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State Legislative Oversight: **Kentucky**



Capacity and Usage Assessment

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

To read the full 50 state study report or to discuss the Kentucky state report, please contact Benjamin.Eikey@wayne.edu.



This report is sponsored by the Levin Center at Wayne Law

Legislative Oversight in Kentucky

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Summary Assessment

Kentucky's governor has historically wielded substantial authority, while the legislature has had limited ability to exercise oversight. While the studies conducted by the state's analytic bureaucracy do seem to result in some action by the legislature, such reports are limited in number. Particularly in the domains of advice and consent and monitoring of state contracts, the instruments of oversight seem limited.

Major Strengths

Legislators on the appropriations committee appear knowledgeable and capable of asking questions of state agency officials. The Legislative Research Committee (LRC) appears to be an especially active analytic bureaucracy attached to a legislative committee. It is instrumental in conducting oversight, and all interim committees operate under the umbrella of the LRC. This means that oversight activities can be coordinated.

Challenges

We found little evidence that reports from analytic bureaucracies are used during the appropriations process. There is evidence that the administrative rules review process has, in the past, facilitated the interest of the private sector rather than preserving the public welfare.

Relevant Institutional Characteristics

The National Conference of State Legislatures (2017) classifies Kentucky's Legislature as a hybrid, since the job of legislator takes more than two-thirds of the time of a full-time job,

but the pay typically requires a second job. Compensation is set at \$188.22 per calendar day. When the legislature is in session, there is a daily per diem of \$135.30, which is 110% the federal rate.⁹¹⁹ Kentucky's legislature ranks 36 out of 50 in terms of professionalism (Squire, 2017). The legislature has 468 staff members, 375 of which are permanent (NCSL 2015).⁹²⁰ There are no limits on the number of terms, consecutive or otherwise, a legislator may hold. Kentucky's legislature is in session for 30 legislative days in odd years and 60 legislative days in even years.⁹²¹

Kentucky grants extensive institutional prerogatives to its governor, ranked second in the country in gubernatorial power (Ferguson, 2015). Kentucky's governor has a budgetary line item veto and can use a pocket veto to avoid justifying use of the legislative veto. On the other hand, gubernatorial vetoes can be overridden by a simple majority vote, making Kentucky one of only six states with such a low bar for the legislature to rein in the governor's challenge to its prerogatives. In addition to being "the source of significant legislative proposals," Kentucky's governor "continues to call special sessions...and submits budgets that generally serve as the starting point for legislative actions" (Haider-Markel, 2009). Furthermore, 12.7% of Kentucky's workforce is employed in state or local government, making it one of the larger bureaucracies relative to its workforce (Edwards, 2006).

Political Context

For most of Kentucky's history, the state's legislature, the General Assembly, was solidly under the control of the Democratic Party (Haider-Markel, 2009). Democratic dominance in Kentucky gave way in 2000 to a long period of split control that lasted until 2017, when Republicans took control of the General Assembly. Democrats have retained control of the governorship, except between 2003 to 2007 and since the 2015 election of Republican Matt Bevin.⁹²² Democrats, led by Attorney General Steve Beshear, are not accepting Republican dominance without a fight, as demonstrated by repeated lawsuits by AG Beshear against Governor Bevin.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Kentucky has both an elected Auditor and a separate legislative support agency that conduct reviews and audits with the support of professional staffs. First, Kentucky has an Auditor of Public Accounts, a constitutionally elected partisan position. Elections for the position occur in gubernatorial election years, increasing the likelihood that the Auditor General and the

⁹¹⁹ <http://www.ncsl.org/research/about-state-legislatures/2011-ncsl-legislator-compensation-table.aspx>, accessed 7/4/18.

⁹²⁰ <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 7/4/18.

⁹²¹ <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx>, accessed 7/4/18.

⁹²² https://www.nga.org/cms/home/governors/past-governors-bios/page_kentucky.html/, accessed 7/4/18.

Governor share political party affiliation. The mission of the office includes both financial audits and performance audits.

