



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Texas

Capacity and Usage Assessment

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

Summary Assessment

The unique distribution of authority among the branches and agencies of Texas' state government has resulted in an unusually powerful state legislature. This characteristic, coupled with the legislature's direct control over three major analytic bureaucracies, and the outsized influence of those bureaucracies (particularly the Legislative Budget Board), creates the potential for extensive legislative oversight. Various factors, however, prevent high quality oversight from occurring. Foremost among these factors is that the members of the committees and boards that direct the activities of the analytic bureaucracies are appointed by the lieutenant governor and the speaker of the house. When both offices are held by members of the same party, as they typically are, objectively-conducted oversight is less likely to occur. High levels of partisan polarization within the legislature exacerbate this. Further, the practice of directly electing most agency heads limits the legislature's ability to conduct oversight of such officials.

Major Strengths

The Texas legislature appears to be responsive to recommendations from the Legislative Budget Board (LBB). Out of 106 recommendations listed in the Government Effectiveness and Efficiency Report for the 84th Legislature, 44 were approved. In addition, Texas' Sunset Advisory Commission claimed in 2016-17 to have saved or gained nearly \$34 million in revenue through consolidation or removal of ineffective agencies, but this success depends on a legislature that makes effective use of its sunset capabilities.

Challenges

Sometimes the legislature fails to heed the warnings or accept the recommendations of its analytic bureaucracies. In the aftermath of the 2010 Deepwater Horizon oil spill, the Texas legislature adopted only one of three recommendations by the LBB concerning fiscal oversight.

Additionally, while reports from the State Auditor's Office (SAO) detailing corrupt contracting practices at the Texas Health and Human Services Commission and the Department of State Health Services did lead to the resignation of key officials, reported mismanagement by the SAO dating back to 2014-15 had gone unheeded by the legislature.

Relevant Institutional Characteristics

The National Conference of State Legislatures classifies Texas' legislature as a hybrid between full and part time.¹ Members of both the house and senate are paid \$7,200 annually, plus \$190 per diem while the legislature is in session.² Regular legislative sessions last 140 days, and take place once every other year, although the governor may convene a special session at any time he or she chooses.³ The legislature has 2,359 staff members, 2,059 of whom are permanent staff.⁴ No term limits exist for Texas legislators.⁵

The Texas governor's powers are relatively weak in comparison to those of the legislature. The governor is part of what is termed a "plural executive" branch. A plural executive is an institutional arrangement in some states where executive power is distributed throughout the executive branch, often with other executive offices being elected independently of the governor. Texas is an extreme example, with six of the seven major executive offices being elected separately from the governor. These offices include the lieutenant governor, attorney general, land commissioner, commissioner of agriculture, comptroller, and commissioner of the General Land Office. Additionally, heads of major regulatory agencies like the Railroad Commission and State Board of Education are directly elected.

Accordingly, the legislature is comparatively strong, with relatively extensive powers. The relative power of the legislature and executive is discussed further, below. A key player in the executive and legislative branches is the lieutenant governor. The lieutenant governor contends with the governor as the most powerful office in Texas government. The lieutenant governor presides over the Texas Senate, appoints committee chairs and can also assign bills to specific senate committees. Additionally, he serves as co-chair of the influential Legislative Budget Board (LBB) and Legislative Audit Committee. In the case of the LBB he serves as co-chair with the speaker of the house and appoints two additional board members from the senate to the 10-member LBB. The speaker makes a similar appointment from the house and the remaining seats are filled by the respective chairs of the Budget and Appropriations/Finance Committees. As a result, the lieutenant governor has a direct role in appointing four of the 10 board members, not including himself.

The governor shares budget-making power with the legislature. The governor has the power to use a line-item veto on appropriations bills only. The legislature can override such a veto with a two-thirds majority vote (Beyle, 2008). According to the Council of State Governments' Governors' Institutional Powers Index (2015), the office of Texas governor is the tenth least powerful among the 50 states (Ferguson, 2015). Additionally, Texas is one of the few states that utilize a biennial budgeting process. To provide some budgetary context, the biennial Texas budget for fiscal year 2016-17 was \$209 billion. Texas governors were historically modest in their use of the veto powers: 62 for Ann Richards, 95 for George W. Bush. These are typical

¹ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 7/10/18.

² <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>, accessed 7/10/18.

³ http://www.laits.utexas.edu/txp_media/html/leg/0200.html, accessed 7/10/18.

⁴ <http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf>, accessed 7/10/18.

⁵ <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>, accessed 7/10/18.

for most past governors. Rick Perry, however, departed from this pattern with 248 vetoes. It is possible that the relationship between the governor and legislature is changing in Texas, but this could just be the approach taken by one specific governor.⁶

Texas has a larger than average share of its citizens working in state and local government (12.3% compared to 11.3% nationally). This places Texas as the state with the 14th largest proportion of its citizens employed in state and local government. The education section is especially large (7.4% compared to 6.1% nationally), accounting for most of the difference between Texas and the rest of the nation (Edwards, 2006).

