



# State Legislative Oversight: **Missouri**



## Capacity and Usage Assessment

Oversight through Analytic Bureaucracies:	Limited
Oversight through the Appropriations Process:	Moderate
Oversight through Committees:	Limited
Oversight through Administrative Rule Review:	Moderate
Oversight through Advice and Consent:	Moderate
Oversight through Monitoring Contracts:	Minimal
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 or to discuss the Missouri state report, please contact [Benjamin.Eikey@wayne.edu](mailto:Benjamin.Eikey@wayne.edu).

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## Summary Assessment

Missouri does not have the political resources to produce the evidence needed for “evidence-based bipartisan oversight.” Missouri provides limited analytic support for its legislature with respect to performance audits or other information about state agencies. Its state auditor is an independent and autonomous actor that does not work in tandem with the legislature or the governor. The heavy reliance on fiscal notes rather than other forms of program assessment suggests that the legislature concentrates on efficiency to the exclusion of effectiveness in government.

## Major Strengths

The Missouri Legislature is vigorous in its use of its authority to confirm gubernatorial appointments. It has the prerogative to use sunset provisions and the rule review process to provide a check on executive authority. Lack of staff severely constrains the use of these prerogatives. The main check on a governor is the use of veto overrides, but this happens primarily when the governor is from the opposite political party. Moreover, relying on this tool assumes continuing large margins of control in the legislature to override a gubernatorial veto, and often the result of such a strategy is gridlock rather than good government.

## Challenges

Missouri needs a legislative auditor and substantial audit staff if it seeks evidence to monitor the performance of state agencies. The current focus of much legislative activity is on how to contain the costs of programs. This could reflect a political ideology ascendant currently in Missouri’s legislature. If the legislature is concerned about government performance, it is not clear it has the tools to facilitate improvement. Moreover, there is no effort to rein in partisanship with respect to audits—either in the legislature, or between the state auditor and the governor.

Additionally, even when oversight is used by actors from the same political party, it frequently is a tool to out maneuver political opponents.

## Relevant Institutional Characteristics

Missouri is slightly more professional than the median state legislature, ranking 16<sup>th</sup> in the nation (Squire, 2015). This ranking is partly because of the short length—70 days—of the legislative sessions and modest pay. The National Conference of State Legislatures (NCSL) characterizes the Missouri Legislature as a “hybrid” legislature (2017). This means that legislators in Missouri work up to two-thirds time while not earning enough income to make a living (approximately \$36,000/year plus \$113 per session day). This means that legislators earn roughly \$44,000 per year or slightly more if there is a special session. Furthermore, there is a smaller number of supporting staff members—approximately 426 staff during the legislative session—available to assist legislators in Missouri than there are available to assist legislators in states with professionalized legislatures (NCSL, 2018). These supporting staff members in Missouri include personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies such as the Joint Committee on Legislative Research’s Oversight Division.

Missouri is among the approximately 15 states that currently have term limits for legislators (NCSL, 2015). Missouri’s term limits are fairly short – eight years in each chamber. Thus, turnover is extremely high, and legislators in Missouri have little time to learn the more complex parts of their jobs, including exercising oversight by monitoring state agencies.

Special (sometimes known as extraordinary) sessions may be called by the governor or the legislature. However, for the legislature to call a special session, three-fourths of the members of the senate and the house must sign a petition after a joint proclamation has been made by the senate president pro tempore and the speaker of the house (NCSL, 2009). Typically, the Missouri Legislature convenes for up to one special session in a year, based on data available since 2010. As such, Hamm and Moncreif (2013) estimate that the legislature is more accurately in sessions as long as four and a half months. When not in session, the legislature does not make substantial use of interim committees to overcome the disadvantages of a short session. The senate only has two interim committees.

Missouri’s governor has a slightly below average Governor’s Institutional Powers Index (GIPI) score, calculated by Ferguson (2013). However, the governor scores particularly well in a few key areas. First, the governor has full authority over the initial budget proposal. The legislature may then revise the governor’s proposal, however, the governor’s line-item veto power is difficult to overcome, requiring either two-thirds of the elected representatives in both chambers or three-fifths of present legislators (Perkins, 2017). Second, the governor has above average “tenure potential,” being allowed to serve two four-year terms. Third, an updated index would show strong “party control” by the governor’s party. Lastly, Ferguson “penalizes” Missouri’s GIPI scores for being a plural rather than singular executive. The importance of this is demonstrated by recent audits of the governor by an elected state auditor of the opposite political party, which will be discussed shortly.

Missouri has a slightly lower than average proportion of its population working in state and local government—10.9% compared to the national average of 11.3%. This reflects a smaller than average proportion working in education in Missouri—5.9% compared to the

national average of 6.1%. Other major areas of state and local government employment—safety and welfare—are close to national averages (Edwards, 2006).