The Auditor's office contains four divisions, two of which are directly involved in auditing. The first of these, the Office of Financial Audits, conducts audits of "state agencies, fiscal courts, sheriff's, county and circuit clerks, special districts, education cooperatives and other entities that manage public funds." The second is the Office of Technology and Special Audits, which itself consists of two branches: Information Technology Audit and Support and Performance and Examination Audits. The former largely supports the Statewide Single Audit and the Comprehensive Annual Financial Review, whereas the latter conducts performance audits "to determine the effectiveness and efficiency of state programs and examinations to identify fraud, waste, or abuse of public funds."⁹²³ These types of audits can be requested by the Auditor of Public Accounts, the legislature, the governor, other constitutional officers, or the public.⁹²⁴ We found that four performance audits were conducted in 2018, using a generous definition of state agency performance audits that included the Kentucky Firefighters Commission as a state agency.

Local government financial audits occur fairly frequently, and are advertised on the Auditor's Twitter feed (@KyAuditorHarmon). More extensive "special examinations," are conducted by the auditor's office to examine allegations of suspected fraud, waste, or abuse and performance reviews. These reports are produced infrequently, however. In 2017, there were four reports issued on different cities and a horse park in Kentucky, and one audit of the Louisville Arena Authority. In 2016, there were four special examinations, two of cities, one of the Department of Criminal Justice Training and Kentucky Law Enforcement Foundation Program Fund, and one of the Buffalo Fire Department.⁹²⁵ The Auditor also uses the Twitter feed to actively engage with legislators to advocate legislation, such as Senate Bill 91 (2018), which would mandate annual financial audits for Kentucky municipalities.

Second, Kentucky has the Legislative Research Commission (LRC), a hybrid of an analytic support agency and a legislative committee that is described as a "fact-finding and service body for the legislature."⁹²⁶ The LRC consists of 16 legislators: 7 from each of the two legislative chambers plus the Senate President and the Speaker of the House, who serve as co-chairs. The LRC "[i]s administered by a full-time LRC director who presides over a highly-trained staff of researchers, fiscal analysts, attorneys, computer operators, librarians, secretaries and others who provide expert services to the legislators."⁹²⁷ Neither the director nor any staff is a legislator. Among its duties, the LRC "provides committee staffing, bill drafting, oversight of the state budget and educational reform, production of educational materials, maintenance of a reference library and Internet site, and the preparation and printing of research reports, informational bulletins and a legislative newspaper."⁹²⁸

The LRC was created in 1948, but was originally dominated by the governor, who appointed its leadership team. In the late 1970s, the legislature was granted authority over the LRC through a citizen initiative. This was an instrumental step in the development of Kentucky's

⁹²³ <https://auditor.ky.gov/about/Pages/Organazation.aspx>, accessed 7/4/18.

⁹²⁴ <https://auditor.ky.gov/about/Pages/Organazation.aspx>, accessed 7/4/18.

⁹²⁵ <https://auditor.ky.gov/auditreports/Pages/SpecialInvestigationsPerformance.aspx>, accessed 7/4/18.

⁹²⁶ <http://www.lrc.ky.gov/lrc/aboutlrc.htm>, accessed 7/4/18.

⁹²⁷ <http://www.lrc.ky.gov/lrc/aboutlrc.htm>, accessed 7/4/18.

⁹²⁸ <http://www.lrc.ky.gov/lrc/aboutlrc.htm>, accessed 7/4/18.

legislature from a “rubber stamp” for the governor into an independent locus of power within Kentucky’s government.

Consequently, it appears that the LRC frequently plays an important role in discussing and raising issues pertaining to oversight. Due to its short legislative sessions, Kentucky is among the states that rely on interim committees to monitor budgets and to “study issues, draft and approve bills for prefiling for the next regular [legislative] session.” In Kentucky all interim committees are subcommittees of the LRC. We discuss below the extent to which its reports lead to legislative oversight activities.

Oversight Through the Appropriations Process

Kentucky’s governor still holds extensive power over budgetary matters, although not as much as in previous decades (Haider-Markel 2009). The governor initiates the budget process by proposing a budget without input from the legislature. Budgets are biannual, and once the governor has submitted a budget to the legislature it must be passed, as adapted, in the House and Appropriations and Revenue Committee before being voted on in the full chamber. It then proceeds to the Senate, where it undergoes the same process. The governor has line-item veto power over any budget passed by the General Assembly, but the veto can be overridden by a majority vote in both chambers of the legislature.⁹²⁹