Political Context

In 2018, Republicans controlled both houses of the legislature, as well as the governorship. Republicans hold a 93-55 majority in the house (with two seats vacant)⁷, and a 20-10 majority in the senate (with one vacancy).⁸ According to Shor and McCarty (2015), in 2014 Texas' house of representatives had the fourth-highest level of partisan polarization in the nation.

Historically, the Democratic Party has dominated Texas state politics. This situation has been reversed in recent decades. The first post-reconstruction Republican governor was elected in 1979. Republicans have held the governorship since 1995. They first took control of the state senate in 1997, and the state house in 2003. Subsequently, they have held uninterrupted majorities in both houses (Republican Party of Texas, 2017).⁹ Therefore, during the last 15 years, Texas has been a Republican trifecta.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

There are three analytic bureaucracies within the legislative branch. They include the State Auditor's Office (SAO), the Legislative Budget Board (LBB), and the Sunset Advisory Commission. Each was established by statute.

The State Auditor's Office was established by the legislature in 1943.¹⁰ Its purpose is to "perform audits, reviews, and investigations of any entity receiving state funds, including state agencies and higher education institutions."¹¹ During fiscal year 2016, it conducted 41 audits of subjects including state agencies, pension funds, universities, boards, commissions, and some county-level entities.¹² It also monitored compliance with federally-mandated directives, and provided reports to the legislature about financial practices of government entities within the state.¹³ Although it has the authority to request information from agencies, it lacks subpoena power. It is not authorized to conduct economy and efficiency audits, program audits or sunset reviews, concentrating instead on financial audits, IT audits, and financial statements. It is,

⁶ <http://texaspolitics.utexas.edu/archive/html/exec/governors/index.html>, accessed 7/4/18.

⁷ https://ballotpedia.org/Texas_House_of_Representatives, accessed 7/10/18.

⁸ https://ballotpedia.org/Texas_State_Senate, accessed 7/10/18.

⁹ <https://www.texasgop.org/overview-and-history/>, accessed 7/10/18.

¹⁰ <https://www.sao.texas.gov/About/History/>, accessed 7/10/18.

¹¹ <https://www.sao.texas.gov/About/>, accessed 7/10/18.

¹² https://www.sao.texas.gov/Documents/AnnualReports/SAOAnnualReport_FY2016.pdf, accessed 7/10/18.

¹³ https://www.sao.texas.gov/Documents/AnnualReports/SAOAnnualReport_FY2016.pdf, accessed 7/10/18.

however, empowered to assess performance measures. Audits are either mandated by state law or chosen by the agency director rather than by legislators (NASACT, 2015).

The SAO is subject to “the six-member Legislative Audit Committee (LAC), a permanent standing joint committee of the State Legislature.”¹⁴ LAC members include the lieutenant governor and the house speaker, who appoint the remaining members: one each from the House Appropriations, House Ways and Means, and Senate Finance committees, as well as one additional senator.¹⁵ From 2011-2015, the SAO averaged 47 audits per year of various state agencies. From 2013 to 2016 the SAO reports that it completed 52 performance audits of the state agencies and institutions of higher education, which means that SAO conducts approximately 12 to 13 performance audits per year. Based on these 2013-2016 audits it made 703 recommendations of which 79 percent were fully implemented by February of 2018.¹⁶ For fiscal year 2017, the SAO budget appropriation was approximately \$21 million to conduct audits.¹⁷ It employs a staff of 215, 127 of whom are directly involved in producing audits.

The LBB is a joint standing committee comprised of ten legislators, appointed by the lieutenant governor and house speaker. It was established by the legislature in 1949. It employs over 100 staff members, who are tasked with reviewing and analyzing the financial operations of various state and local entities, assisting agencies’ fiscal operations, studying the potential costs of proposed legislation. “During the legislative session, the LBB supports the legislative appropriations process by providing staff resources for the House Appropriations Committee, the Senate Finance Committee, and the Conference Committee on Appropriations.” State agencies must report contracts exceeding \$50,000 to the LBB, with some exceptions (Texas Legislative Budget Board, 2017).¹⁸ For fiscal year 2016-17 the LBB’s budget was \$23 million. The LBB provides biennial reports on the overall effectiveness of state programs. This massive report, entitled State Government Effectiveness and Efficiency Report (GEER), is distributed to both the governor and to the legislature. It includes various recommendations for elected officials to consider. The 2015 GEER conducted 49 analyses of government effectiveness and efficiency and made 106 specific recommendations ranging from an economic stabilization fund, addressing the insolvency of the state’s teacher retirement insurance fund, coordinating and oversight of border security, and improving oversight of funds related to the Deepwater Horizon oil spill.¹⁹

In terms of performance reviews, the LBB is authorized to conduct performance reviews and evaluations of state agencies, as well as local school districts and institutions of higher learning (interview notes, 5/21/18). Every biennium the LBB compiles the GEER, which presents legislators with findings and recommendations resulting from reviews and related policy analyses. For example, the 2015 GEER mentioned above summarized 49 reports and made 106 recommendations for improving state government (interview notes, 5/21/18). The legislature acted on 20 of the 34 report’s recommendations for statutory and budgetary changes. This suggests some responsiveness on the part of legislators on key appropriations and standing committees to the recommendations of a central analytic bureaucracy.