## Political Context

Throughout much of the 1980s, there was divided government in Missouri. Although the Democratic Party managed to control the legislature and the governorship from 1993-2000, the state returned to divided government soon thereafter. Since the beginning of the 21<sup>st</sup> century, the Republican Party has controlled the legislature and the governorship twice, from 2005-2009 and from 2017-present (NGA, 2017). In 2017, the Missouri House consisted of 117 Republicans and 46 Democrats, while the senate had 25 Republicans and nine Democrats. Both chambers have veto-proof majorities, making it more difficult for the governor to sustain any vetoes.

Additionally, recent evidence suggests that the Missouri Senate is highly polarized along party lines. Missouri's senate has been ranked as the 6<sup>th</sup> most polarized upper chamber, based on differences between median roll call votes for each party in each chamber (Shor & McCarty, 2015).

## Dimensions of Oversight

### Oversight Through Analytic Bureaucracies

Missouri's analytic support agencies for oversight are responsible to legislative oversight committees, specifically the Committee on Legislative Research. Membership on this committee consists of the Senate Appropriations Committee Chair, the House Budget Committee Chair, and nine members from each of the two chambers. In a nod toward bipartisanship, no more than six of nine members from each chamber can be from the same political party. These members are chosen by the president pro tempore of the senate and the speaker of the house. The Missouri Joint Committee on Legislative Research (JCLR) employs a committee staff of 21.<sup>1412</sup> Legislators and staff on the JCLR are tasked primarily with coordinating bill drafting and reconciliation services for the broader legislature. Within this general legislature support unit there is a specific oversight subunit.

The Chair of the Joint Legislative Research Committee (JCLR) appoints an Oversight Subcommittee that supervises the Oversight Division. The Oversight Subcommittee consists of three representatives and three senators chosen from the Legislative Research Committee. The Director of the Oversight Division is hired and reports to this subcommittee rather than to the Director of Legislative Research. He or she supervises staff of the Oversight Division, which currently consists of 11 people. Thus, in practice, the Oversight Division is an autonomous analytic support subunit.<sup>1413</sup>

The JCLR's Oversight Division receives its authority from §23.150 of Missouri Revised Statutes, which grants the division the power to prepare fiscal notes (impact statements), to

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<sup>1412</sup> <http://www.moga.mo.gov/HtmlPages/LegResHomePage.html>, accessed 12/1/18.

<sup>1413</sup> <http://www.legislativeoversight.mo.gov/>, accessed 12/1/18.

conduct program evaluations of state agencies, and to perform sunset reviews. The Oversight Division produces several thousand fiscal notes each legislative session. These notes are a normal part of legislating and not generally a tool for oversight of the executive branch's implementation of policy. They are completed for every bill introduced into the chamber and revised if the bill changes at any step in the legislative process.

In the past, the Oversight Division performed an average of three program evaluations annually, however, the Oversight Division has not updated its website with any new evaluations since 2016. The Oversight Division is also responsible for performing regular sunset reviews of the state's regulatory and licensing agencies. These reviews appear to occur irregularly; in 2013, the agency performed 13 sunset reviews, none in 2014, one in 2015, and before that, four each in 2012 and 2010, with none in 2011.<sup>1414</sup> Programs and commissions in Missouri have a sunset period of six years, but that period may be extended to a maximum of 12 years should the legislature choose (Perkins, 2017). Of the 13 sunset reviews performed in 2013, three reviews of programs targeting positively constructed populations (i.e. the children of 9/11 first responders, and veterans) were extended, nine programs were recommended be sunset, and the Oversight Division did not offer an opinion on the sunset of two programs in their respective sunset reviews.<sup>1415</sup>

Missouri's already limited institutional resources to support legislative oversight appear to have declined in the past several years. WayBack Machine's archives of prior JCLR<sup>1416</sup> and Oversight Division<sup>1417</sup> staff directories show a gradually shrinking staff for an analytic institution, which creates substantial limits on the committee's capacity for oversight, especially when considering the committee's broad mission of oversight (Missouri Legislature, 2017).

Missouri has an elected state auditor. The state auditor receives much of their authority from Article IV, Section 13 of the Missouri Constitution. While not a part of the legislature and thus not an institution for legislative oversight, the State Auditor of Missouri is responsible for ensuring, "the proper use of public funds and to improve the efficiency and effectiveness of Missouri government by performing audits of state agencies, boards and commissions, the circuit court system, the counties in Missouri that do not have a county auditor, and other political subdivisions upon petition by the voters."<sup>1418</sup> The state auditor conducts various types of audits including annual financial audits of the state's financial statements and annual state-wide compliance audits to ensure that state agencies meet the requirements for federal grants on which state agencies rely. For the year 2017, the state auditor has completed 155 audits. To support its work, the Office of the State Auditor (OSA) receives a state appropriation, which was nearly \$6.3 million for 2015. Also, its staff consisted of 113 professionals, roughly 10 times as large as Legislative Research's Oversight Division (NASACT, 2015). Some audits conducted by OSA are legally required, but the OSA can also decide to audit an agency or program. Neither the governor nor the legislature has the authority to determine what audits of state agencies the OSA undertakes (NASACT, 2015). However, through petitions, the governor and the public can require that the OSA audit local government entities.<sup>1419</sup>

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<sup>1414</sup> <http://www.legislativeoversight.mo.gov/>, accessed 12/1/18.

