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State Legislative Oversight: **Oklahoma**



Capacity and Usage Assessment

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

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



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Legislative Oversight in Oklahoma

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Summary Assessment

Oklahoma has an analytical bureaucracy—a state auditor and inspector—that functions largely independently from the legislature. The legislature can call upon the auditor and inspector and use the reports produced by that office but does so on a limited basis. There has been an effort recently by the legislature to create a parallel auditing agency, run by a citizen committee, but this has only just been formed and how it will function remains unclear. The legislature does have the power to review rules, but it rarely uses its advice and consent powers. Sunset is rare.

Major Strengths

The legislature does use the auditor and inspector’s work to oversee some state agencies. The Appropriations Committee, motivated by the need to find money to balance the budget, actively inquires about agency spending.

Challenges

Oklahoma lacks many resources needed for effective legislative oversight. Chief among these is an adequately funded and staffed analytic bureaucracy that could work closely with Oklahoma’s part-time legislators to help them assess agency performance. The legislature was described as tangential to agency auditing in media stories about a budget scandal in the Department of Health. Oversight by standing committees is limited, and the sunset review process, in particular, is quite underutilized.

The 2017 budget battle demonstrates how gubernatorial veto powers, combined with the authority to call the legislature into special session, can result in significant victories for the executive branch in the appropriations process. With few advice and consent powers, and no apparent ability to oversee state contracts and limited institutional resources and prerogatives, the Oklahoma legislature does not have many strong levers with which to exercise checks on the executive branch.

Relevant Institutional Characteristics

The National Conference of State Legislators classifies Oklahoma’s legislature as a hybrid legislature, indicating that legislators dedicate a substantial amount of time to their duties, although somewhat less than full-time.¹⁹¹⁶ Squire (2017) ranks Oklahoma’s legislature as 22nd out of 50 in terms of professionalization. Legislators’ annual salaries are \$38,400, plus a \$156 per diem for days in session.¹⁹¹⁷ The legislature has 299 total staff, 224 of whom are permanent employees.¹⁹¹⁸ Senators have year-round personal staff, while House members have shared year-round staff (Haider-Markel, 2009). As a result of the imposition of term-limits in 1990, legislators are limited to 12 total lifetime years of service, whether in the House, Senate, or both, combined.¹⁹¹⁹ The lieutenant governor is technically the leader of the Senate, but in practice it is the president pro tempore “who appoints committee chairs, and (with the assistance of the minority leader) committee members” (Haider-Markel, 2009). Oklahoma’s legislature is less polarized than the majority of states. Shor & McCarty (2015) rank Oklahoma’s House of Representatives as the 30th most polarized in the country, and its Senate as the 37th most polarized.

In Oklahoma, the governor’s powers are somewhat constrained. The governor is constitutionally limited to eight years of lifetime service, and Ferguson ranks Oklahoma’s governor near the bottom of the national list in terms of authority, at 46 out of 50. The governor shares budgetary responsibility with the legislature and has line-item veto powers solely on appropriations-related legislation (Beyle, 2008). The legislature may override such a veto by two-thirds majority vote in each chamber. However, if the governor neither signs nor vetoes the budget or any other legislation, it is treated as a “pocket veto,” and it cannot be overridden by the legislature.¹⁹²⁰ Pocket vetoes, however, do not appear to be common. In 2018, despite more than 100 pieces of legislation presented to the governor in the final week before lawmakers adjourned,¹⁹²¹ state media reported that Gov. Mary Fallin only used this prerogative on one bill—legislation that would have allowed anyone over 21 to openly carry guns.

Although Haider-Markel (2009) argues that Oklahoma’s governors are endowed with “a fairly substantial base of formal powers,” he also notes that the governor’s “institutional powers. . . are much less impressive.” The existence of an independently elected lieutenant governor, attorney general, treasurer, auditor, and several other executive positions, as well as serious constraints on powers of appointment to “major policy-making posts in state government” all serve to check the governor’s authority.

Twelve percent of Oklahoma’s workforce is employed by state and local governments, tied with Arkansas at 12th out of the 50 states (Edwards, 2006). Seven percent of that workforce is in the education sector, with safety (1.6%), welfare (1.7%), services (1.3%), and other (0.8%) making up substantially less.

¹⁹¹⁶ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 5/10/18.

¹⁹¹⁷ <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>, accessed 5/10/18.

¹⁹¹⁸ <http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf>, accessed 5/10/18.

¹⁹¹⁹ <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>, accessed 5/10/18.

¹⁹²⁰ <https://okpolicy.org/pocket-veto/>, accessed 5/11/18.

¹⁹²¹ <http://newsok.com/article/5593813/last-bills-of-2018-session-awaiting-governors-action>, accessed 5/11/18.

Political Context

Both chambers of the Oklahoma legislature are controlled by the Republican Party, as is the governorship. There are currently 75 Republicans and 26 Democrats in the House. The Senate consists of 40 Republicans and eight Democrats. Republicans have held majorities in the House of Representatives since 2004, and in the Senate since 2008, breaking decades-long dominance by the Democratic Party. Republicans had never controlled the Senate prior to 2008, and had only held the House for a brief period from 1921 through 1922 (Haider-Markel, 2009). The current governor of Oklahoma, Mary Fallin, took office in 2011. Fallin is a Republican, and since the 1960s, the governor's party affiliation has alternated regularly between Republican and Democrat.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Oklahoma's analytic bureaucracy is the Office of the State Auditor and Inspector, an executive branch agency established in the state Constitution. According to the agency's website, the state auditor and inspector "is responsible for auditing the financial accounts of all government agencies within Oklahoma."¹⁹²² This includes state, county, and municipal entities. The Office of the State Auditor and Inspector contains a number of subdivisions, each with their own purview, including such domains as horse racing, minerals management, counties, emergency services, district attorneys, pensions, information technology, and the Statewide Single Audit and Comprehensive Annual Finance Report. As stated in the agency's 2011 Annual Report, in addition to fiscal audits the auditor and inspector's office also conducts performance audits and "special investigative audits," which are "unique in that they go beyond a typical financial audit to examine allegations of fraud, abuse, or misuse of public funds."¹⁹²³ Performance and special audits are conducted by their own divisions within the Office of the State Auditor and Inspector. The auditing agency itself must undergo an annual audit by an external accounting firm.¹⁹²⁴