The Comptroller’s Office “was established by Article IV, Sections 1 and 23 of the Constitution of 1876.” It serves as the state’s tax collector, as well as auditor of state tax

¹⁴ <https://www.sao.texas.gov/About/LegislativeAuditCommittee>, accessed 7/10/18.

¹⁵ <https://www.sao.texas.gov/About/LegislativeAuditCommittee>, accessed 7/10/18.

¹⁶ <http://www.sao.texas.gov/reports/main/18-021.pdf>, accessed 1/11/19.

¹⁷ http://www.lbb.state.tx.us/Documents/Publications/Fiscal_SizeUp/Fiscal_SizeUp.pdf, p. 546. Accessed 4/23/18. For the biennium fiscal year 2016-2017 the SAO was appropriated \$43.4 million.

¹⁸ <http://www.lbb.state.tx.us/responsibilities.aspx>, accessed 4/23/18.

¹⁹ http://www.lbb.state.tx.us/Documents/Publications/GEER/Government_Effectiveness_and_Efficiency_Report_2015.pdf, accessed 1/11/19

collection. It also “submits financial reports to the governor and the legislature with statements on the previous fiscal year, outstanding appropriations, and estimates of anticipated revenue.”²⁰

The Sunset Advisory Commission was established in 1977 by the legislature.²¹ Its functions are discussed below, under “Automatic Oversight Mechanisms.”

Oversight Through the Appropriations Process

The Senate Finance and House Appropriations Committees’ main oversight responsibilities include examining and amending, as well as holding hearings on, the general appropriations bill, prior to its submission to the full legislature.²² These committees meet several times per week during odd-numbered years, when developing a budget. But in even numbered years, the committee meets once a month or less. In-depth oversight of state agencies’ finances appears to occur primarily through the LBB, technically its own joint standing committee. The committee’s responsibilities include drafting appropriations bills and providing information and advice to committees.²³

In the GEER report produced by the LBB, various legislative and rules recommendations are made to legislators. One key area that impacts Texas is the presence of natural disasters, like hurricanes and tornadoes, and man-made disasters like the Deepwater Horizon oil spill. There is an appropriation subcommittee, Appropriations Subcommittee on Disaster Impact and Recovery, tasked with managing the often-complicated financial responses to these disasters. In the 2015 GEER report, the LBB analyzed oversight of funds related to the spill. The Deepwater Horizon explosion released nearly 5 million barrels of oil before finally being capped. As a result, the ecological and economic damage was extensive. Texas currently receives funds from five different sources: BP, an energy company that leased the oil rig; MOEX Offshore, an investor in the oil well; Transocean, the owner and operator of the well; and federal and state funding sources. With nearly \$320 million in restoration funds, fines, and civil penalties, the LBB was concerned that no formal process was in place that required state agencies to provide reports or updates to the legislature.²⁴

The LBB made three specific recommendations to the governor and legislature regarding this lack of oversight. First, to attach a rider in the general appropriations bill requiring agencies that receive, expend, or conduct projects relating to Deepwater funds, to submit quarterly reports to the LBB. The second recommendation is to attach a rider to the general appropriations bill that requires any agency spending \$1 million or more for a project using Deepwater funds to submit an expenditure request to the LBB and governor’s office. The final recommendation is to create a new standing subcommittee in the house and senate finance or appropriation committees to provide oversight for “exceptional fiscal or policy matters such as the influx of oil spill-related funds.”²⁵

In the following legislative session, the Texas legislature adopted only one of the three recommendations, the requirement that agencies send quarterly reports to the LBB on the use of

²⁰ <https://tshaonline.org/handbook/online/articles/mbc04>, accessed 7/10/18.

²¹ <https://www.sunset.texas.gov/about-us/frequently-asked-questions#2>, accessed 7/10/18.

²² http://texaspolitics.utexas.edu/archive/html/pec/features/0403_01/slide3.html, accessed 7/10/18.

²³ <http://www.tlc.texas.gov/docs/legref/legislativeprocess.pdf>, accessed 7/10/18.

²⁴ file:///F:/State%20Oversight%20Project/Government_Effectiveness_and_Efficiency_Report_2015.pdf, p. 85. Accessed 4/23/18.