<sup>1415</sup> <http://www.legislativeoversight.mo.gov/>, accessed 12/1/18.

<sup>1416</sup> <https://web.archive.org/web/20121130004929/http://www.moga.mo.gov:80/general/lrdir.htm>, accessed 12/1/18.

<sup>1417</sup> <https://web.archive.org/web/2/http://www.moga.mo.gov/general/ovdir.htm>, accessed 12/1/18.

<sup>1418</sup> <https://www.auditor.mo.gov/aboutus/overview>, accessed 12/17/18.

<sup>1419</sup> <https://app.auditor.mo.gov/AuditInfo/AuditsInProgress.aspx>, accessed 7/31/18.

The state auditor is elected as a partisan official. Recently, the Democratic state auditor has audited the actions of Republican Gov. Greitens. She is probing the use of taxpayer funds to pay for private attorneys to represent the governor in disciplinary action taken by the state legislature. She is working with the attorney general, however, rather than the legislature with respect to her audit findings.<sup>1420</sup> This is a pattern that shows up repeatedly in media reports about the OSA audits—the findings are turned over to the attorney general or other state and federal law enforcement officials for prosecution (Wayne County Journal-Banner, 2018). Some of these audits are described as forensic investigations.

The OSA also publishes performance audits. Recently, an audit of food stamp spending revealed that there is a lag of about a month after someone dies before food stamp benefits are terminated (Schmitt, 2018). Similarly, the auditor found a lag for incarceration and food stamp benefits. The auditor recommended better coordination between the Department of Social Services, which runs the food stamp program, and the Department of Health and Senior Services, which maintains death records. It appears that the OSA works directly with the state agencies involved to resolve audit findings. There is no mention in media coverage of involvement by the legislature, and the cover letter for the full audit report does not include any member of the legislature in the distribution list. It does, however, include the governor in addition to the director of the audited state agency.<sup>1421</sup>

The legislature regularly engages a private auditor to perform an audit of the OSA. The current state auditor as of 2018, Democrat State Auditor Nicole Galloway, has had four such private-legislative audits conducted of her office since assuming office three years ago.<sup>1422</sup> The audits conducted by Brown, Smith, and Wallace reported no findings of malfeasance.<sup>1423</sup> Additionally, the interest group and professional association, National State Auditors Association, issues a peer review evaluation of state auditor offices and has found in its most recent reviews Missouri's state auditor to be "well designed" and otherwise compliant with professional standards.<sup>1424</sup> The frequency of these audits by a Republican-controlled legislature of a Democratic state auditor could reflect partisan motives, or it could simply reflect routine checks and balances between two separate branches of government. In either case, it supports a perception that there is not a close collaborative relationship between the OSA and the Missouri Legislature.

## Oversight Through the Appropriations Process

The legislature's involvement in the Missouri budget process formally begins in January, when the governor submits their budget to the legislature. Committees will hold hearings with agencies to discuss their proposed budgets, and the legislature will adopt a final budget in April or May. The House Budget Committee Chair will introduce the budget as a series of bills,

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<sup>1420</sup> <https://www.auditor.mo.gov/content/statement-state-auditor-nicole-galloway-taxpayer-funded-private-attorneys-hired-governor>, accessed 7/31/18.

<sup>1421</sup> <https://app.auditor.mo.gov/Repository/Press/2018032266672.pdf>, accessed 7/30/18.

<sup>1422</sup> <https://auditor.mo.gov/content/legislatures-audit-state-auditors-office-finds-operational-improvements-effective-data>, accessed 12/11/18.

<sup>1423</sup> <https://auditor.mo.gov/sites/default/files/FINAL%20-%20SAO%20Financial%20Audit%20Report.pdf>, accessed 12/11/18.

<sup>1424</sup> <https://auditor.mo.gov/sites/default/files/PeerReviewReport10-27-17.pdf>, accessed 12/11/18.

which the speaker will refer to the appropriate committees. In order, these bills are sent to the house committees (e.g., education, economic development, etc.), the House Budget Committee, the full house (for debate), the Senate Appropriations Committee, the senate body (for debate), and then the conference committee (interview notes, 2018; Sirtori, 2015).