Both the House and Senate Appropriations and Revenue Committees share largely the same staff, with the Senate employing 5 people, including a Committee Staff Administrator and a Committee Assistant, and the House employing one additional person. Throughout the budget-making process, the LRC with its staff of more than 400 “produces legislative information documents for each agency budget hearing, which compares Branch Recommendations for a budget unit with the Agency Request for the Operating Budget.” According to its website, “The LRC has established a budget review office, with professional fiscal analysts and support staff, to assist LRC, the appropriations committees, and budget review subcommittees in performing their duties and functions throughout Kentucky’s budget process and to provide an independent source of budget information for members.” The Interim Joint Committee on Appropriations and Revenue, which is housed under the umbrella of the LRC, must be informed of adjustments to the budget during the lengthy periods when the legislature is not in session. Although the Joint Committee may not act as the legislature, its approval is required for any budget adjustments. If the Joint Committee does not approve of these adjustments, then the executive branch actors making the request must revise the request to comply with the committee’s input.

Legislative budgets sometimes differ substantially from those proposed by the governor. In 2018, for example, Governor Bevin’s budget “proposed the elimination of 70 programs, stripping funding from Kentucky Mesonet, the state’s poison control center, and the Robinson Scholars Program for first-generation students from eastern Kentucky attending college at the University of Kentucky”.⁹³⁰ Both the House and the Senate proposed substantial changes to the governor’s budget, attempting to reverse cuts recommended by the governor while

⁹²⁹ <https://transparency.ky.gov/transparency/Pages/How-the-Budget-is-Made.aspx>, accessed 7/4/18.

⁹³⁰ <http://www.wkyt.com/content/news/House-GOP-budget-plan-reverses-many-major-cuts-475490473.html>, accessed 7/4/18.

simultaneously avoiding tax increases.^{931 932 933} However, media reports note that the House and Senate proposals differed substantially.⁹³⁴

In previous years, budget disputes between the House and the Senate have meant that there have been times when the legislature has failed to pass a budget. In both 2002 and 2004, the House and Senate were unable to agree on a budget, leaving the governor free to “use[s] his own spending plan until lawmakers passed a budget in 2003” (Haider-Markel, 2009). A similar crisis was avoided in 2016, when a budget was passed with two hours left in the legislative session. However, the budget was still subject to a gubernatorial line-item veto, so with the legislative session ending there was no opportunity for the general assembly to exercise its power to override any vetoes.⁹³⁵ The state’s contentious budget-making process has at times meant that budgets are not passed, or are passed at the last moment, with the result that power over spending has been conceded to the governor, albeit temporarily.

It would therefore appear that some oversight through the appropriations process does occur in Kentucky. The Interim Joint Committee appears to be an attempt to maintain legislative involvement in the budget even when the chamber is not in session, which is the vast majority of the time. Although several House Appropriations and Revenue Committee meetings consisted entirely of hearings on legislation, the meeting held on January 9th, 2018⁹³⁶ included a presentation by the Kentucky Department of Education on a new facilities project assessment system. Following a detailed presentation by department, legislators asked multiple questions about the proposed system. In general, the plan decentralized authority for facilities projects to the district level. Legislators wanted to know how consistency across districts would be maintained. They expressed concerns about student safety. The questions demonstrated knowledge of school facilities and problems such as asbestos.

Oversight Through Committees

Most standing committees hold regular hearings. The minutes of these meetings are available on the general assembly’s website. A sample of minutes indicates that committee members often take testimony from agency heads, auditors, and others. In some cases, legislators expressed disappointment that individuals like the Secretary of State did not attend, because they had questions that they wanted him to answer.⁹³⁷

Interim committees, as noted earlier, are part of the LRC. They provide information on their work that is published monthly by the LRC in a newsletter format called the Interim Record, which are available online. Looking at past Interim Record newsletters reveals that interim committees actively conduct hearings on the performance of state programs.

⁹³¹ <https://www.courier-journal.com/story/news/politics/2018/03/01/kentucky-house-millions-employees-health-plan-budget/384431002/>, accessed 7/4/18.

⁹³² <https://www.courier-journal.com/story/news/politics/2018/03/20/kentucky-senate-budget-committee-state-spending-plan-proposal/438999002/>, accessed 7/4/18.

⁹³³ <https://www.courier-journal.com/story/news/politics/2018/02/28/6-takeaways-kentucky-house-budget-matt-bevin-proposal/373417002/>, accessed 7/4/18.