²⁵ file:///F:/State%20Oversight%20Project/Government_Effectiveness_and_Efficiency_Report_2015.pdf, p. 85. Accessed 4/23/18.

oil spills (interview notes, 5/21/18).²⁶ This suggests that on some issues the Appropriations and Finance Committees pursue oversight less vigorously than the LBB would advise.

The House Appropriations Committee has taken some oversight actions in recent months to examine the failures of the Health and Human Services Commission over the agency's continued contract procurement, monitoring and reporting issues.²⁷ This suggests a somewhat engaged oversight process in the state house of representatives. Currently, however, there have been no hearings scheduled in the Senate Finance Committee regarding this high-profile issue, but there have been hearings in the Senate Health and Human Services Committee.²⁸ This further indicates that there is some reluctance on the part of Texas' legislators with respect to using the appropriations process to conduct oversight.

It appears that the Appropriations Subcommittee on Budget Transparency and Reform consider audit reports and other evidence of needed improvements in state government processes, such as fleet management. That subcommittee met twice during 2017, once on 3/6/17 for an hour and again on 4/4/17 for 1.5 hours.

Oversight Through Committees

Rather than creating separate standing and interim committees, Texas' legislative leaders assign interim "charges" to standing committees that they are responsible for investigating and reporting on. The analytic bureaucracies serve as an oversight resource for the standing committees both during the regular session and during interim. To the extent that the standing committees conduct oversight, it appears to be based on the investigations conducted by the analytic bureaucracies. Indeed, assistance and consultation with the legislature are essential functions of each of the three legislative-branch analytical bureaucracies discussed above.

For instance, the Texas Health and Human Services Commission had serious contract monitoring and procurement issues. Despite these problems, there has been very little action on this high-profile failure. There was one hearing by the House Committee on General Investigations and Ethics in February 2018.²⁹ During that hearing there were multiple witnesses from the state analytic bureaucracies, especially the Legislative Budget Board and the State Auditor Office, but no witnesses from the agency in question--the Health and Human Services Commission. The Joint Health and Human Services Transition Oversight committee met on May 24th, 2018 to investigate this topic. The minutes of the meeting show that the Chief Policy Officer of the Texas Health and Human Services Commission testified. That is the only item recorded on the meeting minutes. This joint oversight committee met again on September 12, 2018 the meeting minutes and witness list show that four state officials testified: three from the state's Health and Human Services Commission and one from the Department of State Health Services. We were unable to find archival recordings that correspond to these hearings. There were no further meetings of this joint committee in 2018. This might suggest limits on the rigor of oversight.

A search of archives of the Legislative Reference Library of Texas for reports on state administrative hearings found one committee report for 2015 (for the Senate Natural Resources and Economic Development committee) and no similar reports for either 2016 or 2017. That

²⁶ Article IX Sec. 7.10 2018-2019, Biennium Reporting Requirement for Deepwater Horizon Oil Spill Funds.

²⁷ <https://www.mystatesman.com/news/state--regional-govt--politics/texas-lawmakers-rebuke-state-health-officials-for-contract-flap-again/Z17KQFQzpwHk78GNPWHMbM/>, accessed 5/1/18.

²⁸ <https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C6102018032110001.PDF>, accessed 5/1/18.

²⁹ http://tlchouse.granicus.com/MediaPlayer.php?view_id=40&clip_id=14800, accessed 5/1/18.

report, entitled Interim Report to the 85th Legislature,³⁰ lists the seven charges for the committee, the three interim hearings held, and the actions taken on each committee charge. Charge 5 (pg. iii) gives the committee authority to “[c]onduct legislative oversight and monitoring of agencies programs under the committee’s jurisdiction.” The report notes (p. 121) that “[t]he committee took no action on this charge.” A summary of the items considered at each of the three committee hearings for this committee documents that charge 5 was the only change for which the committee took no testimony (p. x). In fairness, charge 7, which did receive some attention involved the implementation of a permitting process, which could be a form of oversight. But this report reinforces other evidence that legislative oversight of state agencies is not vigorously pursued by interim committees in Texas.

During the 2017 interim this same committee took action on its charge to oversee the Texas Railroad Committee through a sunset review process. So, there is some evidence in the report it filed³¹ that this time this interim committees conducted oversight, but it appears that this is not a high priority.