Legislative oversight during the appropriations process also appears to be partly conducted by the Senate Committee on Fiscal Oversight. The committee's authority is described in subpoint 8 of Rule 28 of the rules of the Missouri Senate. In sum, "the committee must consider and report upon all bills, except regular appropriations bills that require new appropriations or expenditures of appropriated funds in excess of \$100,000, or that reduce such funds by that amount during any of the first three years that public funds will be used to fully implement the provisions of the Act." The membership of the committee must be as equal to the partisan balance of the chamber as possible. Currently, the membership of the committee consists of seven senators, two of which are Democrats and five of which are Republicans.

The House Budget Committee consists of 24 Republicans and 10 Democrats and is established by House Rule 23.<sup>1425</sup> Its responsibilities are described in House Rule 24; "The Committee on Budget shall have the responsibility for any other bills, measures, or questions referred to it pertaining to the appropriation and disbursement of public moneys."<sup>1426</sup> During a hearing held on February 12, 2018,<sup>1427</sup> on HB 3 (the appropriation bill for the Department of Higher Education) and HB 12,<sup>1428</sup> most members ask questions, although most questions are not investigative of the testifying agencies' actions. However, some in-depth questioning is conducted by multiple members. For instance, a legislator asks what priorities the Commissioner of Higher Education took in deciding to cut all of the higher education initiatives. The commissioner responds that the priority was to fund the core, which, according to a legislator at the meeting, is necessary to maintaining the institution, without which there would be no program. Many potentially investigative questions took the form of statements rather than actual questions. For instance, in discussing need-based and merit-based funding, a legislator comments that children with a poor education, while just as bright as children with a good education, are less likely to obtain the merit-based funding because of their poor education. Furthermore, that children with good educational opportunities, who obtain the merit-based funding, are likely going to be more capable of affording higher education than those children in need with poor education. Meetings are typically an hour and a half long.

The Senate Appropriations Committee consists of eight Republicans and three Democrats<sup>1429</sup> and is established by Senate Rule 25. Its duties are described in Senate Rule 28; "The Committee on Appropriations shall consider and report upon all bills and matters referred to it pertaining to general appropriations and disbursement of public money." There are no online recordings of senate hearings and hearings are typically not recorded. Although members can request that a hearing be recorded, these requests are seldom made (interview notes, 2018). However, according to an interviewee, audit reports are a part of an agency's budget report when the agency is testifying in front of the committee. Although the interviewee was unsure as to the

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<sup>1425</sup> <https://www.house.mo.gov/Committees.aspx?category=all&committee=1727&year=2018>, accessed 12/11/18.

<sup>1426</sup> <https://www.house.mo.gov/billtracking/bills171/rules/rules.pdf>, accessed 12/11/18.

<sup>1427</sup> <https://www.house.mo.gov/MediaCenter.aspx?selected=BudgetArchive>, accessed 12/11/18.

<sup>1428</sup> <https://oa.mo.gov/budget-planning/budget-information/2017-budget-information/appropriation-bills-fy-2017>, accessed 12/11/18.

<sup>1429</sup> <https://www.senate.mo.gov/aprp/>, accessed 12/17/18.

different ways audit reports perhaps impact the budget or how often they are mentioned, audit reports are discussed during Senate Appropriations Committee hearings (interview notes, 2018).

There also appears to be an exchange of information between the Joint Committee on Legislative Research's Oversight Division and standing committees in the Missouri Legislature. As a division of the Joint Committee on Legislative Research, the work performed by the Oversight Division comes from the direction of the joint committee and is reported to them respectively. The Joint Committee on Legislative Research is established in Article III Section 35 of the Missouri Constitution. Further authority of the joint committee is derived from s. 23.010-23.298, Mis. Stats.

The Joint Committee on Legislative Research, a statutory committee, provides fiscal notes for all bills introduced to either committee or the floor and whenever they are amended. The Oversight Division prepares approximately 3,000 fiscal notes during a regular legislative session that are likely viewed by various standing committees responsible for overseeing the appropriations made to the agencies under their supervision (Missouri Legislature, 2017). These fiscal impact statements are, however, little more than an estimate of a bill's cost if implemented, not a review of the actual implementation of a program by an agency. Based on a staff training Power Point Presentation on the Legislative Oversight Committee's website,<sup>1430</sup> the fiscal notes provide the following information: costs and revenue generated, fiscal impacts on any political subdivision, economic impact on small business, duplication of existing program or agency, physical facilities or capital improvements required, and whether the bill satisfies any federal mandates. State agencies are asked to complete forms that provide this information to Legislative Oversight Committee staff. Thus, the appropriations process in Missouri involves gathering information from agencies about the fiscal impacts of any bill being considered in any legislative committee.