Oklahoma Statute 74-212 requires that the state auditor and inspector conduct semiannual audits of the State Treasurer and County Treasurers, and annual audits of "of all state officers whose duty it is to collect, disburse or manage funds of the state." It is also required to conduct ongoing examinations of certain state agencies, including the Department of Corrections. Additionally, a governor, district attorney, or county commissioner may order a financial audit of any current or former state official. According to the latest published annual report, the state auditor and inspector performed 372 audits during the 2016 fiscal year, 287 of which were audits of county governments.¹⁹²⁵ Since 2003, the state auditor and inspector has completed just 35 performance audits of state agencies. In some cases, agencies were audited multiple times: the

¹⁹²² https://www.sai.ok.gov/about_the_agency/, accessed 5/10/18.

¹⁹²³ <http://digitalprairie.ok.gov/cdm/ref/collection/stgovpub/id/311>, accessed 10/24/18.

¹⁹²⁴ <https://www.sai.ok.gov/Search%20Reports/database/2016AnnualReportFinal.pdf>, accessed 5/10/18.

¹⁹²⁵ <https://www.sai.ok.gov/Search%20Reports/database/2016AnnualReportFinal.pdf>, accessed 5/10/18.

Oklahoma Board of Nursing, for example, was audited in 2005-2006, 2007-2009, 2009-2013, and 2013-2015. A review of the audit reports indicates that auditors were largely satisfied with the Board's performance in areas like fiscal accountability, while IT-related issues were satisfactorily addressed prior to subsequent audits.

In most cases, the president pro tempore and the speaker of the House are able, along with the governor, to request audits of agencies and school districts. (One exception is counties, audits for which can only be requested by the governor or county commissioners).¹⁹²⁶ The auditor must submit the results of such audits, as well as an annual report, to the governor, the president pro tempore of the Senate, the speaker of the House of Representatives, appropriations and budget chairs of the House of Representatives and the Senate, and the minority leader of the Senate and of the House of Representatives (OS §74-213.2).

Oklahoma lawmakers also recently created a controversial new Agency Performance and Accountability Commission (APAC). The governor, the president pro tempore of the Senate, and the Speaker of the House each appoint three of the nine members of the commission, many of whom come from the business community; among others, the commission's appointees included an audit manager from First Fidelity Bank, the head of an oil and gas firm, the managing director of an "owner advisory, corporate development and private equity group, and the manager of the Oklahoma Cotton Cooperative Association.¹⁹²⁷ The commission will hire private firms to "uncover waste, fraud and unnecessary spending that goes beyond agencies' legislative or constitutional directives." Critics, however, allege that these audits will politicize audits and give "a group of businessmen undue influence over how the state spends taxpayer dollars." They also argue that the audits will be "expensive and are likely to reveal little beyond agencies' need for more money to carry out their core missions." Another point of concern is that the commission will have independent authority that will circumvent the legislature to direct agencies to implement recommendations. Oklahoma's state auditor and inspector also criticized the commission, pointing out that the agency will not have to meet the same standards of independence or accountability as the Office of the State Auditor and Inspector, instead focusing on cost-cutting, privatizing services, or consolidating agencies. According to the auditor and inspector, "It is improper . . . to require the auditor to assume that costs need to be cut." APAC Commissioners at the January 25 and March 5 meetings in 2018 discussed the potential and feasibility of getting private donations to fund its work, perhaps consistent with the concerns of the state auditor and inspector that the APAC will be expensive.

During its meeting on January 25, 2018, the APAC commissioners discussed bundling agencies into groups in order to meet a statutory timeline of auditing 20 agencies over five years. The proposed timeline involved contacting outside audit agencies—consultants—and finalizing Requests for Proposals (RFP). They also discussed the problem of accepting bids without knowing how much money they would receive to carry out their mission. Ultimately, the governor appropriated \$2 million to cover the cost of these private audits.¹⁹²⁸ Staff recommended auditing the Tax Commission first because of the potential for improved performance of that agency to provide revenue.¹⁹²⁹ Additionally, the APAC discussed existing agency audits, some of which appear, according to commissioners' comments, to have been conducted independently rather than through the Office of the State Auditor and Inspector. But no one at the meeting

¹⁹²⁶ https://www.sai.ok.gov/frequently_asked_questions/, accessed 5/10/18.

¹⁹²⁷ http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/hB/HB2311%20ENR.PDF, accessed 5/11/18.

¹⁹²⁸ <http://kgou.org/post/hand-picked-group-begin-wielding-powers-over-state-agencies>, accessed 05/11/18.

¹⁹²⁹ <https://www.okhouse.gov/Video/Default.aspx>, accessed 6/17/18.

seemed to have a list of audits already conducted either by the state auditor and inspector or independently by the state agencies. Staff present at these meetings spent substantial time explaining and educating the commissioners about the requirements for open meetings and describing what public organizations can and cannot do.