Oversight Through the Administrative Rules Process

Texas Government Code 2001 establishes the administrative rules process. Prior to the adoption of a rule, state agencies must perform a variety of reviews, prepare various impact statements, and allow public comment. As part of this process, the legislature is required to conduct a review of the proposed rule, through the pertinent legislative committees. Proposed rules are sent by agencies to the lieutenant governor and the speaker of the house, who in turn forward the rules to the appropriate legislative committee. Under this process, the legislature reviews proposed rules and either supports or rejects them. This is advisory only; it does not formally approve or reject such rules (Sec. 2001.032). These reviews include fiscal impacts, environmental impact statements, and especially an assessment of impacts on small businesses mandated by HB 3430 of 2007. These committees then provide statements declaring their opinion. Such statements, however, are nonbinding.³² Existing rules are reviewed every four years. It is the responsibility of agencies to assess whether the rule is still necessary under Texas law (Sec. 2001.039).

Schwartz (2010) finds that legislative committees and subcommittees rarely if ever review administrative rules. Moreover, the analysis of the impacts of administrative rules focuses almost solely on costs of rules rather than considering benefits to the public of, for example, protection from environmental toxins. Our efforts to find information on instances of administrative rule review led us to a 2011 Senate Committee of Government Organization that was charged with examining the pros and cons of “cost-effectiveness analysis in state agency rule making”³³ This committee reported that the costs associated with mandatory cost-effectiveness analysis would outweigh any benefits, and therefore this analysis should only be considered on a case-by-case basis (p. 3). We were unable to locate other specific instances in which committees reported on their administrative rule review activities.

³⁰ <https://lrl.texas.gov/scanned/interim/84/N219E.pdf>, accessed 1/12/19

³¹ <https://lrl.texas.gov/scanned/interim/85/N219E.pdf>, accessed 1/12/19

³² https://www.lawserver.com/law/state/texas/tx-codes/texas_government_code_chapter_2001, accessed 5/1/18.

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<https://lrl.texas.gov/committees/cmtesDisplay.cfm?from=LegRpt&cmteID=11351&passSearchparams=termid=3355&subject=Administrative%20Rule&from=LegRpt&cftoken=85709074&cfid=75510450%20&chargeSearched=>, accessed 1/12/19

Oversight Through Advice and Consent

The Texas governor's power to make major appointments is relatively limited, as "[t]he only executive official appointed by the governor is the Secretary of State."³⁴ Department heads and state judges are all directly elected, excepting the secretary of state and the heads of some minor agencies. However, the governor can appoint supporters to over 200 different boards and commissions, as well as vacant judicial seats. Gubernatorial appointments must be approved by two-thirds of the state senate. The governor can appoint individuals to interim appointment when the legislature is not in session, which is frequent. Additionally, state senators, much like U.S. senators, observe senatorial courtesy. This allows the senator from the district in which the nominee resides to effectively block or veto the governor's nominee.³⁵

Further complicating the governor's appointment power is the fact that most appointees serve staggered six-year terms, and the governor cannot fire appointees from previous governors.³⁶ As a result, it can take a governor several years to finally get their "people" into place on key boards and commissions. Overall, the Senate Nominations Committee is fairly accommodating of the governor's appointees. From 2001 to 2017, the senate refused to confirm 13 of the hundreds of gubernatorial nominees (interview notes, 5/26/18). The number of nominees the senate refused to confirm peaked in 2015 with five rejected (interview notes, 5/26/18). While most of the rejected nominees have been noncontroversial, in 2013 the governor's nominee for insurance commissioner was rejected. During her time as an interim appointment she had several conflicts with the legislature and was subsequently rejected when the senate reconvened, and her interim appointment concluded (interview notes 5/26/18). Despite these occasional forays into oversight, there have been problems with some recent gubernatorial appointees, (see discussion of the Health and Human Services Commission in the section on State Contracts, below), that suggest that some gubernatorial nominations might need to be scrutinized more carefully.

Texas' governor is not empowered to issue executive orders reorganizing state government or creating agencies and so forth. The legislature has the power to "create new agencies or abolish existing ones."³⁷ It also may modify the purposes and duties of agencies. (Texas Politics Project, 2005).

Other than the limitation on government reorganizations, Texas' governor has wide latitude in issuing executive orders. As is often the case, gubernatorial executive orders—which typically cover things like hurricane evacuations—are not overturned by the legislature. Governors vary widely in the number of orders they issue and in the policy making they attempt through executive orders. When governors issue more controversial executive orders, it appears that the legislature has been quite willing to overturn these. Gov. Perry was especially zealous, by Texas standards, in using this tool, issuing 80 executive orders in 13 years. Some of these were quite controversial. By contrast, Gov. Abbott issued only one executive order during his first two years in office.

In 2007 then-Gov. Perry issued an executive order requiring all Texas girls entering the 6th grade to be vaccinated against human papillomavirus (with the option for parents to fill out a conscientious-objection affidavit form).³⁸ The disease causes cervical cancer, and it could be considered a public health emergency. But the legislature objected vigorously, and it took them

³⁴ https://www.laits.utexas.edu/txp_media/html/exec/print_exec.html#41, accessed 7/10/18.

³⁵ https://www.laits.utexas.edu/txp_media/html/exec/print_exec.html, accessed 5/1/18.