*Vignette: Budget Battles with the Governor and the Legislature's New Constitutional Power to Override the Governor's Withholdings*

*Even with the institutional advantages over budget matters that Missouri's governor possesses and even during periods of single party control, conflicts over the state budget do occur. In Missouri, budget battles are often exacerbated by two conditions: first, the state's greater than the average reliance on the state income tax for revenue (Scarboro, 2017), and second, generally low tax revenues—Missouri has the 8<sup>th</sup> lowest annual tax revenue in country.<sup>1431</sup> Because the income tax is responsive to economic downturns or sluggish economic growth state revenues are likely to fall short of expectations during hard times, as was the case during the 2016 appropriations debates. Recently, the state auditor warned that the state's present 2018 budget is unstable and similarly susceptible to fiscal crises.<sup>1432</sup>*

*In addition to an above average reliance on income tax, the state's generally low tax revenues have meant that legislators have become accustomed to making difficult decisions about which programs receive funding and which do not. Many such budget debates tend to revolve around typically partisan spending priorities. Specifically, recent budget battles can be characterized as conservative attempts to cut education and welfare programs which are generally considered liberal spending priorities. The 2012 and 2017 budget battles took this*

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<sup>1430</sup> <http://www.legislativeoversight.mo.gov/LegOvrHomePage.html>, accessed 7/29/18.

<sup>1431</sup> <https://www.taxadmin.org/2016-state-tax-revenue>, accessed 12/11/18.

<sup>1432</sup> <https://app.auditor.mo.gov/Repository/Press/2018007491503.pdf>, accessed 11/12/18.



form. In 2012, following a substantial decrease in the state's business tax, the budget battle centered around dramatic cuts to the state's Head Start program (Robertson, 2012). In 2017, the debate centered around Medicare access, tax cuts for retirees, as well as education spending (Erickson, 2017c). Interestingly, during the 2012 budget debate between Democratic Governor Jay Nixon and the Republican legislature, the governor proposed a compromised budget that avoided many of the most extreme cuts by creating an amnesty program for delinquent taxpayers. However, the Republican legislature ultimately opposed the amnesty program and thus implemented their proposed cuts, nearly ending the Head Start program in the state. They were ultimately successful in their effort to exert their policy priorities over those of the governor.

Additionally, the for the budget for FY 2015, although both versions of the budget are typically based upon a "consensus revenue estimate" (Sirtori, 2015), "established by state budget experts and outside consultants" (The Missouri Times, 2018), the governor and the legislature "were at odds about how much money the state would make" (Sirtori, 2015). The governor estimated \$8.73 billion while both chambers estimated \$8.59 billion, however, the legislature ended up appropriating roughly \$8.9 billion in general revenue. The governor at the time (Nixon) vetoed \$144.6 million of general revenue, but the legislature overrode the veto and restored roughly \$50 million. Then, the governor restricted the appropriated funds, withholding \$641.6 million (including \$100 million for k-12 education). Gov. Nixon released \$180 million, but still withheld \$502 million, and the legislature was without power to do anything until the end of the fiscal year.

That was until November, when voters approved Amendment 10, "which gave the legislature the power to override the governor's withholdings" (Sirtori, 2015). As of 2015, Republicans of the House Budget and Senate Appropriations Committees were unsure if they were going to use the power, as the full \$500 million would likely not be restored. However, in maintaining a balanced budget, as "[i]f something gets released, something else gets restricted" (Sirtori, 2015), some funds could be released for domestic violence shelters among other ideas. The legislature planned to hear testimony from departments to decide, for the supplemental budget, how to appropriate funds (Sirtori, 2015).

A more recent article describes this new power more in-depth: "[The override] does not require the governor to reduce the total amount of his withholds. If the legislature overrides a withhold of \$1 million on a specific line item, the governor can respond by withholding \$1 million somewhere else" (Barnes, 2016). Also, the decision of where to make withholdings can be overrode by the legislature. The override power was first used in March of 2016; "\$575,000 for the Missouri Scholars and Fine Arts academies . . . and \$350,000 for rehab services for [those] who have suffered traumatic brain injuries" (Barnes, 2016). The author of this article described the above overrides as "modest" as they are a "tiny fraction of [a] potential surplus." An override requires a two-thirds majority vote (Barnes, 2016).

## Oversight Through Committees

The legislature does occasionally consider "good government" legislation which might enhance the legislature's capacity for oversight. Government reform or "good government" bills are generally heard in the Senate Committee on Government Reform and in the House Committee on Government Efficiency. Sen. Romine recently sponsored two such bills. One bill would place additional limits on the governor's appointment powers. It passed committee

with a favorable vote and is awaiting floor action. A second bill by Sen. Romine, which eliminated public whistleblower protections, has been codified into law. Both bills passed through the same senate committee in the same session and address policy relevant to the legislature's mission to carry out oversight of the executive.