⁹³⁴ <https://www.courier-journal.com/story/news/politics/2018/03/20/kentucky-senate-2018-20-state-budget-proposal-takeaways/441196002/>, accessed 7/4/18.

⁹³⁵ <http://www.kentucky.com/news/politics-government/article72123697.html>, accessed 7/4/18.

⁹³⁶ <https://www.ket.org/legislature/?archive&program=WGAOS&epoch=2018&nola=WGAOS+019012>, accessed 1/24/19.

⁹³⁷ http://www.lrc.ky.gov/minutes/st_gov/171129OK.HTM, accessed 7/4/18

The September 2018 issue described committee hearings on inmate reform and on protections for vulnerable populations. Both articles referred to legislation that had been passed to address these problems. This is a newsletter with information that Kentucky citizens might want to consult rather than transcripts of the hearings. The topics covered suggest that interim committee focus their attention on oversight of public programs, however.

Kentucky has a Program Review and Investigations Committee (PRIC). Created in 1978, the PRIC is a 16-member statutory committee “empowered to review the operations of state agencies and programs, to determine whether funds are being spent for the purposes for which they were appropriated, to evaluate the efficiency of program operations, and to evaluate the impact of state government reorganizations”.⁹³⁸ Its members in 2019 consist of 12 Republicans and 4 Democrats. In discharging its duties, PRIC has the power to subpoena and examine witnesses and to compel the production of any documents it might need (Kentucky Revised Statutes, Title 2 Section 6.920).⁹³⁹ The committee has 12 employees, including a Committee Staff Administrator and a Committee Assistant.

The PRIC website provides access to exceptionally complete minutes for the nine meetings the committee held in 2017. The two initial meetings of that year appear to provide a forum for legislators on the committee to propose new study topics. PRIC staff attends the meetings along with the legislators and various “guests,” which include parties involved in performance reports being reviewed. Most of the guests are state agency directors or other top administrators within government. But there were occasional experts, such as university faculty. Most of the reports reviewed during PRIC meetings are produced by PRIC staff, but University of Kentucky students also produced a report on animal shelters. The committee spent a large portion of one meeting working through the content of this report, but it does not appear that this led to tangible action. The minutes simply reflect the judgment of the committee’s legislators that local enforcement of state laws is ineffective.⁹⁴⁰

For example, the PRIC produced a report in 2015 on the Local Defined-Benefit Pension Plans in Kentucky.⁹⁴¹ It was presented to the Public Pension Oversight Board (LRC Report Number 411). This report looks at the vestiges of an older system in which local governments setup their own pensions, an approach which was stopped by statute in 1988. The report analyzes the remaining liability and the degree to which they are funded and warns that statutes governing such pensions are no longer sufficient. The report recommended that the legislature revise statutes governing such plans, allowing them to be more easily repealed. PRIC conducts studies as directed by a joint resolution of the general assembly. When the Assembly is not in session, studies are conducted by the LRC.

There is evidence that studies conducted by the PRIC have provided the impetus for legislative action. For example, one study from 2012 concluded that it was impossible to determine exactly how many boards, commissions, and task forces, or their exact cost, were actually operating in Kentucky.⁹⁴² The report was able to identify 571 such entities, double the number found in most other states. The report also noted that “[t]here are no objective standards for determining the appropriate number and responsibilities of boards, commissions, and similar

⁹³⁸ <http://www.lrc.ky.gov/committee/statutory/Prog%20Rev/home.htm>, accessed 7/4/18.

⁹³⁹ https://www.lawsolver.com/law/state/kentucky/ky-statutes/kentucky_statutes_6-920, accessed 7/4/18.

⁹⁴⁰ http://www.lrc.ky.gov/minutes/prog_rev/171109OK.HTM, accessed 7/4/18.

⁹⁴¹ <http://www.lrc.ky.gov/lrcpubs/RR411.pdf>, accessed 7/4/18.