In addition, the senate and house have fiscal divisions that analyze revenue, conduct research and assess program performance, among other duties.

Oversight Through the Appropriations Process

In Oklahoma, state agencies are required to submit their budget requests to both the legislature and the Office of Management and Enterprise Services. The governor then prepares an executive budget. Next, the Equalization Board, which is staffed by the governor, lieutenant governor, attorney general, state treasurer, and state auditor and inspector, certify the actual funding available for appropriation, which cannot exceed 95% of projected revenues, with the remaining 5% held in reserve to ensure a balanced budget. Once this process is complete, the General Conference Committee on Appropriations (GCCA) allocates available funds to the budget, subject to the recommendations of its various subcommittees.¹⁹³⁰ Once the budget passes with a majority vote from both chambers, it is sent to the governor. During a legislative session, the governor has five working days to sign or veto the budget, either in whole or in part. After the end of the legislative session, the Governor has 15 days in which to sign or veto it. If Oklahoma's governor uses the line-item budget veto, a two-thirds majority is needed for an override.

The 2017 appropriations process highlighted tensions in Oklahoma's budget process. Negotiations came down to the last day of the legislative session, as lawmakers attempted to find ways to fill a \$878 million shortfall. They settled on several revenue measures, including a tax on vehicle sales, a registration fee for hybrid and electric cars, and, most controversially, a cigarette fee that would have provided \$215 million in revenue. However, Oklahoma's Supreme Court invalidated the cigarette fee on the grounds that "the fee was a revenue-raising measure that violated the state Constitution, because it was passed in the last week of the 2017 legislative session, did not pass with a three-quarters majority vote from lawmakers or a vote of the people, and originated in the Senate, not the House of Representatives."¹⁹³¹ Faced with a sudden \$215 million deficit, the governor called the legislature back into a special session on September 25, 2017.¹⁹³²

As soon as the special session began, Republicans on the House Joint Committee on Appropriations and Budget (JCAB) advanced a bill to reinstate the failed cigarette tax,¹⁹³³ which House Democrats decried as "insanity."¹⁹³⁴ As the special session continued, legislators came no closer to closing the \$215 million shortfall with revenue-increasing measures that would have required a three-quarters vote by the legislature. Instead, deep cuts were proposed to education and health care.¹⁹³⁵ The resulting budget, which "cut funding to dozens of state agencies and

¹⁹³⁰ http://www.oksenate.gov/committees/appropriations/approp_process.htm, accessed 5/11/18.

¹⁹³¹ <http://kgou.org/post/gov-fallin-says-special-session-only-option-fix-state-budget>, accessed 5/11/18.

¹⁹³² <http://kgou.org/post/it-s-official-fallin-issues-order-special-session>, accessed 5/11/18.

¹⁹³³ <https://nondoc.com/2017/09/25/mccall-cigarette-tax-first-priority/>, accessed 5/11/18.

¹⁹³⁴ <https://nondoc.com/2017/09/26/insanity-passes-jcab-again/>, accessed 5/11/18.

¹⁹³⁵ <http://kgou.org/post/capitol-insider-bipartisan-budget-deal-likely-dead>, accessed 5/15/18.

took money from agency revolving funds, or savings accounts,” did not make it past the Governor’s desk: 165 out of 170 sections of the budget were vetoed.¹⁹³⁶ A second special session was called in December in response to the governor’s veto.¹⁹³⁷ This special session continued into April 2018, running concurrently with the legislature’s regular session until April 19, when the governor finally signed a new budget that contained a variety of tax hikes, including pay raises for teachers, who had threatened to walk out if their demands were not met.¹⁹³⁸ In the end, many of the appropriations included in the final budget reflected the governor’s spending priorities, including the teacher pay rise, funding for mental health, and criminal justice reform.¹⁹³⁹

As a prelude to the negotiations between the legislature and the governor, the Appropriations and Budget Subcommittees listened to presentations from the agencies under their jurisdiction.¹⁹⁴⁰ The archived recordings cover two meetings lasting multiple hours during which various agencies and commissions made roughly 30 minute presentations and answered 15 or 20 minutes of questions from committee members. Questions from the Education Subcommittee indicate that there was a search for any slack resources. For example, during the hearing on January 23, 2018, the Subcommittee on Education vigorously probed the administrative costs of the Commission of the Land Office, which manages the state’s education trust fund. The subcommittee chair asked the director of this commission to step up with some resources to help with teacher pay. The director, during his presentation, and in response to these queries, argued that the Constitution mandated that oil and land lease revenues be deposited in the trust fund and that only the profits from the fund were available for the state to spend. Further questioning from the committee asked why there were charges in the administration of the trust fund for maintaining the land being leased. The commissioner argued that not maintaining the land as a resource would in undermine the future value of the land and would depress its revenue generating capacity.

Oversight Through Committees

According to the House Rules of the Oklahoma House of Representatives, standing committees and subcommittees are authorized to conduct oversight of state agencies within their jurisdiction. This includes the inspection of agency documents, inviting public officials and employees to give testimony, and with the permission of the speaker, issue subpoenas.¹⁹⁴¹ Although the Senate Rules do not explicitly mention oversight or subpoena powers, committees are empowered to “issue process, compel attendance of witnesses, and to administer oaths to any person appearing before the committee.”

Audio of Senate Committee hearings is not posted online, though live proceedings can be streamed. However, audio of some House Committee hearings is available. These proceedings

¹⁹³⁶ <http://kgou.org/post/fallin-vetoes-most-budget-bill-promises-new-special-session>, accessed 5/15/18.

