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State Legislative Oversight: **Tennessee**



Capacity and Usage Assessment

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

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Legislative Oversight in Tennessee

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Summary Assessment

The Tennessee General Assembly has extensive analytic tools available to conduct rigorous oversight—particularly its Office of the Comptroller. The general assembly has several institutional prerogatives that enhance its ability to conduct oversight—sunset review, separate committees tasked with fiscal review and with government oversight. However, despite these advantages we found instances in which in-depth oversight exercised by the legislature is not conducted on a level consistent with the tools available. Moreover, the legislature has cut some of its own oversight committees. As is true in many states, private contracts for service delivery, appear to be especially difficult for the legislature to oversee. The example of the problems with private prisons illustrates this dilemma.

Major Strengths

The Tennessee General Assembly possesses excellent tools at its disposal to conduct robust and rigorous oversight of the executive branch. The primary analytic agency, the Office of the Comptroller, has ample budgetary, staff, and investigative resources. The comptroller produces a wide range of reports from financial audits to performance audits for legislators to utilize. The comptroller's size and resources may in fact be so large that legislative action is not always necessary to activate change in an agency. The legislature appoints the comptroller, and the comptroller appears to work collaboratively with legislators. Tennessee also has aggressive sunset provisions that require all rules to be renewed by the legislature every year and state agencies to be reviewed on a rotating basis. Furthermore, in 2014, votes gave the general assembly review over gubernatorial judicial appointments to fill court vacancies.

Challenges

First, the short legislative session provides a disincentive to conduct in-depth investigations of agencies and commissions. Short session length focuses legislators' attention on more pressing and immediate concerns like passing the budget. Second, Tennessee's

administrative rules review process may be too comprehensive, but also not nuanced enough to improve rules. Again, with so little time legislators are forced to deal with a large number of new rules and may simply not take the time to fully engage in oversight of the impact of the proposed rules. The same can be said of the sunset process. Third, the size, scope, and reputation of the comptroller's office may actually lessen the role of the legislature in leading on oversight. The comptroller is fully capable of conducting investigations and audits and soliciting change before the general assembly is engaged. Recent decisions to eliminate oversight committees for corrections, children's services, and TennCare seem ill-advised.

Relevant Institutional Characteristics

The Tennessee General Assembly is characterized as a hybrid legislature, meaning legislators receive low pay and roughly 2/3rd of their time is spent working as a legislator.²²²⁶ The general assembly is comprised of 33 senators and 99 representatives, who are paid \$22,667 per year. Legislators who reside more than 50 miles from the capital receive a \$220 per diem and legislators who live less than 50 miles receive a \$59 per diem for every legislative day.²²²⁷ Senators serve a four-year term and representatives a two-year term, with no limits on the number of terms they can serve. With only 322 staffers, of which 264 are permanent, the Tennessee General Assembly has lower staff resources compared to other similarly-sized hybrid legislatures. For example Kentucky has 468 staffers, and Arkansas has 435.²²²⁸ Rank-and-file members of the senate and house have one dedicated staffer, while those in leadership positions--speaker of the house, senate speaker, respective majority and minority leaders, and committee chairs--employ two to six staffers (interview notes, 2018). The general assembly meets for a relatively short period of time, convening for a constitutionally mandated 90 legislative days over the two-year session.²²²⁹ The general assembly can meet in special session upon request of the governor or the presiding officers of the legislature with the written consent of 2/3rd of members from the senate and house.²²³⁰ The most recent special session was called in 2016 for two days to deal with federal highway funds.²²³¹ Based on these, and other factors, the Tennessee General Assembly was ranked as the 44th most professional legislature in the country (Squire, 2017).

Tennessee diffuses executive power through several executives who are not elected by voters. The legislature elects the secretary of state, state treasurer, and state comptroller (auditor). The attorney general is appointed by the Tennessee Supreme Court (Council of State Governments, 2008). Tennessee is one of several states where the lieutenant governor is not elected on the same ticket of governor, indeed he or she is not elected by the voters of the state. In Tennessee, the speaker of the senate, who is elected by his peers, is the next in line to succeed the governor and carries the honorary title of lieutenant governor.²²³²

²²²⁶ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 10/27/18.