⁹⁴² <http://www.lrc.ky.gov/lrcpubs/RR394.pdf>, accessed 7/4/18.

entities. As with the decisions to create them, deciding which ones to eliminate, consolidate, revise, or continue is a policy decision for the General Assembly”.⁹⁴³ The report made a number of recommendations, including creating lists of inactive entities for legislative review, new processes for the legislature to identify entities with overlapping responsibilities, and for the implementation of more robust sunset rules.⁹⁴⁴ These findings ultimately bore fruit and prompted gubernatorial efforts to “reduce red tape,” along with legislative measures in the form of board consolidation, sunset provisions, and legislation intended to reduce the number of such entities to under 400.⁹⁴⁵

Minutes for PRIC meetings, as well as the results of the committee’s investigations, are available online. The reports sometimes gain traction in the media. For example, a PRIC “staff report” called “Kentucky’s Foster Care System”, found that state funding for social work is inadequate, and noted other issues in the system, including long review times, growing number of children in the foster care system, and a lack of reliable data on the system. Although the report was not published officially, due to loss of quorum, it was nonetheless discussed widely in the media.⁹⁴⁶⁹⁴⁷ Furthermore, during the 2018 legislative session, the general assembly took steps to address the problems noted in the report.⁹⁴⁸

Oversight Through the Administrative Rules Process

All proposed rules are sent to the LRC, after which there is a public hearing and comment period held between the 21st day and the last day of the month. After the end of the public comment period, the rule is considered by the LRC Administrative Regulation Review Subcommittee. This subcommittee consists of 8 legislators, four from each chamber with co-chairs each representing one legislative chamber each. Minutes from these hearings indicate that committee members occasionally ask questions or hear testimony about the necessity of, or outcomes resulting from, the implementation of particular rules. The committee’s determinations, however, are nonbinding (KRS 13A.030). Findings are reported to the LRC, at which point the rule is assigned to the second committee for review. The second committee is a House or Senate committee that specializes in the appropriate subject area.

A rule can be found deficient by either review committee. If a rule is found to be deficient, it is “attached” and sent to the governor, who then decides whether it will go into effect, whether it requires amendment by the agency, or whether it should be withdrawn (Administrative Regulation Promulgation Process; KRS 13A.330).⁹⁴⁹ If not “attached,” the rule is adopted “as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first” (Administrative Register of Kentucky, 2018).⁹⁵⁰ The finding of deficiency occurs rarely and even when it occurs the finding is non-binding to the

⁹⁴³ <http://www.lrc.ky.gov/lrcpubs/RR394.pdf>, accessed 7/4/18.

⁹⁴⁴ <http://www.lrc.ky.gov/lrcpubs/RR394.pdf>, accessed 7/4/18.

⁹⁴⁵ <http://kentuckytoday.com/stories/bevin,7061>, accessed 7/4/18.

⁹⁴⁶ http://www.kentuckynewera.com/ep/news/article_9677b97c-c9ae-11e7-86f5-0700666a839a.html, accessed 7/4/18.

⁹⁴⁷ <https://www.courier-journal.com/story/news/politics/2017/12/12/kentucky-budget-child-protection-services/941531001/>, accessed 7/4/18.

⁹⁴⁸ <http://www.kentucky.com/news/politics-government/article201638604.html>, accessed 7/4/18.

⁹⁴⁹ <http://water.ky.gov/Documents/Regulations/RegulationPromulgationProcess.pdf>, accessed 7/4/18.

⁹⁵⁰ http://www.lrc.ky.gov/kar/contents/registers/44Ky_R_2017-18/09_March.pdf, accessed 7/4/18.

governor (interview notes, 2/8/19). This process, however, has not been utilized in several years, with people familiar with the process unable to recall the last time a finding of deficiency was issued (interview notes, 2/8/19). While this suggests that the legislature is not engaged in active oversight of administrative rules through the official committee process, the legislature is active in addressing major concerns with proposed rules prior to the rule reaching the committee review stage (interview notes, 2/8/19). In a normal session the Administrative Regulation Review Committee may review between 600 to 800 rules and since the committee only meets once a month, hearings are not an efficient forum to work out issues with the proposed rules (interview notes, 2/8/19). This informal process demonstrates, that despite not having a formal legislative mechanism to stop or impede a proposed rule, the legislature often works with agencies, the governor, and affected interests to make the new rule palatable to all parties. Additionally, one informal check on more controversial rules is the committee's ability to simply defer reviewing the regulation until the next scheduled meeting (interview notes, 2/8/19). This informal norm is usually respected by all parties and rarely are there institutional political battles over rules (interview notes, 2/8/19).