¹⁹³⁷ <https://okpolicy.org/frequently-asked-questions-oklahomas-special-session/>, accessed 5/15/18.

¹⁹³⁸ http://www.tulsaworld.com/homepagelatest/fallin-signs-historic-tax-bill-to-fund-teacher-pay-raises/article_ffe245e7-95de-5efe-b4f4-ba9a158f5d81.html, accessed 5/15/18.

¹⁹³⁹ <http://kfor.com/2018/04/30/gov-fallin-signs-multi-billion-budget-into-law/> accessed 5/21/18.

¹⁹⁴⁰ <https://www.okhouse.gov/Video/Default.aspx>, accessed 6/16/18.

¹⁹⁴¹ [https://www.okhouse.gov/Documents/Rules/56/House%20Rules%20-%2056th%20Oklahoma%20Legislature%20\(2017-2018\).pdf](https://www.okhouse.gov/Documents/Rules/56/House%20Rules%20-%2056th%20Oklahoma%20Legislature%20(2017-2018).pdf), accessed 05/15/18.

suggest that standing committees do not take an active role in oversight, but that special investigation committees take a substantial role in fire alarm oversight. In 2017 and 2018, a Special Investigations Committee conducted several lengthy hearings into a case of potential fraud based in the Oklahoma Health Department¹⁹⁴²—a situation identified by the state auditor and inspector.¹⁹⁴³ Commentators¹⁹⁴⁴ pointed out that the state auditor and inspector has to be “invited” to conduct a performance audit on an agency and that it had been years since the Health Department had been audited. Moreover, some observers blamed antiquated budgeting systems and lax rules about shifting funds between federal and state pots of money in order to cover agency shortages. Previous financial audits identified problems, but the agency did not implement recommended accounting.¹⁹⁴⁵ Upon learning about the financial problems, the legislature responded in 2017 by cutting the Health Department’s budget by 15%, which presented additional problems for an agency that was already described as insolvent.¹⁹⁴⁶ Testimony in these hearings described agency officials as repeatedly saying that they had to find more cash, a theme that recurs repeatedly throughout a wide range of documents describing many government activities in cash-strapped Oklahoma.

Oklahoma makes extensive use of interim studies when in recess. In the latest interim the Oklahoma Senate approved 43 interim studies of which 3 were eventually cancelled.¹⁹⁴⁷ These studies covered a wide range of subjects from medical marijuana, which met 12 times during the interim, to veteran suicide rates, to regulation of vaping. While the Senate does not appear to have video or audio recordings of these hearings, all the presentations made during the hearings are available online. Most importantly, Senator Pro Tem Greg Treat commissioned an interim study exploring the creation of a legislative accountability or budget office, similar to dedicated legislative analytic bureaucracies seen in other states.¹⁹⁴⁸ In a video podcast describing the potential office, Senator Treat explained that this type of office has been discussed for nearly 20 years and that the legislature is wholly dependent on state agencies for gathering and presenting budget information. The legislature has no resource to independently verify the information presented or the ability to determine the effectiveness of the previous appropriation.¹⁹⁴⁹ The interim study heard testimony from similar legislative agencies from New Mexico, Colorado, and Indiana when considering the structure and form of this potential office. Sen. Treat suggested that there is a great deal of momentum for the creation of this office in both the Senate and House and predicted a lot of action on the introduced bill early in the new session.¹⁹⁵⁰

The House approved 57 interim studies for 2018, in which 24 were combined with other studies of similar scope and subject and 2 were cancelled. This resulted in 31 total studies, which covered a wide range of subjects like per pupil expenditures, health insurance affordability, underperforming schools and turnaround models used in other states, just to name a

¹⁹⁴² <https://nondoc.com/2017/12/17/memo-problems-oklahoma-state-department-of-health/>, accessed 6/17/18.

¹⁹⁴³ <http://kosu.org/post/oklahoma-state-auditor-testifies-health-department-hearing>, accessed 6/17/18.

¹⁹⁴⁴ <http://oklahomawatch.org/2017/12/10/where-were-the-watchdogs-in-the-health-department-crisis/>, accessed 6/17/18.

¹⁹⁴⁵ <https://kfor.com/2018/01/01/state-health-department-releases-report-amid-financial-mismanagement-investigation/>, accessed 6/17/18.

¹⁹⁴⁶ <https://www.okhouse.gov/Video/Default.aspx>, accessed 6/17/18.

¹⁹⁴⁷ http://www.oksenate.gov/publications/senate_studies/interim_studies.aspx, accessed 1/8/19

¹⁹⁴⁸ http://www.oksenate.gov/publications/senate_studies/interim_studies.aspx, report 18-45; 10/25/18, accessed 1/8/19

¹⁹⁴⁹ <http://www.oksenate.gov/ProTem.html>, podcast 11/11/18, accessed 1/8/19

¹⁹⁵⁰ <http://www.oksenate.gov/ProTem.html>, podcast 11/11/18, accessed 1/8/19

few.¹⁹⁵¹ The House does have available audio and some video archived for all floor sessions, committee hearings, and interim studies.¹⁹⁵² While it is not entirely clear if all of these interim studies are acted upon in the new session, it is apparent that the Oklahoma legislature makes extensive use of interim studies to conduct oversight hearings and look to improve certain government functions. As noted by Senator Treat in his videocast, while the Oklahoma legislature is considered part-time, the sheer number of interim studies being conducted from the end of session in early May through December, not to mention special sessions which Oklahoma had two in 2018, in practice makes the legislature a full-time profession.¹⁹⁵³