²²²⁷ <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>, accessed 10/27/18.

²²²⁸ <http://www.ncsl.org/research/about-state-legislatures/legislative-staff.aspx>, accessed 10/27/18.

²²²⁹ <http://www.capitol.tn.gov/about/>, accessed 10/27/18.

²²³⁰ <http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx>, accessed 10/27/18.

²²³¹ www.ncsl.org/documents/ncsl/sessioncalendar2016.pdf, accessed 10/27/18.

²²³² <http://www.capitol.tn.gov/senate/speaker.html>, accessed 10/27/18.

The governor has moderately strong budgetary powers that include proposing the annual budget and a line-item veto. However, these powers are easily overcome by the general assembly, since the governor shares budget making powers with the legislature and his line-item vetoes apply only to appropriation bills and can be overridden with a simple majority vote of legislators present (Council of State Governments, 2008). Additionally, Tennessee governors have no ability to “pocket-veto” a bill, since any bill not signed within 10 days becomes laws regardless of whether the general assembly is in session (Council of State Governments, 2017). Tennessee governors rarely veto bills as evidenced by current Governor Bill Haslem only vetoing five bills since 2011 (Ebert, 2018a). None of those five vetoes have been overturned by the legislature (Ebert, 2016). Historically, the legislature has called special sessions just to override a governor’s veto, but at present there is no movement to call a special session to override the governor’s latest veto of a proton cancer therapy bill (Ebert, 2018b).

The governor is limited to two consecutive four-year terms of service but is eligible for office again after sitting out for four years. The governor has extensive powers granted through statute to reorganize and reshape the executive branch through executive orders (Council of State Governments, 2014). Current Governor Bill Haslem has issued 70 executive orders since first taking office in 2011, covering ethics, disclosure and transparency in government to transferring policy responsibilities from one agency to another.²²³³ As a result, the Tennessee governor is ranked as the 15th most powerful governor in the country despite fairly limited budget powers and constraints on gubernatorial vetoes.

Political Context

Divided party control of state government was the norm from 1992 through 2010, but from 2011 onward Tennessee is one of the states with a Republican trifecta. Often the divided party control in the state resulted from a Republican governor facing a general assembly controlled by Democrats. There were two periods of one-party Democratic control, 1992-1994 and 2003-2004. From 2005 to 2010, the two chambers of the general assembly were divided, with Republicans controlling or tied for control. Shor and McCarty rank the Tennessee Senate as only the 28th most polarized upper chamber in the country and the house of representatives the 23rd most polarized chamber in the nation (2015). This is likely to reflect this history of divided party control in which compromise was necessary to get anything accomplished.

Currently, Republicans have supermajorities in both houses with a 28 to five majority in the senate and 74 to 25 majority in the house. At the national level, Tennessee is one of the most reliably Republican states in the country. At the state level, however, the governorship has alternated between Democrats and Republicans since 1970. Since 1979, every governor has served two full four-year terms, suggesting Tennessean voters are hesitant to oust incumbent governors of either party. Republicans have had unified control of government since 2011.

²²³³ <https://sos.tn.gov/products/division-publications/governor-haslam-executive-orders>, accessed 10/27/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The Office of the Comptroller of the Treasury (OCT) is the primary analytic bureaucracy in Tennessee. The comptroller is a constitutional office elected jointly by the general assembly and serves a two-year term with no term limits.²²³⁴ The comptroller's duties are set out in statute. The OCT is responsible for auditing both state agencies and local government. Moreover, the OCT participates in the "general financial and administrative management and oversight of State government."²²³⁵ The OCT is a massive well-funded legislative agency with a FY17-18 budget of \$109.5 million.²²³⁶ The primary division relating to oversight in the OCT is the Department of Audit, but the OCT performs many other duties, such as property assessments, management services, small business advocacy, as well as serving on a wide range of state boards and commissions.

