." Much of the 2015 audit, in its view, was therefore "misleading," "irrelevant," and "inaccurate." Some recommendations, such as those pertaining to the installation of a security system and the implementation of fees and other new income streams, were accepted by the agency. But the agency response also accuses auditors of having "blatant political overtones," of "not comprehending the information provided to LAC," a "predisposition toward negative findings," "[a]n alarming lack of basic working knowledge of business principles," and "a refusal to recognize errors when made, and inattention in gathering facts."⁵⁴ The legislature, meanwhile, has taken no action vis-à-vis either the Department of Agriculture or the farmer's market, leaving the agency largely free to ignore the LAC's recommendations.

There is evidence, however, that the legislature does in some instances successfully act on the recommendations provided by the LAC. For example, in response to recommendations made in an audit of the Small Business Development Centers (SBDC) Program,⁵⁵ legislators proposed an amendment that would prohibit appropriations to or expenditures by the SBDC "until the program provides unfettered access of its entire client database to the Legislative Audit Council as requested in the July 2016 LAC report, "A Review of the Small Business Development Centers Programs."⁵⁶ During the May 3, 2018, meeting of the Oversight Committee, the chair presented a graph showing legislative action in the 122nd General Assembly, lasting January 9 to May 10, 2018, in response to audit reports. It demonstrates that

https://www.postandcourier.com/politics/fbi-investigating-south-carolina-statehouse-corruption-could-expand-scope-of/article_954c1d06-6ca5-11e7-953d-9f2de89f849c.html, accessed 06/27/18.

⁵¹ <https://agriculture.sc.gov/divisions/agency-operations/state-farmers-markets/sc-state-farmers-market/>, accessed 06/27/18.

⁵² <https://www.thestate.com/news/business/article32689554.html>, accessed 06/27/18.

⁵³ http://lac.sc.gov/LAC_Reports/2015/Documents/State_Farmers_Market.pdf, accessed 06/27/18.

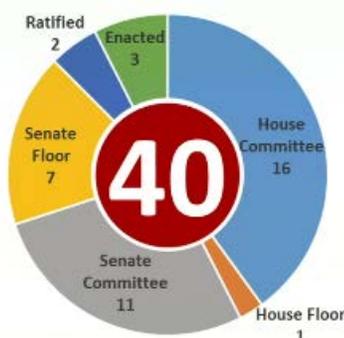
⁵⁴ http://lac.sc.gov/LAC_Reports/2015/Documents/State_Farmers_Market.pdf, accessed 06/27/18.

⁵⁵ http://lac.sc.gov/LAC_Reports/2016/Documents/SBDC.pdf, accessed 06/26/18.

⁵⁶ <https://www.scstatehouse.gov/amendments.php?KEY=27076> , accessed 06/26/18.

40 bills have been introduced, although most are still in committees. But two have been ratified and three have been enacted.⁵⁷

40 Bills Implementing House Legislative Oversight Committee's Recommendations



As mentioned above, the LAC conducted an extensive audit of the South Carolina Department of Juvenile Justice (SCDJJ), which was initiated in 2015⁵⁸ and published in 2017.⁵⁹ The House Legislative Oversight Subcommittee on Law Enforcement and Criminal Justice, a four legislator subset of the House Oversight Committee, held a nearly five hour hearing on this report on January 26, 2017, that included detailed testimony from LAC audit staff and agency response to the audit. Highlights of that hearing focused on several very serious problems: unreported deaths that were not investigated despite allegations that one of them involve “foul play,” gang violence the officers lack of training to deal with and uncertified staff working in positions that state laws prohibit them from holding, failure of staff to enroll in training programs provided to them, and of the 21 enrollees in the training program only 13 were certified. In addition, there were teachers whose highest degree earned was a high school diploma and required staff support visits to at-risk youth that were not documented as occurring, among other concerns.

Questions asked by legislators were insightful, probing and challenging when directed toward the agency representatives. Immediately following that hearing, the director of the SCDJJ resigned. The subcommittee met again on January 31, 2017, in a “work session” to discuss additional information on several pending issues. They spent the first 20 minutes of this meeting itemizing additional information that they wanted from SCDJJ based on the January 26, 2017, meeting. One of the subcommittee members asked to see the contracts that SCDJJ had with AMIKids for operation of some its facilities. AMIKids operates institutional “camps” for at risk youth in nine states, including South Carolina.⁶⁰ One of the deaths occurred at the facility

⁵⁷ <https://www.scstatehouse.gov/video/archives.php>, Meeting of the House Oversight Committee, May 3, 2018, accessed 7/24/18.

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[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Notification%20to%20full%20Committee%20and%20Subcommittee%20Study%20-%20DJJ%20\(pdf\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Notification%20to%20full%20Committee%20and%20Subcommittee%20Study%20-%20DJJ%20(pdf).pdf), accessed 7/25/18.