Oversight Through the Administrative Rules Process

When an agency wishes to promulgate a new rule, it must submit it to the governor, who has the power to approve or deny it within 45 days. If the rule is approved by the governor, it is then subject to review by the House and the Senate, which “may each establish a rule review committee or designate standing committees of each such house to review administrative rules.”¹⁹⁵⁴ The legislature then has 30 days to review the rule. According to 75 O.S. 308, “[b]y the adoption of a joint resolution, the legislature may disapprove any rule, waive the thirty-legislative-day review period and approve any rule which has been submitted for review, or otherwise approve any rule.” A joint legislative resolution disapproving of a rule does not require approval by the governor, “and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the governor of such rule.”¹⁹⁵⁵ If a joint resolution approving the rule is passed, it then goes to the Governor for either signature or veto. If the governor then vetoes the rule, the legislature may override such veto with a two-thirds majority in each chamber. Even then, in cases of an omnibus joint resolution, the governor may still enact the rule by a “Governor’s Declaration,” effectively overriding the override of a veto of a disapproval of an agency rule. If no joint resolution is passed to either approve or disapprove of a proposed rule, it also may be enacted by Governor’s Declaration.¹⁹⁵⁶

Rejection of rules does not appear to be very common. Most recently, in May 2018, the legislature rejected a new rule proposed by the Oklahoma Ethics Commission, whose five members are appointed by the governor, the leaders of the legislature, the attorney general, and the chief justice of the State Supreme Court. The rule would have restricted the ability of elected state officials to engage in lobbying activities for two years after leaving office. According to the legislature, the Commission overstepped its authority.¹⁹⁵⁷ The governor concurred with the legislature’s rejection of the rule, stating that “the commission does not have the authority to write rules that prohibit employment opportunities of Oklahoma’s private citizens, which include state employees and lawmakers when they no longer are employed by the state.”¹⁹⁵⁸

¹⁹⁵¹ <https://www.okhouse.gov/Committees/ShowInterimStudies.aspx>, accessed 1/8/19

¹⁹⁵² <https://www.okhouse.gov/Video/Default.aspx>, accessed 1/8/19

¹⁹⁵³ <http://www.oksenate.gov/ProTem.html>, podcast 11/11/18, accessed 1/8/19

¹⁹⁵⁴ <https://administrativelaw.uslegal.com/administrative-procedure-acts/oklahoma/>, accessed 5/16/18.

¹⁹⁵⁵ <https://ok.gov/wcc/documents/Administrative%20Procedures%20Act.pdf>, accessed 05/16/18.

¹⁹⁵⁶ https://www.sos.ok.gov/forms/oar/procss_per.pdf, accessed 05/16/18.

¹⁹⁵⁷ <https://www.apnews.com/67c60e907c544473a4696a0e132232f0>, accessed 05/16/18.

¹⁹⁵⁸ <https://newsok.com/article/5593698/oklahoma-legislators-reject-ethical-rules-restricting-when-they-can-become-lobbyists>, accessed 05/16/18.

Another example of the legislature attempting to block the adoption of new rules occurred in 2014, when the school board adopted a set of standards that were based on the “Next Generation Science Standards,”¹⁹⁵⁹ which “put a greater emphasis on controversial topics like global warming and evolution.”¹⁹⁶⁰ These topics proved controversial for many in Oklahoma, with one legislator contending that “as far as standards are concerned, they need to be written, administered and taught in a way to teach students critically.”¹⁹⁶¹ A House committee reviewing the rule rejected it, but the measure was amended in the Senate and the House did not take it up again before adjourning. This left the matter to the governor, who approved the rule adopting the new standards.

A similar process to rule adoption occurs when changes to existing rules are proposed by agencies. Legislative leaders may also “establish a rule review committee or designate standing committees of each such house to review administrative rules” (75 O.S. 307.1). An April 11, 2018, audio recording of the House Administrative Rules Committee consists of assigning submitted rules to members of the committee to read and consider independently. Committee members were instructed to bring any items of concern to the attention of the chair within two weeks. That would allow staff to put rules acceptance and rejection into the Omnibus Bill. The meeting was brief—only six minutes—and included no discussion of the substance of any rules.

This committee also handles sunset reviews of existing agencies. During committee meetings, members mention taking testimony on the value of these agencies. But audio of committee meetings are all extremely short, some less than 10 minutes, and none longer than 30 minutes, so it is not clear how extensively sunset provisions or administrative rules are scrutinized.

Oversight Through Advice and Consent

According to the Oklahoma Legislative Manual, the legislature “is a very active participant in the appointment of persons to service on the many boards and commissions in Oklahoma state government . . . Almost without exception, the Senate traditionally exercises control over the confirmation process.”¹⁹⁶² Moreover, “the directors of many of the largest, most powerful state agencies are hired and fired by agency boards and commissions rather than by the governor. And while the governor does make appointments to these boards and commissions, the commissioners’ terms of office are usually staggered over several years” (Warner, 1998). Cabinet members are appointed by the governor, subject to confirmation by the Senate, pending the results of hearings held by the pertinent committees. However, cabinet secretaries in Oklahoma have no executive power, only advisory power, and in most cases serve as “little more than gubernatorial staff members with responsibilities in a substantive area” (Warner, 1998).

While rejection of nominees is not common, it does happen occasionally. For example, in 2012, the Senate rejected an appointee to the state election board. The nominee would have been

¹⁹⁵⁹ <https://newsok.com/article/3946962/oklahoma-board-of-education-adopts-new-science-standards>, accessed 05/16/18.