The Department of Audit in the Office of the Comptroller is comprised of two distinct sections, the State Audit Section and the Local Government Audit Section, which often work in conjunction with the Investigations Section.²²³⁷ The FY 17-18 budget for the Audit Department was \$27.5 million. Its staff of 300 published over 62 audit reports in 2017 of which 19 were performance audits of state agencies or programs.²²³⁸ The Audit Department is a post-audit agency that conducts financial and compliance audits, performance audits, information systems audits, attestation agreements, and the state Comprehensive Annual Financial Report.²²³⁹ Within the State Audit Division is the State Audit Section, the Information Systems Audit Section and a whole section devoted to Medicaid/TennCare audits.²²⁴⁰ Also, working in support of the State and Local Government Audit sections, is the Division of Investigations which investigates allegations of waste, fraud, or abuse of public funds often leading to criminal prosecutions.²²⁴¹ In 2017, the Division of Investigations issued 34 reports that detailed the loss of over \$841,000 due to fraud and \$484,000 in waste or abuse of public funds. These investigations resulted in 19, mostly local officials, being indicted on 189 felony counts.²²⁴² Moreover, the comptroller's Waste and Fraud Hotline produces a large number of opportunities for audits or investigative follow-up. Between 2016 to 2017 the Audit Division receive over 900 notifications of possible fraud, of which 462 were considered substantive allegations and were referred for action, with over 350 responses have been reviewed, with over 100 still open.²²⁴³ The bulk of the other notifications were either repeat notifications or calls made to the wrong agency. The data suggest that the Audit Division in comptroller's office is an extremely active agency with abundant staff, budgetary, and investigative resources to conduct oversight.

²²³⁴ <http://comptroller.tn.gov/shared/pdf/COTGUIDE.pdf?v062018>, accessed 10/27/18.

²²³⁵ <http://comptroller.tn.gov/shared/pdf/COTGUIDE.pdf?v062018>, accessed 10/27/18.

²²³⁶ <http://www.capitol.tn.gov/joint/staff/budget-analysis/docs/Budget%20Summary%20for%20FY%2018-19%20final.pdf>, accessed 10/27/18.

²²³⁷ <http://www.comptroller.tn.gov/audit/>, accessed 10/27/18.

²²³⁸ <http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf>, accessed 10/27/18.

²²³⁹ <http://www.comptroller.tn.gov/sa/Index.asp>, accessed 10/27/18.

²²⁴⁰ <http://comptroller.tn.gov/shared/pdf/COTGUIDE.pdf?v062018>, accessed 10/27/18.

²²⁴¹ <http://comptroller.tn.gov/shared/pdf/COTGUIDE.pdf?v062018>, accessed 10/27/18.

²²⁴² <http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf>, accessed 10/27/18.

²²⁴³ <http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf>, accessed 10/27/18.

Given that the comptroller is an elected official, he or she has a high degree of independence to audit or investigate agencies. The OCT is statutorily required to conduct performance audits of all agencies every eight years in compliance with Tennessee's Governmental Entity Review Law or Sunset Law. As a result, there is not a specific legislative committee tied to the OCT; many committees often react to the reports conducted by the Audit Division. Despite this, the joint committees on Government Operations and Fiscal Review appear to be the primary committees utilizing the work done by the comptroller. The Fiscal Review Committee reviews all comptroller audits and conducts the majority of hearings related to audit findings.²²⁴⁴

There is another analytic bureaucracy that aids the finance and budgetary processes, the Legislative Budget Analysis Office (LBAO). The LBAO provides support to the Joint Fiscal Review Committee (FRC), as well as the House and Senate Ways and Means Committees. This office was created by statute in 1999 to conduct detailed analyses of the state's budget and condition of financing for state programs. Its staff of seven examines and makes recommendations on the fiscal impacts of policy decisions, as well as monitoring federal grants and information management.²²⁴⁵ The FRC itself also has a committee staff of 14 professionals plus two administrative assistants.