⁵⁹ http://lac.sc.gov/LAC_Reports/2017/Documents/DJJ.pdf, accessed 7/25/18.

⁶⁰ <http://www.amikids.org/programs-and-services>, accessed 7/25/18.

operated by AMIKids. This appears to be another example of legislative oversight of state contracts occurring as an outgrowth of the legislative audit process—a pattern we have found in several other states. The subcommittee held two other meetings to hear constituent testimony and to discuss implementation of the audit recommendations with which the agency agreed. Given the findings of the audit report presented at the January 26th hearing, the subcommittees recommendations seem very modest. “The Subcommittee’s recommendations for revisions to the agency’s internal operations fall into the following categories: (a) update case manager policies; (b) determine and eliminate duplication in case manager activities; (c) cite to source of data when providing information; (d) review the appropriateness of agency employees’ membership in state retirement systems; and (e) provide quarterly updates. There are no specific recommendations with regards to continuance of agency programs or elimination of agency programs.”⁶¹ The agency’s budget has been increased consistently for the four years⁶² indicating that the legislature is willing to provide resources needed to improve staff training and provide other resources needed to improve its performance. And the subcommittee members introduced legislation, H 3848, which requires that the Department of Juvenile Justice report child deaths to the coroner and law enforcement or face criminal penalties. The bill was referred to the Judiciary Committee on February 23, 2017. There has been no further action taken.⁶³

Clearly, the House Oversight Committee and its subcommittees are active, and they take oversight of state agencies seriously. It is difficult, however, to determine just how active other standing committees are. The House Judiciary Committee did not meet at all during 2016 and only twice in 2017. Those two meetings, however, were subcommittee meetings rather than the full committee: the General Laws Subcommittee met May 3, 2017, and the Constitutional Laws Subcommittee on November 14, 2017. It is, therefore, unclear what the fate of H 3848 will be, given the infrequent activity of the House Judiciary Committee. The Senate Agriculture and Natural Resources Committee website,⁶⁴ which we discussed earlier, shows no activity since 2017, and no video archives exist for meetings after June 2015. The Subcommittee on Agriculture of the House Agriculture, Natural Resources and Environmental Affairs Committee did meet twice during 2018 despite not meeting in 2017.⁶⁵ Similarly, the Senate Banking and Insurance Committee’s website has not been updated since March 2017, and, although it seems to have met relatively frequently in 2015 and 2016, it has archived video for only one meeting from 2017. It appears that many substantive standing committees are not active at all, let alone active in overseeing state agencies under their jurisdiction.

On the other hand, some committees do meet quite regularly. The Senate Judiciary Committee met 32 times in 2018. But several of these meetings were to consider nominees. There were hearings discussing a bill on personhood of fetuses, a subcommittee devoted to determining whether legislative term limits would be appropriate for the South Carolina legislature, and a bill about littering. Oversight does not seem to be a major activity for this committee in the hearings sampled from the video archives for the chamber.

61

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Notification%20to%20full%20Committee%20and%20Subcommittee%20Study%20-%20DJJ%20\(pdf\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/DJJ/Notification%20to%20full%20Committee%20and%20Subcommittee%20Study%20-%20DJJ%20(pdf).pdf), p. 2. Accessed 7/25/18.

⁶² <https://www.fitsnews.com/2018/06/20/scdjj-new-scandals-no-accountability/>, accessed 7/25/18.

⁶³ <https://www.scstatehouse.gov/billsearch.php>, accessed 7/25/17.

⁶⁴ <https://www.scstatehouse.gov/CommitteeInfo/senateagri.php>, accessed 06/28/18.

⁶⁵ <https://www.scstatehouse.gov/CommitteeInfo/houseagri.php>, accessed 7/26/18.

Oversight Through the Administrative Rules Process

After state agencies publish a draft synopsis of a proposed administrative rule in the State Register, according to state law, “all regulations promulgated or proposed to be promulgated by state agencies having general public applicability and legal effect . . . must be filed with the Legislative Council,”⁶⁶ which then submits the proposed regulation to the general assembly and provides preliminary studies and recommendations if asked to do so by the general assembly. A request by a minimum of two legislators can force the five-member Budget and Control Board (BCB) to review the rule. The BCB consists of three executive branch officials, (Governor, Treasurer, and Comptroller) and the two legislative chamber leaders. This review includes benefits and costs, feasibility, an implementation plan, as well as environmental and public health consequences if the rule is blocked. The President of the Senate and the Speaker of the House then refer the regulation to the substantive standing committee overseeing the agency in question, as South Carolina does not have a dedicated legislative regulatory review committee. The committees then have 120 days to review the proposal. Committees can request that the agency withdraw, revise, and resubmit the rule. If the regulation is not resubmitted within 30 days of being withdrawn, it is considered to be permanently withdrawn. Then the general assembly can pass a joint resolution approving or disapproving the rule. If no resolution is introduced that either approves or disapproves the regulation by the end of the 120 day review period, the regulation is considered to be approved. All regulations in South Carolina are supposed to be reviewed every five years, with a particular eye towards impacts on small business (South Carolina Code, Sectiona 1-23). Agencies are required to provide a list every five years to the LAC of the rules the agency plans to keep, repeal, or alter.