Thus, it appears that the legislature provides advice on administrative rules, but the executive branch can ignore that input. Schwartz (2010) reports that legislative review of rules in Kentucky historically resulted in lots of "wins" for business interests. So it is not clear that the administrative rule review process is as neutral as one might hope. Furthermore, in conversations with people familiar with the rules process, it is possible for individual citizens, or more likely prominent interests to suggest rules to the governor or petition his office regarding a proposed agency rule (Interview notes, 2/8/19). The governor's office has an online business portal⁹⁵¹ that provides guidance to businesses on the rules process and how to become involved. Also, Kentucky has a massive email list which can notify concerned parties about proposed rules that may have a direct impact on them (interview notes, 2/8/19). The RegWatch program is free and allows anyone to receive notification of rule changes or proposals that are tailored to their specific area of interest.⁹⁵²

Additionally, the Administrative Regulation Review Subcommittee also has the power to review existing rules, and to recommend their amendment or repeal if necessary. Regulations with effective dates on or after July 1, 2012 expire 7 years after its last effective date; otherwise, they expire on July 1, 2019 (KRS 12A.3102). If an administrative body wishes to prevent a regulation from expiring, it must submit a formal request to the LRC (KRS 12A.3104).

Oversight Through Advice and Consent

Kentucky's governor has wide powers to appoint members of boards and commissions. In most cases, legislative approval is not required. However, specific statutes may require confirmation by the General Assembly for particular positions (KRS 11.160). Kentucky's nine-member Parole Board, for example, is appointed by the Governor but subject to approval by the Senate (KRS 439.320). Similarly, appointments to the Kentucky Board of Education must be confirmed by both the Senate and the House of Representatives. Even though the legislature

⁹⁵¹ <https://onestop.ky.gov/operate/Pages/regulations.asp>, accessed 2/8/19

⁹⁵² <https://secure.kentucky.gov/Regwatch/>, accessed 2/8/19

could block some of these gubernatorial appointments, it does not appear that this happens very often.

The governor has the power to reorganize agencies through executive orders. However, for this to take permanent effect, it must be translated into legislation by the general assembly by the end of the next legislative session (KRS 12.028). If that does not occur, the agency “is required to revert back to the last enacted organizational structure”.⁹⁵³ The governor also has the power to reorganize agencies when the legislature is not in session, and he has used this power “at least a dozen times to abolish and replace state boards and commissions”, earning the ire even of fellow Republicans in the legislature.⁹⁵⁴ In 2017, one Republican member of the House claimed that many legislators “believe Gov. Matt Bevin’s use of executive orders threatens their independence”.⁹⁵⁵ Those remarks came in the wake of an order that abolished several education boards and reorganized several others, a move that provoked Kentucky’s Attorney General to threaten a lawsuit.⁹⁵⁶ Previously, the “members and duties of those boards had...been set by the legislature”.⁹⁵⁷

The governor’s use of executive orders has therefore become controversial in Kentucky in recent years. Currently, the legislature does not have much oversight power pertaining to executive orders. However, a bill adopted by the Senate in March of 2018 would give the general assembly more authority by delaying their implementation for 35 days after being filed with the Secretary of State to allow for review by the legislature.⁹⁵⁸ The legislature would then have the power to draft legislation declaring objectionable executive orders void or to amend them. It would also force the Governor to create a list of all executive orders currently in effect and to identify those that needed to remain in effect; others would be revoked or cease as of October 1, 2018 (SB 200, 2018). According to the bill’s sponsor, “the bill helps address a long-standing practice when governors issue executive orders after the legislature has completed a session”.⁹⁵⁹

Oversight Through Monitoring of State Contracts

According to KRS 45A, Kentucky has a bipartisan Government Contract Review Committee. The committee reviews “[a]ll proposed personal service contracts, tax incentive agreements, and memoranda of agreement” and evaluates whether such contracts are necessary, could be performed instead by state personnel, and whether the amount of the contract is appropriate. Per KRS 45A.705, if the committee disapproves of the contract, it attaches “a written notation of the reasons for its disapproval or objection...to the secretary of the Finance and Administration Cabinet”, whereupon a determination is made to amend the contract, cancel

⁹⁵³ <https://hr.personnel.ky.gov/Documents/Reorg-Process.pdf>, accessed 7/4/18.