Oversight Through the Appropriations Process

The budgetary process in Tennessee is a shared responsibility between the governor and the general assembly. Both the senate and house have ways and means standing committees, as well as, the Joint Fiscal Review Committee (FRC), which meets during the interim as well as during the regular sessions. The FRC is comprised of 17 members, six senators and nine representatives, plus the speakers of the house and senate, with a current partisan split of 12 Republicans and five Democrats. As noted above, this committee has a staff of 14 to aid legislators. The committee was established by statute in 1967 and is responsible for reviewing revenue collections, budget requests, the recommended executive budget, appropriations, work programs, reserves, the state debt, and the condition of various state funds.²²⁴⁶ The FRC also prepares fiscal notes on all bills introduced in the general assembly that may have a fiscal impact on the state or local governments. From 2017 thru 2018, FRC met seven times and from the agenda action items, much of their work was focused on approving non-competitive bids over \$250,000. To provide some budgetary context, Tennessee recently passed its annual budget which for FY18-19 was \$37 billion.²²⁴⁷

Aiding the FRC, as well as the House and Senate Ways and Means Committees is the Legislative Budget Analysis Office, described above. The Ways and Means Committee has a specific subcommittee dedicated to investigations and oversight, the Senate Finance, Ways and Means Oversight Subcommittee. This subcommittee held five meetings between 2017 and 2018. On one occasion hearings were held in response to the comptroller's report concerning the

²²⁴⁴ <http://www.capitol.tn.gov/joint/committees/fiscal-review/>, accessed 10/27/18.

²²⁴⁵ <http://www.capitol.tn.gov/joint/staff/budget-analysis/>, accessed 10/27/18.

²²⁴⁶ <http://www.capitol.tn.gov/joint/committees/fiscal-review/>, accessed 10/27/18.

²²⁴⁷ <http://www.capitol.tn.gov/joint/staff/budget-analysis/docs/Budget%20Summary%20for%20FY%2018-19%20final.pdf>, accessed 10/27/18.

troubled Department of Human Services (DHS) summer food programs.²²⁴⁸ While the bulk of funding for the programs comes from the federal government, Tennessee contributes over \$800,000 towards two summer food programs. Since 2015, DHS has encountered numerous problems relating to oversight of approved vendors, meal counts, abuse of reimbursement of meals provided,²²⁴⁹ to outright theft of funds by vendors.²²⁵⁰ However, during the course of the hearings, few substantive questions were asked about DHS procedures in response to recent reports. Rather, most questions focused on the “how to” type questions, focusing on how the programs work, how someone becomes a vendor, or how people qualify to receive benefits.²²⁵¹

While the FRC focuses much of its attention on granting and extending contracts, the respective House and Senate Ways and Means Committee are more likely to hold hearings in which agency heads defend their budget requests. However, an examination of Ways and Means hearings demonstrates that agencies do not provide much testimony. Additionally, many questions that are asked are technical in nature when an agency does in fact testify.²²⁵² In comparison to the FRC, the House and Senate Ways and Means Committees meet more frequently with the house committee meeting 22 times from January to April 2018 and its senate counterpart also meeting 22 times.

At one hearing of Senate Finance, Ways and Means Committee, the head of the Department of Finance and Administration gave the governor’s annual budget request for that department. Many senators asked questions about the governor’s budget proposal. The chair of the Ways and Means Committee inquired directly on how much oversight needs to be conducted regarding “reductions” of all programs. The chair was concerned that there might be a lack of discipline on the part of agency commissioners and executive branch broadly about reviewing the efficiency of various programs considering the monetary resources being investing in them.²²⁵³ This demonstrates his desire for accountability through oversight, but the focus was on “how” and “what” rather than “why” questions.