Although OSA's work is not directed by the legislature, it is legally required to audit state agencies and various local government entities. These reports are publicly available. The information in these reports concentrates primarily on use or misuse of public funds, conflicts of interest, and other use of public resources. As noted earlier, the response to these audits appears to more often follow legal channels rather than legislative. For example, as the result of a recent audit, the Greenville City Clerk was charged with a felony (Wayne County Journal-Banner, 2018), and information from the audit of MoDOT and the Highway Patrol that revealed biased bidding practices involving truck weigh stations was turned over to state and federal law enforcement authorities (Shurr, 2018). It appears from media reports that the state auditor works more closely with the attorney general than with the legislature. These reports appear to concentrate primarily on what the state auditor described as "forensic auditing."<sup>1433</sup>

## Oversight Through the Administrative Rules Process

The Missouri Legislature possesses a Joint Committee on Administrative Rules (JCAR), that receives its authority from §536.037 of Missouri Statutes. The joint committee consists of 10 members, five of which come from the senate and five from the house. No major party may be represented by more than three appointed members from either house. The statute states the JCAR's authority to prevent proposed rules from being established and their authority to suspend rules that have already been promulgated (Perkins, 2017). However, a 1997 Missouri Supreme Court ruling determined that this broad veto authority was an unconstitutional violation of the state's separation of powers.<sup>1434</sup> The court specified that to block a rule the legislature needed to rely on its ability to pass bills. Thus, the legislature revised the administrative rule processes to allow itself the option to hold hearings and pass concurrent resolutions to block bills.

The administrative rules process in Missouri begins with printing proposed rules in the Missouri Register, which is published bimonthly. Once a rule has been published, a 30-day comment period begins during which any member of the public may provide comments to the agency promulgating the rule. The agency may also conduct a public hearing on the proposed rule, the date of which will be shown in the Missouri Register. The agency must then compile the comments received on the rule as well as any changes to be made to the text of the rule as a result of the comments received in an Order of Rulemaking. The Order of Rulemaking is then filed with the Joint Committee on Administrative Rules and may not be filed with the secretary of state until 30 days have elapsed.<sup>1435</sup>

During this 30-day period, JCAR hears testimony from those opposing the rule as well as those who are supportive of the rule, including the state agency responsible for promulgating the rule. The state agency proposing the rule is responsible for preparing a fiscal note if the rule will have an impact of more the \$500 on public funds or would affect the income of any individuals

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<sup>1433</sup> <https://www.auditor.mo.gov/content/statement-auditor-galloway-criminal-charges-filed-against-former-greenville-city-clerk>, accessed 7/30/18.

<sup>1434</sup> Mo. Coal. for Env't v. Joint Comm. on Admin. Rules, 948 S.W.2d 125, 134 (Mo. banc 1997).

<sup>1435</sup> [https://www.senate.mo.gov/jcar/?page\\_id=8](https://www.senate.mo.gov/jcar/?page_id=8), accessed 12/17/18.

or businesses by more than \$500. Given these low thresholds, fiscal notes are often needed. Moreover, the agency must submit a statement of impacts on small businesses to JCAR and to the Small Business Regulatory Fairness Board before the public hearing. Then, the committee may take action on the rules and may disapprove the entire rule or any portion thereof. If JCAR disapproves of a rule, it may not be published by the secretary of state, and for the disapproval to become permanent, the general assembly must ratify the action with a concurrent resolution passed in both houses of the general assembly (Council of State Governments, 2015). The governor may veto the general assembly's decision and the general assembly may override the governor's veto to permanently disapprove the rule.<sup>1436</sup>

Beginning in 2015, JCAR also conducts a five-year rolling review of existing rules. This is established in s. 536.175, Mis. Stats. Each year, a specified group of state agencies will undergo a process to review existing rules based on a predefined schedule.<sup>1437</sup>

According to the Missouri JCAR, they receive approximately 1880 rule filings per year, 150 of which are emergency rulemakings. "Each rule filing is reviewed for compliance and if necessary, members of the regulated community are contacted regarding their position on the prospective rule."<sup>1438</sup> JCAR has limited staff assisting the review of the large number of rules, therefore they reportedly rely on the public to expose problems with administrative rules.<sup>1439</sup>

Schwartz (2010) reports that JCAR's emphasis on the costs of rules without considering their benefits helps lobbyists and economic interests prevail over the public welfare. He provides an example of a rule that JCAR rejected that would have required improvements to sprinklers, alarms, and smoke partitions in nursing homes to enhance safety. JCAR voted nine to zero to disapprove the rule because it would cost too much (an undue burden) for nursing homes to comply.

## Oversight Through Advice and Consent

The senate's advice and consent power over gubernatorial appointments is defined in Article IV, Section 51 of the Missouri Constitution, which states that, "All members of administrative boards and commissions, all department and division heads and all other officials appointed by the governor shall be made only by and with the advice and consent of the senate." The Missouri Senate has 30 days to confirm the nominee; otherwise that person may not be reappointed by the governor to the same office or position (Perkins, 2017).