Schwartz (2010) assessed South Carolina’s rule review process as “standardless, inconsistent and opaque” (p. 362) due to the involvement of so many different committees. In the same vein, business interests criticized South Carolina’s regulatory environment as opaque, unreasonable, and cumbersome.⁶⁷ This prompted then-Gov. Nikki Haley to issue an executive order establishing a Regulatory Review Task Force to study ways to improve rule review. This task force included several legislators, members of the business community, environmental interests, and the health care sector. Among the task force’s suggestions were: the consolidation of a variety of regulatory powers under fewer departments, streamlining permitting processes, and making regulations easier for the public to track. Importantly, the task force also suggested several changes that would increase legislative oversight of the regulatory review process, including implementing regulatory sunseting, which would strengthen the existing five year review cycle by making regulations expire unless explicitly renewed, expanding the oversight capacity of the legislative council by making it easier to reject regulations if the rule exceeds statutory requirements, and requiring up/down votes on all regulations in the general assembly, rather than automatically approving regulations that do not receive a vote. A bill to enact these changes died in committee in 2013.⁶⁸ No further action has been taken to make the changes recommended by the task force.

⁶⁶ <https://administrativelaw.uslegal.com/administrative-procedure-acts/south-carolina/>, accessed 06/28/18.

⁶⁷ <https://www.scribd.com/document/184494163/Regulatory-Review-Task-Force-executive-summary#download>, accessed 06/28/18.

⁶⁸ <https://legiscan.com/SC/text/H3128/2013>, accessed 06/28/18.

In practice, Schwartz says South Carolina's legislature does occasionally pass a joint resolution disapproving a rule, but these resolutions only rarely become law. Agency impact assessments are not rigorous—often there are no numbers used to assess economic impacts. The public health and environmental and economic impacts might be assessed as “moderate” rather than providing dollar estimates of benefits and costs (Schwartz, 2010).

More recently, beginning in 2015, the South Carolina House established a committee on Regulations and Administrative Procedures. This 13-member committee operates with four subcommittees: Education, Business, Commerce and Administrative, Health, and Environment and Natural Resources. This collection of subcommittees considered 121 agency rules promulgated during the 2017-18 legislative session. They sent 18 of these back to the originating agency. Ten of these were withdrawn by the agency, while eight were revised, resubmitted and approved. Five reviews were pending. The Senate continues to use the earlier committee system for reviewing rules. But it appears that the House has responded to various critiques of the state's rule review process.

Oversight Through Advice and Consent

South Carolina's governor has relatively limited appointment powers. To begin with, the state has nine separately elected executive positions, substantially reducing the governor's influence over the cabinet. There are over 250 boards and commissions in South Carolina.⁶⁹ When former-Gov. Haley had been in office for one and a half years, media reported that there were more than 600 vacancies on these various boards and commissions. Some of these are important, (e.g., the State Ethics Commission), while others are likely less so (e.g., War Between the States Heritage Trust Advisory Board).⁷⁰ Until recently, all gubernatorial appointees had to be approved by the state senate.⁷¹ However, a few years ago, the general assembly streamlined the appointment process by eliminating legislative approval for many positions.⁷² A bill (H. 3146) introduced in the general assembly during the 2017-18 session would have shifted the State Superintendent of Education to a gubernatorial appointment. Rather than pass the bill, senators decided to let the voters decide the question during the November 2018.⁷³ South Carolina Amendment 1 was defeated quite easily with 60% of voters rejecting the proposed change to make the state superintendent position an executive appointment.⁷⁴ Although there are some reasonable arguments for avoiding a statewide political campaign for this office, this would decrease the legislature's opportunities to check the appointment power of the executive branch. That said, there do not seem to be any recent examples of nominees being rejected. Therefore, it does not appear that this is a power that the legislature wields effectively or frequently.

⁶⁹ <http://governor.sc.gov/ExecutiveBranch/Pages/BoardsandCommissions.aspx>, accessed 06/29/18.

⁷⁰ <https://www.charlestoncitypaper.com/TheBattery/archives/2013/09/12/gov-haley-has-neglected-to-appoint-nearly-600-positions-on-state-boards-and-commissions>, accessed 7/25/18.