Oversight Through Committees

There is evidence of robust and comprehensive oversight from the general assembly’s non-appropriation committees. In a recent instance the Senate and House Education Committees dealt with issues surrounding sexual misconduct in Tennessee public schools. A report by USA Today demonstrated that Tennessee had gaps in its definitions of misconduct, licensure revocations, and reporting (Reilly, 2016). This prompted the Office of Research and Education Accountability (OREA), a subunit within the OCT, to conduct an audit of state policies and regulations related to reporting of teacher misconduct. OREA focuses on policies related to local education and higher education institutions. OREA’s report identified problems in six areas: 1) several levels background checks were not being performed or were not performed often enough, 2) there was little follow up on the references for new hires, 3) the State Education Board had a backlog of sexual misconduct reports, 4) most districts lacked a working definition of what

²²⁴⁸ http://tnga.granicus.com/MediaPlayer.php?view_id=404&clip_id=14158, accessed 10/27/18.

²²⁴⁹ <http://www.comptroller.tn.gov/repository/ia/allaboutgiving.pdf>, accessed 10/27/18.

²²⁵⁰ <http://www.comptroller.tn.gov/repository/NR/20160502KingdomDominion.pdf>, accessed 10/27/18.

²²⁵¹ http://tnga.granicus.com/MediaPlayer.php?view_id=404&clip_id=14158, accessed 10/27/18.

²²⁵² http://tnga.granicus.com/MediaPlayer.php?view_id=376&clip_id=14297, accessed 10/27/18.

²²⁵³ http://tnga.granicus.com/MediaPlayer.php?view_id=402&clip_id=14222, accessed 10/27/18.

constitutes sexual misconduct, 5) vague Tennessee law regarding revocation of licensure, and 6) teachers retained their license even if misconduct had been properly reported.²²⁵⁴

The OREA report was issued in January 2018 followed by joint hearing of the Senate and House Education and Planning Committees on January 23. In this hearing both the comptroller, OREA analyst, and the State Board of Education gave presentations regarding the report's findings and offered concrete policy solutions to address the problem.²²⁵⁵ Legislators were engaged and for the most part asked probing questions of the analyst and the State Board of Education staffers. While the USA Today report came out in late 2016, the OREA analyst noted that there had been *only* four instances of criminal sexual misconduct in Tennessee by teachers or other school personnel. This, however, did not reflect reported issues of misconduct that did not reach a level criminality. The result of the hearing was the passage of several bills aimed at closing gaps in reporting and clarifying vague language regarding revocation of licensure, which were passed before the end of session in April (Nicholson, 2018). These bills, including action by the U.S. Department of Education, have provided districts and the State Board of Education with the tools and language necessary to prevent teachers accused of misconduct from gaining employment in other districts (Gonzales, 2018).

While there is certainly a “fire alarm” quality to this example, the legislature took substantial action in response to serious gaps in Tennessee’s background check process for teachers. The pertinent committee held an in-depth hearing, which produced legislation aimed at addressing a large portion of the problem. The reaction by the education and planning committees demonstrated a coordinated effort by the house and senate to affect some change. This example shows that the general assembly is fully capable of working in conjunction with the comptroller, affected agencies, and the other legislative house to find comprehensive solutions to a pressing problem. This seems to meet the criteria of evidence-based, solution-driven, nonpartisan oversight.

The Tennessee Legislature eliminated three oversight subcommittees in 2011. One of these, the Prison Oversight Committee, an interim legislative committee, received recent media attention after a prison riot in April of 2017. State media reported that in 2015 the prisons in the state were so overcrowded that the governor could have declared an emergency, but both he and the Tennessee Department of Corrections (TDOC) claimed that there was no emergency (Hale, 2017). According to a local TV station, their investigating team and a state representative asked to visit another prison to interview people who worked at the facility, but their requests were denied (Kalodimos, 2017). Family and former employees of that prison provided graphic details of the use of excessive force by guards. A minority party legislator argued that that oversight committee needed to be reinstated in the wake of the riot. Despite the media attention, senators stripped a provision from a bill that would have reinstated oversight committees for corrections, children’s services and TennCare. The speaker of the senate, also known as the lieutenant governor, claimed that the state and local committee of the senate has “a corrections subcommittee that meets regularly and holds hearings when needed” (Lowary, 2017). Yet the media reported in a story dated April of 2017, that that subcommittee had met only twice recently, in June 2016 and in September 2016. This reaction by senate leadership indicates that the legislature may not be fully committed to devoting time and resources to some varieties of oversight. Moreover, as the following OCT audit and hearing by the Government Operations

²²⁵⁴ <http://www.comptroller.tn.gov/Repository/RE/!TeacherMisconductMultipleofFour.pdf>, accessed 10/27/18.