### *Vignette: The Legislature's Oversight over the Governor's Appointments*

*Advice and consent of gubernatorial appointments has proven to be an important venue for legislative oversight in Missouri, even when both the Office of the Governor and the senate have been controlled by the same (in this case, Republican) party. In 2017-2018, the Republican-dominated senate and Republican Governor Eric Greitens faced numerous heated battles over key appointments. The first example occurred in 2017, when Republican senators and the governor faced off over a set of key appointments and the unilateral removal of commissioners on the state's Board of Education. Greitens' intention was to stack the Board of*

<sup>1436</sup> [https://www.senate.mo.gov/jcar/?page\\_id=12](https://www.senate.mo.gov/jcar/?page_id=12), accessed 12/17/18.

<sup>1437</sup> [https://www.senate.mo.gov/jcar/?page\\_id=38](https://www.senate.mo.gov/jcar/?page_id=38), accessed 12/17/18.

<sup>1438</sup> <https://www.senate.mo.gov/jcar/>, accessed 12/11/18.

<sup>1439</sup> Interview with Cindy Kadlec, General Counsel to JCAR, 2/24/10 (Schwartz, 2010).

*Education in order to remove Education Commissioner Margie Vandeven. The governor struggled to get his nominees confirmed by legislators in his own party, however, and was forced to withdraw three nominations for the board (Erickson & Taketa, 2017; Lieb, 2018). However, after successfully appointing four new members to the board via recess appointment, the governor still failed repeatedly to remove Vandeven from her role after a series of nominees—Claudia Onate Greim (Erickson, 2017b), Tim Sumner, and Melissa Gelner (Erickson, 2017a)—voted to retain Vandeven. After each failed attempt, Greitens “restacked” the commission until he finally succeeded in firing Vandeven (Taketa & Erickson, 2017). It took the governor 10 attempts to appoint people to the board before he finally succeeded in removing the commissioner. However, once the legislature reconvened it refused to consider Greitens’ five recess appointees but refused to allow the governor to withdraw the recess-appointments from consideration, effectively delivering a lifetime ban to the five from ever serving on the board again (Suntrup, 2018). Without his board in place and facing serious personal legal troubles of his own, the governor was unable to direct the board to hire his preferred replacement, charter school activist and friend, Ken Zeff (Associated Press, 2018; Ballentine, n.d.). Ultimately, the senate succeeded in blocking the governor from realizing his policy priorities. Presently (in July 2018), the former Deputy Commissioner of Financial and Administrative Services within the Department of Education now serves as Interim Commissioner for the department (Taketa & Erickson, 2017).*

*Another example of the legislature trying to effectively ‘check’ the policy priorities of the governor through the confirmation process occurred a month after the battle for the Board of Education when the governor began to make similar attempts at remaking the Housing Development Commission. However, the senate refused to hold any hearings on the three nominations proposed by the governor. The governor then attempted to withdraw the nominees from consideration. However, Republican senators filibustered the move, effectively resulting in lifetime bans for each of the appointees from ever serving in that position (Peters, 2018b). Some legislators, board members, and bureaucrats felt the governor’s handling of the Board of Education and Housing Development Commissions were “amateurish,” exploitative, and “an abuse of [his] power” as governor (Peters, 2018a). As such, Republican Senator Romine introduced a bill in February of 2018 which, if passed, would eliminate recess appointments and make it impossible to fire a board member before their term was complete without the approval of a majority of the other board members. The bill has received a favorable vote in the Senate Committee for Government Reform.<sup>1440</sup> Greitens was arrested on unrelated matters weeks later and so the Board of Education and Housing and Development Commission battles concluded unceremoniously. However, the new governor, Governor Mike Parsons, is facing a lawsuit from state Democrats over his attempt to appoint a new lt. governor to fill the vacant position (Watson, 2018).*

The senate recently used its confirmation authority to indirectly check other ambitions of the governor over which the senate has no formal authority. For example, Missouri’s governor can issue executive orders without legislative approval, but the governor cannot reorganize government without senate ratification of the plans. With respect to government reorganization, the senate has 60 days—rather than 30 days as with appointments—to block the reorganization attempt. The legislature has no authority, however, to formally review and block other executive

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<sup>1440</sup> [http://senate.mo.gov/18info/BTS\\_Web/Bill.aspx?SessionType=R&BillID=69680271](http://senate.mo.gov/18info/BTS_Web/Bill.aspx?SessionType=R&BillID=69680271), accessed 12/11/18.

orders, aside from their typical authority to legislate. However, when Governor Greitens passed an executive order that gave all executive agency employees paid family leave, the legislature responded by shelving all gubernatorial appointments (Peters, 2017). The senate, however, eventually gave in to pressure from Greitens (Zimpfer, 2017).