⁹⁵⁴ <https://www.courier-journal.com/story/news/politics/2017/06/12/rep-john-carney-gov-bevins-executive-orders-concern-gop-lawmakers-kentucky/390928001/>, accessed 7/4/18.

⁹⁵⁵ <https://www.courier-journal.com/story/news/politics/2017/06/12/rep-john-carney-gov-bevins-executive-orders-concern-gop-lawmakers-kentucky/390928001/>, accessed 7/4/18.

⁹⁵⁶ <https://www.usnews.com/news/best-states/kentucky/articles/2017-06-16/bevin-alters-executive-order-as-lawsuit-threat-looms>, accessed 7/4/18.

⁹⁵⁷ <https://www.courier-journal.com/story/news/politics/2017/06/12/rep-john-carney-gov-bevins-executive-orders-concern-gop-lawmakers-kentucky/390928001/>, accessed 7/4/18.

⁹⁵⁸ <http://weku.fm/post/kentucky-senate-weighs-gubernatorial-executive-orders>, accessed 7/4/18.

⁹⁵⁹ <http://weku.fm/post/kentucky-senate-weighs-gubernatorial-executive-orders>, accessed 7/4/18.

it, or make no changes.⁹⁶⁰ Whatever decision is made, the Secretary of the Finance and Administration Cabinet must notify the Government Contract Review Committee, but beyond establishing reporting procedures the committee has no power to halt the adoption of a contract of which it disapproves. The committee's "purely advisory" nature has come under some criticism from the press, who see Kentucky's weak contract review process as contributing to "tens of millions of wasted tax dollars every year".⁹⁶¹

The independently elected Auditor of Public Accounts also appears to have responsibility for investigating waste, fraud, and abuse of public funds. The auditor responds to requests from legislators to investigate contracts, as demonstrated by an investigation of a \$12 million contract with ARAMARK in which it concluded that the Corrections Department was not monitoring ARAMARK's performance adequately.⁹⁶² A decision by a House committee to cancel the Aramark Correctional Services contract with a prison in which a riot occurred may have triggered the audit, but there are also media reports that indicate a legislator requested the report in response to a complaint from constituents about the prison food. The legislature received a report about the prison riot in November 2009, but was not aware that it was not the full report. It finally received a redacted report in response to repeated requests from the House Judiciary Committee.

This type of audit report initiates a response from the state agency directly to the auditors. The audit report, posted on the Auditor of Public Accounts webpage, includes the auditor's findings and the agency responses. The report with the Department of Corrections responses was sent to the legislature to, in the words of the cover letter on the report, "assist the Kentucky General Assembly and the Department of Corrections in improving procedures and internal controls."⁹⁶³ But news reports indicate that the Corrections Department determined that Aramark was not in violation of the contract and, despite protests from State Representative Brent Yonts, was renewing the contract. And the difficulty the legislature had in getting access to the information indicates that the legislature does not easily learn of information it needs to oversee public funds and programs.

Oversight Through Automatic Mechanisms

Kentucky has no comprehensive sunset process that would require "all statutory agencies to undergo sunset review on a preset schedule." Instead, the state has a regulatory review process that "requires only licensing and regulatory boards to undergo sunset reviews, and a selective review state reviews select agencies and regulatory boards" (Baugus & Bose, 2015). In Kentucky, this duty falls to the Administrative Regulation Review Subcommittee of the LRC.

⁹⁶⁰ <http://www.lrc.ky.gov/statutes/statute.aspx?id=22470>, accessed 7/4/18.

⁹⁶¹ <https://www.courier-journal.com/story/opinion/columnists/bob-heleringer/2017/07/24/slay-bloated-personal-service-contracts-bob-heleringer/506266001/>, accessed 7/4/18.

⁹⁶² http://apps.auditor.ky.gov/Public/Audit_Reports/Archive/2010ARAMARKreport.pdf, accessed 7/4/18.

⁹⁶³ http://apps.auditor.ky.gov/Public/Audit_Reports/Archive/2010ARAMARKreport.pdf, accessed 7/4/18, p. 6.

Methods and Limitations

Kentucky provides access to archival recordings of legislative committee hearings through the state's public television network. The ability to link the recording to an agenda or minutes does not appear to be a feature of this system. This makes listening to records a hit-or-miss proposition. Fourteen people were contacted, but we were only able to conduct one interview.

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