³⁶ http://www.laits.utexas.edu/txp_media/html/exec/0401.html, accessed 5/1/18.

³⁷ http://www.laits.utexas.edu/txp_media/html/leg/0503.html, accessed 7/10/18.

³⁸ <https://www.texastribune.org/2011/08/15/facing-new-scrutiny-perry-walks-back-hpv-decision/>, accessed 11/16/18.

only a few months to overrule him.³⁹ They did this by passing bills by overwhelming (veto-proof) majorities in both chambers, which is the only mechanism they possess to reject an executive order.

Oversight Through Monitoring of State Contracts

The State Auditor's Office (SAO) audits state contracts through its normal review processes, as specified by statute.⁴⁰ As noted above, state agencies must report any contract exceeding \$50,000 to the Legislative Budget Board (LBB). In 2018, the State Auditor's Office issued a report that highlighted the failures of the Texas Health and Human Services Commission and the Department of State Health Services regarding the mishandling of state contracts. The SAO report stated that the commission used "inconsistent methodology, inconsistent math formulas, inaccurate calculations, and data entry errors to score the contracting competition between five companies. Officials also did not verify that the competing companies were qualified for the job."⁴¹ The Health and Human Services Commission (HHSC) has a history of contract mishandling and lack of reporting to the LBB. In 2017, the Commission failed to report at least "42 contracts worth \$100 million to the LBB in a timely manner." Also, in 2014-2015, it was discovered that the HHSC had awarded a \$20 million contract to 21st Century Technologies, a relative newcomer in the fraud software tracking market, through a no-bid competitive process.⁴² Once made public, this resulted in the resignation of the HHSC Deputy Inspector General, three separate investigations and a lawsuit.

As of April 2018, three commission employees had been fired and the Chief Operating Officer and Deputy Executive Commissioner for Procurement and Contracting Services had resigned. These contracting lapses had occurred shortly after a required sunset review and reforms. Despite these reviews, the Health and Human Services Commission still exhibited issues regarding contract management.⁴³ Additionally, the Executive Commissioner for HHSC Charles Smith resigned in May, dogged by the continued contracting management woes at the commission.⁴⁴ On April 18, 2018, the House Appropriations Committee held a hearing on the current contract monitoring and procurement lapses and asked very pointed questions on Executive Commissioner Smith.⁴⁵ Representatives repeatedly inquired how the HHSC could have repeated problems with procurement and reporting of contracts after its recent failures. From Commissioner Smith's testimony, there appears to be a heavy reliance on internal oversight.

The relationship between the SAO and the legislature appear to enhance the power of the Texas legislature to oversee state contracts. This power is still limited to situations that trigger an audit by SAO, but this is more power than many state legislatures have over these service contracts.

³⁹ <https://www.texastribune.org/2017/06/02/analysis-governors-executive-order-doesnt-go-very-far-texas/>, accessed 7/4/18.

⁴⁰ <https://www.sao.texas.gov/About/>, accessed 7/10/18.

⁴¹ <https://www.texastribune.org/2018/04/16/audit-report-finds-two-texas-health-agencies-fault-over-contract-error/>, accessed 5/1/18.

⁴² <https://www.texastribune.org/2015/02/03/21ct-health-commission-recap/>, accessed 5/1/18.

⁴³ <https://www.texastribune.org/2018/04/20/health-commission-official-resigns-amid-contracting-woes/>, accessed 5/1/18.

⁴⁴ <https://www.texastribune.org/2018/05/03/charles-smith-out-head-texas-health-commission/>, accessed 5/1/18.

⁴⁵ www.house.state.tx.us/video-audio/committee-broadcast, accessed 4/18/18.

Oversight Through Automatic Mechanisms

The 12-member Texas Sunset Advisory Commission reviews all agencies prior to the expiration of such agencies' mandate. It is comprised of 10 legislators and two non-legislators, appointed by the lieutenant governor and speaker of the house. The commission's findings and recommendations are provided to each chamber of the legislature through pertinent committees, which either reauthorizes or abolishes each agency, subject to the governor's approval or veto.^{46,47}

Most state agencies are subject to the sunset process. That is, their existence must be periodically reauthorized. Reauthorization is usually required every 12 years. Entities subject to the sunset process include, but are not limited to, departments, boards, commissions, and authorities. Universities and courts are not subject to sunset law.⁴⁸ Since 1977, the Sunset Advisory Commission has conducted nearly 500 reviews and abolished 37 agencies, consolidated 47 more programs and agencies, and nearly 80% of SAC's recommendations become law.⁴⁹ Considering SAC's budget for fiscal year 2016-17 was only \$4.7 million, and it claims to have saved or gained revenue totaling nearly \$34 million over that time, this is impressive rate of return. Finally, every four years agencies review their own rules to determine whether they still fulfill the purposes for which they were initially adopted.