The Missouri Legislature seems willing and able to utilize the confirmation process to oversee a governor from their own political party. It also demonstrates its ability to do so effectively and creatively when it feels highly motivated to rein in the governor.

## Oversight Through Monitoring of State Contracts

As is the case in many of the other states, the authority to monitor state contracts is largely associated with the executive branch. Missouri has a centralized procurement system, which can facilitate tracking state contracts. In Missouri, procurement is overseen by the Office of Administration's Internet and Telecommunication Services Department (ITSD). The ITSD website standardizes the procurement process by hosting all executive agency requests for competitive bids and allows contractors to register as potential vendors. Additionally, users can search and retrieve public vendor contracts and review them.<sup>1441</sup> By standardizing the procurement process and making a system of searchable contract documents, the cost of conducting oversight of state contracts is theoretically diminished. Nevertheless, the legislature has very little formal authority over this. Determining with whom agencies contract—and how—generally, remains a gubernatorial and executive agency prerogative (Department of Legislative Services, 2014; Commission to Modernize State Procurement, 2016).

## Oversight Through Automatic Mechanisms

Missouri has a couple of “automatic” and “good government” mechanisms that help ensure legislative oversight of the executive branch, including a legislative “sunset” mechanism as well as a statewide “sunshine” law. But, the Missouri Legislature can only review licensing and regulatory boards (Baugus & Bose, 2015). Given that the Missouri Joint Committee on Legislative Research's Oversight Division has not posted a sunset review report since 2015, there is considerable reason to suspect that legislators are not exercising strong legislative oversight through the sunset review process.

In Missouri, licensing boards and commissions are given a six to 12-year term before they come up for review by the Oversight Division of the JCLR. In 2013, the Oversight Division allowed most of the reviewed programs to sunset. However, two of the programs were never implemented to begin with because the legislature failed to fund them. Additionally, the legislature failed to offer an opinion on the continuation of a program in question in two different circumstances. Ultimately, the oversight division reviews very few sunset agencies every year, and it does not always offer an opinion as to whether to renew the agency or program.

It is also worth noting that Missouri has a “sunshine” statute which allows any citizen, including legislators, to request and access official documents, including emails which are not personal or otherwise sensitive. The state's sunshine law is a potential tool for both legislative

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<sup>1441</sup> <https://oa.mo.gov/itsd/contracts-bidding>, accessed 12/11/18.

and “interest group” oversight of the executive. The “sunshine” law played a part in determining the intentions of Gov. Greitens in the case of the Board of Education. Greitens additionally ran afoul of the state’s “sunshine” law when he directed his staff to communicate via an app called *Confide*, which sends encrypted messages that are not stored on the user’s device after viewing them. The current state auditor is also facing a lawsuit from a citizen interest group hoping to gain access to certain emails and documents that are not presently available to them (Hancock, 2017). The sunshine law also allows people to request minutes and transcripts of committee hearings (interview notes, 2018).

Despite the above oversight enhancing mechanisms, Missouri has recently eliminated a third “good government” mechanism that had decreased the information costs associated with conducting oversight of the executive branch. In 2017, after the departure of Governor Jay Nixon, Republicans in the legislature repealed “whistleblower” protections for state and public university employees. Republicans had previously attempted to repeal the state’s public employee whistleblower protections, but the efforts had been blocked by former-Governor Nixon (Ballentine, 2017). The elimination of “whistleblower” protections could have a diminishing effect on legislative and other forms of oversight by increasing the cost associated with obtaining the information necessary for oversight. If public employees are too fearful of losing their job to report malfeasances, then oversight of any kind will be difficult. To overcome this deficiency, the state auditor is now promoting an anonymous tip line run by her office.<sup>1442</sup>

## Methods and Limitations

The Missouri House provides online access to video and audio for the House Budget Committee, but very infrequently for other committees (saved within the house’s Debate Archive). For the house, transcripts are typically only available for special committees and minutes (including agendas) are archived by the secretary of state (interview notes, 2018). Additionally, the chairs of the house committees will keep their minutes and send them to the Missouri Archives at the end of the session. The chairs of the house committees can request a hearing to be videotaped as well (interview notes, 2018).

The senate does not publish minutes, transcripts, audio, or video online. Minutes and transcripts may be requested of the senate (interview notes, 2018). Minutes are kept by senate chairs and sent to the archives at the end of session. Senate Communications will record hearings upon committee request and keep those audio files and transcripts (interview notes, 2018). There are reports that are published from committee hearings, which describe who attended and the views of proponents and opponents of legislation. These can be accessed via Missouri Archives (interview notes, 2018).

Interviews were crucial due to the lack of accessible information. Out of the 19 people that were contacted, we conducted interviews with five people.

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<sup>1442</sup> <https://auditor.mo.gov/state-auditors-whistleblower-hotline>, accessed 12/11/18.

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