¹⁹⁶⁰ <https://www.usnews.com/news/articles/2014/06/20/how-the-climate-change-debate-is-influencing-whats-taught-in-schools>, accessed 05/16/18.

¹⁹⁶¹ <http://www.koco.com/article/ok-legislators-reject-new-science-standard-over-climate-change/4298365>, accessed 05/16/18.

¹⁹⁶² <https://www.okhouse.gov/Documents/LegislativeManual.pdf>, accessed 05/17/18.

the first openly gay official in Oklahoma, “raising questions as to whether the nominee was discriminated against because of his sexual orientation.”¹⁹⁶³ The chair of the Senate Rules Committee argued, however, that since the appointee had previous experience as an elected official in Oklahoma, it was “inappropriate” for him to serve on the election board.

According to Oklahoma Statutes 74-3302 through 3305, the legislature has sole authority to create state agencies while in session. However, the governor may create agencies by executive order while the legislature is out of session. Such agencies must be approved by the legislature during the next session in order to continue operation. Executive orders may be used to create and reorganize councils and boards. One example is the Joint Commission on Public Health, which was created by Executive Order 2017-36, which also appointed the commission’s chairman. Another example is the Governor’s Unmanned Aerial System Council, which was created by Executive Order 2011-19. The council consisted between 10 and 15 members, appointed by the governor, and operated under the Oklahoma Department of Commerce.¹⁹⁶⁴ An amendment to that order, filed December 22, 2017, reconstituted the council as the Governor’s Aerospace and Autonomous Systems Council, provided a clearer definition of its duties, expanded its size to between 15 and 20 members, and placed it under the joint purview of the Department of Commerce and the Secretary of Science and Technology.¹⁹⁶⁵

The constitution grants Oklahoma’s governor the power to issue executive orders in areas other than government reorganization. The legislature does not appear to have any formal power to check the use of executive orders other than to pass legislation overturning the order.

Oversight Through Monitoring of State Contracts

The Office of Management and Enterprise Services monitors and conducts audits of state contracts.¹⁹⁶⁶ The legislature does not have any oversight powers in this domain.

Oversight Through Automatic Mechanisms

According to Baugus and Bose, Oklahoma has both selective and discretionary sunset processes. This means that the legislature is enabled to choose which agencies and regulatory boards are reviewed. In 2017, HB 1999, was introduced in the House Administrative Rules Committee that proposed to make the administrative rules of all state agencies subject to sunset provision every four years. That bill died in the Administrative Rules Conference Committee.¹⁹⁶⁷ As suggested by the example of the State Board of Examiners for Long-term Care Administrators described above, agency and board sunseting is not very common in Oklahoma. In 2012, there were 75 such entities up for sunset review, and almost all of them were

¹⁹⁶³ http://www.enidnews.com/news/local_news/blocked-openly-gay-fallin-appointee-turned-down-by-senate-committee/article_f40730ff-d73e-59ce-b6d4-01f36208cd40.html, accessed 05/17/18.

¹⁹⁶⁴ <https://www.sos.ok.gov/documents/executive/781.pdf>, accessed 05/17/18.

¹⁹⁶⁵ <https://www.sos.ok.gov/documents/executive/1793.pdf>, accessed 5/17/18.

¹⁹⁶⁶ https://www.ok.gov/DCS/Central_Purchasing/, accessed 5/21/18.

¹⁹⁶⁷ <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB1999>, accessed 05/18/18.

reauthorized. As a reporter for the *Tulsa World* wrote, “In practice, the sun rarely sets on a state board.”¹⁹⁶⁸

One example occurred during a meeting of the Administrative Rules Committee on February 28, 2018, when the Oklahoma State Board of Examiners for Long-term Care Administrators came up for sunset renewal.¹⁹⁶⁹ One legislator questioned the need for the agency, pointing out that the Board governed the smallest agency in the state, with 9 Board members regulating the activities of three full-time employees: “Why would we renew it? Why can’t it be merged with a more robust agency that could better meet the needs of this population?” The chair of the committee replied that the legislator who raised the question was welcome to try to pass legislation to abolish the board. When queried whether he would therefore be open to allowing the board to cease functioning, the chair replied that, while he had let other agencies sunset in the past, “only three agencies” had even come up for sunset in 2018.¹⁹⁷⁰ He then called a vote. The motion to renew the State Board of Examiners for Long-term Care Administrators passed by a vote of 6-2 and the Committee moved on to other business.

Methods and Limitations

Oklahoma’s legislature does not provide archival recordings of committee hearings. Despite contacting 12 professionals in or knowledgeable about Oklahoma’s legislature, we were not able to interview anyone.

¹⁹⁶⁸ http://www.tulsaworld.com/news/government/most-state-agencies-survive-oklahoma-sunset-laws/article_7d515ed5-75fb-52db-87fd-aec02d56c883.html, accessed 05/18/18.

¹⁹⁶⁹ <http://sg001-harmony.sliq.net/00283/Harmony/en/View/Calendar/20180228/99>, accessed 05/15/18.

¹⁹⁷⁰ <https://newsok.com/article/5595817/tom-coburn-more-oversight-not-more-taxes-needed-in-state-government>, accessed 6/17/18.