Oversight Through Other Mechanisms

The Legislative Budget Board website also offers citizens the opportunity to submit specific ideas for performance or evaluation audits. However, how often this option is utilized by citizens and acted upon by the LBB is unknown. The LBB could not provide data on the utilization of this online option.

Methods and Limitations

Texas provides archival recordings of committee hearings, but it is hard to locate recordings that correspond to specific dates for a specific committee. Meeting minutes are cryptic. This makes it difficult to follow a line of oversight activity to document the quality of the oversight carried out. We contacted 12 people to request interviews and were able to interview two of them about legislative oversight in Texas.

⁴⁶ <https://www.sunset.texas.gov/about-us/frequently-asked-questions>, accessed 7/10/18.

⁴⁷ <https://www.sunset.texas.gov/how-sunset-works>, accessed 7/10/18.

⁴⁸ <https://www.sunset.texas.gov/about-us/frequently-asked-questions#5>, accessed 7/10/18.

⁴⁹ http://www.lbb.state.tx.us/Documents/Publications/Fiscal_SizeUp/Fiscal_SizeUp.pdf, accessed 7/10/18.

References

- Beyle, T. (2008). The Council of State Governments. Table 4-4. In *The book of the states 2008*. Lexington, KY
- Chang, J. (2018, April 18). Texas lawmakers rebuke state health officials for contract flap — again. *Austin American-Statesman*. Retrieved from <https://www.mystatesman.com/news/state--regional-govt--politics/texas-lawmakers-rebuke-state-health-officials-for-contract-flap-again/Zl7KQFQzpwHk78GNPWHMbm/>
- Council of State Governments, The (2015). Table 8-4. In *The book of the states 2015*. Lexington, KY
- Council of State Governments, The (2016). Table 3.26 legislative review of administrative rules/regulations: Powers. In *The book of the states 2016*. P. 128. Retrieved from <http://knowledgecenter.csg.org/kc/system/files/3.26%202016.pdf>;
- Council of State Governments, The (2016). Table 3.27 summary of sunset legislation. In *The book of the states 2016*. Retrieved from <http://knowledgecenter.csg.org/kc/system/files/3.27%202016.pdf>
- Evans, M. (2018, April 16). State auditor finds more contracting errors made by health agencies. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2018/04/16/audit-report-finds-two-texas-health-agencies-fault-over-contract-error/>
- Evans, M. (2018, April 20). Fifth Texas health commission official out amid contracting woes. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2018/04/20/health-commission-official-resigns-amid-contracting-woes/>
- Evans, M. (2018, May 3). Amid contracting scandal, Charles Smith to retire as head of Texas health commission. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2018/05/03/charles-smith-out-head-texas-health-commission/>
- Health and Human Services Commission (2018, April 21). Witness list [PDF document]. Retrieved <https://capitol.texas.gov/tlodocs/85R/witlistmtg/pdf/C6102018032110001.PDF>
- House Appropriations Committee Meeting (2018, April 18) [Video file]. Retrieved from www.house.state.tx.us/video-audio/committee-broadcast
- Jasinski, L.E. (2010). Comptroller of public accounts. In *Handbook of Texas online*. Retrieved from <https://tshaonline.org/handbook/online/articles/mbc04>
- Langford, T. (2015, February 3). The HHSC-21CT contract investigations: How did it get to this point? *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2015/02/03/21ct-health-commission-recap/>

- Legislative Reference Library of Texas (Report dated November 2016) Senate Committee on Natural Resources and Economic Development, Interim Report to the 85th Legislature [Website] Retrieved from <https://lrl.texas.gov/scanned/interim/85/N219E.pdf>
- Legislative Reference Library of Texas (Report dated December 2018) Senate Committee on Natural Resources and Economic Development, Interim Report to the 86th Legislature [Website] Retrieved from <https://lrl.texas.gov/scanned/interim/85/N219E.pdf>
- National Association of State Auditors, Comptrollers and Treasurers (NASACT), The (2015). *Auditing the states: A summary*. 2015 Edition.
- National Conference of State Legislatures (NCSL) (2015, March 13). The term limited states [Website]. Retrieved from <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>
- National Conference of State Legislatures (NCSL) (2016, July). Size of state legislative staff: 1979, 1988, 1996, 2003, 2009, 2015 [PDF document]. Retrieved from <http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf>
- National Conference of State Legislatures (NCSL) (2016, December 15). State & legislative partisan composition (2016 election) [PDF document]. Retrieved from http://www.ncsl.org/portals/1/documents/elections/Legis_Control_2016_Post12_28_2pm.pdf
- National Conference of State Legislatures (NCSL) (2017, February 28). 2017 Legislator compensation information [Website]. Retrieved from <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>
- National Conference of State Legislatures (NCSL) (2017, March 27). 2017 State & legislative partisan composition [PDF document]. Retrieved from http://www.ncsl.org/portals/1/documents/elections/Legis_Control_2017_March_27_11am.pdf
- National Conference of State Legislatures (NCSL) (2017, June 14). Full and part-time legislatures [Website]. Retrieved from <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>
- Ramsey, R. (2017, June 2). Analysis: A governor's executive order doesn't go very far in Texas. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2017/06/02/analysis-governors-executive-order-doesnt-go-very-far-texas/>
- Republican Party of Texas (2017). Overview and history. Retrieved from: <https://www.texasgop.org/overview-and-history/>
- Shor, B. & McCarty, N. (2015). *Aggregate state legislator Shor-McCarty ideology data, June 2015 update* [Data file]. Retrieved from <https://doi.org/10.7910/DVN/K7ELHW>
- Texas Government Code §§2001- Administrative Procedure (2018). Retrieved from https://www.lawserver.com/law/state/texas/tx-codes/texas_government_code_chapter_2001