⁷¹ <https://www.scstatehouse.gov/code/t01c003.php>, accessed 06/29/18.

⁷² <https://www.charlestoncitypaper.com/TheBattery/archives/2013/09/12/gov-haley-has-neglected-to-appoint-nearly-600-positions-on-state-boards-and-commissions>, accessed 06/29/18.

⁷³ <https://www.thestate.com/opinion/opn-columns-blogs/cindi-ross-scopepe/article210772699.html>, accessed 7/25/18.

⁷⁴ [https://ballotpedia.org/South_Carolina_Amendment_1,_Appointed_Superintendent_of_Education_Measure_\(2018\)](https://ballotpedia.org/South_Carolina_Amendment_1,_Appointed_Superintendent_of_Education_Measure_(2018)), accessed 12/13/18

South Carolina's governors make frequent use of executive orders: current Gov. McMaster has issued 61 such orders since coming to office in 2017.⁷⁵ Many of these pertain to states of emergency, the flying of flags at half-staff, and similar topics. At other times, however, executive orders have been used to establish executive oversight groups, order reviews of cabinet agency regulations, or make various appointments.

Executive orders are not subject to any administrative procedures act or legislative review. The governor does not have the power to restructure the government, and any government restructuring must be accomplished through legislation. A reorganization took place most recently in 2014, when the legislature passed the "South Carolina Restructuring Act."⁷⁶ This act was a massive reorganization of how South Carolina's state agencies communicate and coordinate their efforts by the creation of a Department of Administration⁷⁷ and splitting budgetary responsibilities between the executive and legislature, as discussed in the earlier section on the Revenue and Fiscal Affairs Office.⁷⁸ This reorganization also created a legislative oversight process whereby the House and Senate separately will review the operations of state agencies on a rotating schedule every seven years.⁷⁹ While South Carolina does not regularly reorganize the form and functions of state agencies, this act demonstrates that it is capable of massive and needed reorganizations.

Oversight Through Monitoring of State Contracts

State contracts in South Carolina are administered by the Procurement Services division of the State Fiscal Accountability Authority (SFAA).⁸⁰ The state's Consolidated Procurement Code does not include any language specifying an oversight role for the legislature beyond occasionally reviewing a report furnished by the SFAA.⁸¹ The legislature uses the audit process to insert itself into the oversight of contracts, however. As we noted above, the House Oversight Subcommittee on Law Enforcement and Criminal Justice was eager to hear from the DJJ about the contract with AIMKids, which operated residential facilities for juveniles at which serious problems occurred. But as is true in most states, the legislature's efforts in this area of severely constrained.

Oversight Through Automatic Mechanisms

⁷⁵ <https://www.scstatehouse.gov/reports/ExecutiveOrders/execrpts.php>, accessed 06/29/18.

⁷⁶ https://www.scstatehouse.gov/sess120_2013-2014/bills/22.htm, accessed 06/29/18.

⁷⁷ At the time, South Carolina was the only state not have a Department of Administration.

⁷⁸ <https://www.sctv.org/stories/palmetto-scene/2014/gov-nikki-haley-signs-government-restructuring-act-2014>, accessed 12/18/18

⁷⁹ <https://www.sctv.org/stories/palmetto-scene/2014/gov-nikki-haley-signs-government-restructuring-act-2014>, accessed 12/18/18

⁸⁰ <https://procurement.sc.gov/>, accessed 06/28/18.

⁸¹ <https://www.scstatehouse.gov/code/t11c035.php>, accessed 06/28/18.

South Carolina previously had a sunset law, but it was repealed in 1998. Currently, the state has neither sunset nor sunrise laws. The one exception is the five-year review of agency rules, discussed in the section, Oversight Through Administrative Rules Review.

Methods and Limitations

Of the seven people we contacted to request interviews, two responded. Committee hearings are archived and readily available along with detailed minutes of meetings. Overall, South Carolina's readily available resources allowed us to better assess the legislature's levels of oversight.

References

- Edwards, Chris. 2006. *State Bureaucracy Update*. Washington D.C.: CATO Institute.
- Ferguson, Margaret. 2013. "The Governors and the Executive Branch." Chap. 7 in *Politics in the American States*, edited by Virginia Gray, Russel Hanson and Thad Kousser, 194-231.
- Shor, B., and McCarty, N., 2015. State Legislative Aggregate Ideology Data June 2015 Update.
- Squire, P. (2017). A Squire Index Update. *State Politics & Policy Quarterly*, 17(4), 361-371.
- Schwartz, Jason A. 2010. *52 Experiments with Regulatory Review: The Political and Economic Inputs into State Rulemaking*. Institute for Policy Integrity, New York University School of Law, Report No. 6, November 2010.