References

- Allen, S. (2014, March 26). Oklahoma board of education adopts new science standards. *The Oklahoman*. Retrieved from <https://newsok.com/article/3946962/oklahoma-board-of-education-adopts-new-science-standards>
- Associated Press (2018, May 7). State lawmakers reject Oklahoma ethics commission rules. *Associated Press*. Retrieved from <https://www.apnews.com/67c60e907c544473a4696a0e132232f0>
- Baugus, B., & Bose, F. (2015). *Sunset legislation in the states: Balancing the legislature and the executive* (pp. 1-24, Rep.). Arlington, VA: George Mason University.
- Beyle, T. (2008). The Council of State Governments. *The book of the states 2008*. Table 4-4.
- Bidwell, A. (2014, June 20). Climate change debate: Coming to a school near you. *U.S. News & World Report*. Retrieved from <https://www.usnews.com/news/articles/2014/06/20/how-the-climate-change-debate-is-influencing-whats-taught-in-schools>
- Blatt, D. (2019, January 19). Everything you should know about Oklahoma's special sessions. *Oklahoma Policy Institute*. Retrieved from <https://okpolicy.org/frequently-asked-questions-oklahomas-special-session/>
- Brown, T. (2018, May 10). Hand-picked group to begin wielding powers over state agencies. *KGOU*. Retrieved from <http://www.kgou.org/post/hand-picked-group-begin-wielding-powers-over-state-agencies>
- Clay, N. (2018, May 7). Oklahoma legislators reject ethical rules restricting when they can become lobbyists. *The Oklahoman*. Retrieved from <https://newsok.com/article/5593698/oklahoma-legislators-reject-ethical-rules-restricting-when-they-can-become-lobbyists>
- Coburn, T. (2018, May 25). Op-ed: More oversight, not more taxes, needed in state government. *The Oklahoman*. Retrieved from <https://newsok.com/article/5595817/tom-coburn-more-oversight-not-more-taxes-needed-in-state-government>
- Denwalt, D. (2018, May 8). Last bills of 2018 session awaiting governor's action. *The Oklahoman*. Retrieved from <https://newsok.com/article/5593813/last-bills-of-2018-session-awaiting-governors-action>
- Detling, D. (2014, May 16). Oklahoma legislators reject new science standard over climate change. *KOCO News 5*. Retrieved from <https://www.koco.com/article/ok-legislators-reject-new-science-standard-over-climate-change/4298365>

- Ferguson, M. (2013). "The Governors and the Executive Branch." Gray, V., Hanson, R., & Kousser, T. (eds.), in *Politics in the American states*, 194-231. Washington DC: CQ Press.
- Fortier, J. (2017, December 14). Oklahoma state auditor testifies at health department hearing. *KOSU*. Retrieved from <http://www.kosu.org/post/oklahoma-state-auditor-testifies-health-department-hearing>
- Greene, W. (2012, May 15). Most state agencies survive Oklahoma's 'sunset laws'. *Tulsa World*. Retrieved from https://www.tulsaworld.com/news/government/most-state-agencies-survive-oklahoma-sunset-laws/article_7d515ed5-75fb-52db-87fd-aec02d56c883.html
- Haider-Markel, D. (2009). *Political Encyclopedia of U.S. States and Regions*. New York: CQ Press.
- Hoberock, B. & Krehbiel, R. (2018, May 29). Fallin signs historic tax bill to fund teacher pay raises. *Tulsa World*. Retrieved from https://www.tulsaworld.com/homepagelatest/fallin-signs-historic-tax-bill-to-fund-teacher-pay-raises/article_ffe245e7-95de-5efe-b4f4-ba9a158f5d81.html
- McClelland, J. (2017, October 27). Capitol insider: Bipartisan budget deal likely dead. *KGOU*. Retrieved from <http://www.kgou.org/post/capitol-insider-bipartisan-budget-deal-likely-dead>
- McClelland, J. (2017, November 18). Fallin vetoes most of budget bill, promises new special session. *KGOU*. Retrieved from <http://www.kgou.org/post/fallin-vetoes-most-budget-bill-promises-new-special-session>
- Miston, B. (2018, January 1). State health department releases report amid financial mismanagement investigation. *KFOR*. Retrieved from <https://kfor.com/2018/01/01/state-health-department-releases-report-amid-financial-mismanagement-investigation/>
- Monies, P. (2017, December 10). Where were the watchdogs in the health department crisis? *Oklahoma Watch*. Retrieved from <http://oklahomawatch.org/2017/12/10/where-were-the-watchdogs-in-the-health-department-crisis/>
- National Conference of State Legislatures (NCSL) (2015, March 3). 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) (2017, February 28). Legislator compensation [Website]. Retrieved from <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>