Texas House of Representatives (n.d.) [Website]. Retrieved from https://ballotpedia.org/Texas_House_of_Representatives

Texas House of Representatives (n.d.). General Investigating & Ethics [Video file]. Retrieved from http://tlchouse.granicus.com/MediaPlayer.php?view_id=40&clip_id=14800

Texas Legislative Budget Board (2015) *Government effectiveness and efficiency report*. Retrieved from: http://lbb.state.tx.us/Documents/Publications/GEER/Government_Effectiveness_and_Efficiency_Report_2015.pdf

Texas Legislative Budget Board (2017). *84th Legislature fiscal size-up 2016–17 biennium*. Retrieved from http://www.lbb.state.tx.us/Documents/Publications/Fiscal_SizeUp/Fiscal_SizeUp.pdf

Texas Legislative Budget Board (2017). History of the LBB [Website]. Retrieved from: <http://www.lbb.state.tx.us/History.aspx>

Texas Legislative Council for the 85th Legislature (2017). *The legislative process in Texas*. Retrieved from: <http://www.tlc.texas.gov/docs/legref/legislativeprocess.pdf>

Texas State Auditor’s Office (2016, October). *The state auditor’s office annual report for fiscal year 2016*. Retrieved from https://www.sao.texas.gov/Documents/AnnualReports/SAOAnnualReport_FY2016.pdf

Texas State Auditor’s Office (2018, February). *A Report on the Implementation Status of Prior State Auditor’s Office Recommendations*. Retrieved from <http://www.sao.texas.gov/reports/main/18-021.pdf>

Texas State Auditor’s Office (n.d.). History of the SAO [Website]. Retrieved from <https://www.sao.texas.gov/About/History/>

Texas State Auditor’s Office (n.d.). Legislative audit committee [Website]. Retrieved from <https://www.sao.texas.gov/About/LegislativeAuditCommittee>

Texas State Auditor’s Office (n.d.). The state auditor’s office [Website]. Retrieved from <https://www.sao.texas.gov/About/>

Texas State Senate (n.d.) [Website]. Retrieved from https://ballotpedia.org/Texas_State_Senate

Texas Sunset Advisory Commission (2017). *Sunset in Texas, 2015-2017*. Retrieved from https://www.sunset.texas.gov/public/uploads/files/reports/Sunset%20in%20Texas_0.pdf

Texas Sunset Advisory Commission (n.d.). Agencies subject to sunset review [Website]. Retrieved from <https://www.sunset.texas.gov/reviews-and-reports/agencies>

Texas Sunset Advisory Commission (n.d.). Frequently asked questions [Website]. Retrieved from <https://www.sunset.texas.gov/about-us/frequently-asked-questions>

Texas Sunset Advisory Commission (n.d.). How sunset works [Website]. Retrieved from <https://www.sunset.texas.gov/how-sunset-works>

University of Texas at Austin, Texas Politics Project (2005). 5.3 Administrative powers [Website] Retrieved from http://www.laits.utexas.edu/txp_media/html/leg/0503.html

University of Texas at Austin, Texas Politics Project (2005). Organization of the legislature [Website]. Retrieved from http://www.laits.utexas.edu/txp_media/html/leg/0200.html

University of Texas at Austin, Texas Politics Project (2005). Review & approval: January-May of odd-numbered years [Website]. Retrieved from http://texaspolitics.utexas.edu/archive/html/pec/features/0403_01/slide3.html

University of Texas at Austin, Texas Politics Project (2005). Texas politics – The executive branch [Website]. Retrieved from https://www.laits.utexas.edu/txp_media/html/exec/print_exec.html

University of Texas at Austin, Texas Politics Project (n.d.). Governors of Texas [Website]. Retrieved from <http://texaspolitics.utexas.edu/archive/html/exec/governors/index.html>