- 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>
- National Conference of State Legislatures (NCSL) (n.d.). Staffing data 1979-2015 [PDF document]. Retrieved from <http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf>
- Neal, J. (2012, May 16). Blocked: Openly gay Fallin appointee turned down by senate committee. *Enid News & Eagle*. Retrieved from https://www.enidnews.com/news/local_news/blocked-openly-gay-fallin-appointee-turned-down-by-senate-committee/article_f40730ff-d73e-59ce-b6d4-01f36208cd40.html
- Office of Management and Enterprise (n.d.). Purchasing [Website]. Retrieved from <https://omes.ok.gov/services/purchasing>
- Oklahoma Governor's Office (2011, May 20). Executive order 2011-19 [PDF document]. Retrieved from <https://www.sos.ok.gov/documents/executive/781.pdf>
- Oklahoma Governor's Office (2017, December 22). Amended executive order 2011-19 [PDF document]. Retrieved from <https://www.sos.ok.gov/documents/executive/1793.pdf>
- Oklahoma House of Representatives (2008, November). Legislative manual for fifty-second Oklahoma legislature [PDF document]. Retrieved from <https://www.okhouse.gov/Documents/LegislativeManual.pdf>
- Oklahoma House of Representatives (2017, February 6). House rules for the fifty-six Oklahoma legislature [PDF document]. Retrieved from [https://www.okhouse.gov/Documents/Rules/56/House%20Rules%20-%2056th%20Oklahoma%20Legislature%20\(2017-2018\).pdf](https://www.okhouse.gov/Documents/Rules/56/House%20Rules%20-%2056th%20Oklahoma%20Legislature%20(2017-2018).pdf)
- Oklahoma House of Representatives (2018, February 28). Administrative rules committee hearing [Video file]. Retrieved from <http://sg001-harmony.sliq.net/00283/Harmony/en/View/Calendar/20180228/99>
- Oklahoma House of Representatives (2018). 2018 Interim studies proposals [Website]. Retrieved from <https://www.okhouse.gov/Committees/ShowInterimStudies.aspx>
- Oklahoma House of Representatives (2019, February 4). HB 1999 [Website]. Retrieved from <http://www.oklegislature.gov/BillInfo.aspx?Bill=HB1999>
- Oklahoma Office of Administrative Rules (2016, November 1). An overview of Oklahoma's regulatory process [PDF document]. Retrieved from https://www.sos.ok.gov/forms/oar/procss_per.pdf

- Oklahoma Policy Institute (2018, May 6). Pocket veto [Website]. Retrieved from <https://okpolicy.org/pocket-veto/>
- Oklahoma Senate (2018). 2018 interim studies [Website]. Retrieved from http://www.oksenate.gov/publications/senate_studies/interim_studies.aspx
- Oklahoma Senate (n.d.). Overview of Oklahoma appropriations process [Website]. Retrieved from http://www.oksenate.gov/committees/appropriations/approp_process.htm
- Oklahoma Senate Pro Tem (2018, November 11). Interview on SB 1 [Podcast]. Retrieved from <http://www.oksenate.gov/ProTem.html>
- Oklahoma State Auditor & Inspector (2011). 2011 Annual report [Website]. Retrieved from <http://digitalprairie.ok.gov/cdm/ref/collection/stgovpub/id/311>
- Oklahoma State Auditor & Inspector (2016). 2016 Annual report [PDF document]. Retrieved from <https://www.sai.ok.gov/Search%20Reports/database/2016AnnualReportFinal.pdf>
- Oklahoma State Auditor & Inspector (n.d.). About the agency [Website]. Retrieved from https://www.sai.ok.gov/about_the_agency/
- Oklahoma State Auditor & Inspector (n.d.). FAQs [Website]. Retrieved from https://www.sai.ok.gov/frequently_asked_questions/
- Oklahoma State Legislature (2017, May 17). HB 2311 [PDF document]. Retrieved from http://webserver1.lsb.state.ok.us/cf_pdf/2017-18%20ENR/hB/HB2311%20ENR.PDF
- Oklahoma State Legislature (2018, January 23). Appropriations and budget education subcommittee hearing [Video file]. Retrieved from <https://www.okhouse.gov/Video/Default.aspx>
- Oklahoma State Legislature (2018, January 25). Agency performance and accountability commission hearing [Video file]. Retrieved from <https://www.okhouse.gov/Video/Default.aspx>
- Oklahoma State Legislature (2018, January 29). Special investigative committee hearing [Video file]. Retrieved from <https://www.okhouse.gov/Video/Default.aspx>
- Oklahoma Statute (n.d.). Administrative procedures act [PDF document]. Retrieved from <https://ok.gov/wcc/documents/Administrative%20Procedures%20Act.pdf>
- Oklahoma Watch (2017, December 17). Memo outlines Oklahoma state department of health problems. *NonDoc*. Retrieved from <https://nondoc.com/2017/12/17/memo-problems-oklahoma-state-department-of-health/>

- Querry, K. (2018, April 30). Gov. Fallin signs multi-billion budget into law. *KFOR*. Retrieved from <https://kfor.com/2018/04/30/gov-fallin-signs-multi-billion-budget-into-law/>
- Savage, T. (2017, September 25). McCall: Cigarette tax ‘first priority’, GPT not focus right now. *NonDoc*. Retrieved from <https://nondoc.com/2017/09/25/mccall-cigarette-tax-first-priority/>
- Savage, T. (2017, September 26). ‘Insanity’: Cigarette tax passes House JCAB . . . again. *NonDoc*. Retrieved from <https://nondoc.com/2017/09/26/insanity-passes-jcab-again/>
- Shor, B., and McCarty, N. (2015). State Legislative Aggregate Ideology Data June 2015 Update.
- Squire, P. (2017). A Squire Index Update. *State Politics & Policy Quarterly*, 17(4), 361-371.
- Ujiyedin, N. (2017, August 16). Gov. Fallin says special session only option to fix state budget. *KGOU*. Retrieved from <http://www.kgou.org/post/gov-fallin-says-special-session-only-option-fix-state-budget>
- Ujiyedin, N. (2017, September 15). It’s official: Fallin issues order for special session. *KGOU*. Retrieved from <http://www.kgou.org/post/it-s-official-fallin-issues-order-special-session>
- US Legal (n.d.). Oklahoma Administrative procedures act [Website]. Retrieved from <https://administrativelaw.uslegal.com/administrative-procedure-acts/oklahoma/>
- Warner, J. (1998). Oklahoma Governors. In G. Copeland, R. Gaddie & C. Williams, eds. *The almanac of Oklahoma politics*. Stillwater: OPSA Press 7-14.