²²⁵⁵ http://tnga.granicus.com/MediaPlayer.php?view_id=370&clip_id=14164, accessed 10/27/18.

Committees illustrates, without an oversight subcommittee, the tools available to the legislature to hold the TDOC accountable are a sunset review of the entire department.

In addition to standing committees with substantive jurisdiction, the House and Senate Government Operations Committees use OCT audits to review state agencies periodically (Sher, 2009). These reviews allow them to extend or terminate an agency. The decision to terminate an entire state agency even in response to a “scathing” audit report is a fairly blunt oversight instrument, however. This is apparent in the continuing problems with prisons in Tennessee described below.

The OCT has conducted audits of Tennessee’s prisons in the past, and these audits have documented serious problems (Reutter, 2014). After the prison riot in April of 2017, the OCT conducted another audit of the TDOC. The audit found multiple staffing violations that put prison employees at risk, inadequate health care for prisoners that resulted in deaths, and severe overcrowding. The OCT report criticized TDOC for not holding its private contractor, CoreCivic, accountable for its failures. The Government Operations Committee met in November 2017 for four hours with the OCT to grill TDOC (Sisk, 2017). This committee has the power to terminate the department and reportedly considered this. But they delayed the decision until December, at which point they decided to reauthorize the department for one year instead of the usual four-year extension because if they terminated TDOC, then the entire corrections system would be privatized. Given that the problems emanated from poor performance by the private contractor, CoreCivic, some legislators argued that terminating TDOC could make the problems worse. In exchange for another year of existence, TDOC promised to fine CoreCivic for violations, and a legislator on the committee promised to write legislation addressing problems with prison privatization. The tools available to the Government Operations Committee appear to be so extreme that they cannot be used to oversee the work of state agencies, especially if those agencies provide essential services. Therefore, the more consequential the agency is, the more difficult it is for the Government Operations Committee to impose consequences on it.

Oversight Through the Administrative Rules Process

Tennessee grants its general assembly substantial rule review power. Proposed rules that do not need public hearings become effective 150 days after being filed with the secretary of state. Rules that receive a public hearing take effect 90 days after the hearing. But during this waiting period, the Joint Government Operations Committees can stay any proposed rule that has already received a public hearing for up to 60 days and request an agency to amend, repeal, or withdraw the rule. More importantly, all permanent rules expire at the end of the fiscal year in June, unless the legislature acts to extend the rule (Council of State Governments, 2015). The committee considers the following factors when deciding whether to terminate a rule: “authority, clarity, consistency, justification, necessity, and reference (2010 Tennessee Annotated Code).²²⁵⁶ As a result of the short termination period, the Government Operations Committees can exercise considerable authority of the rulemaking process.

A review of the Joint Government Operations Committee website demonstrates that the committee meets regularly. In 2017, the committee held 14 hearings, and so far in 2018 they

²²⁵⁶ <https://law.justia.com/codes/tennessee/2010/title-4/chapter-5/part-2/4-5-226/>, accessed 10/18/18.

have held 11 hearings on rules from a variety of agencies and commissions.²²⁵⁷ In several hearings a wide range of rules were considered but committee members asked only a few questions. In most instances questions centered on clarifying the rule or asking for additional information from the presenters. One hearing in April 2018 considered 19 rules. Only one rule was not adopted; it was stayed 45 days. This suggests that the hearings themselves are not a forum where the benefits and costs of the rules are fleshed out.²²⁵⁸ One observer of the administrative rules review process stated that all agencies that propose a new rule must legally have public hearings prior to bringing the rule to Government Operations Committee. This often gives legislators and their staff a full month to review objections or issues with the rule from concerned parties and work those issues out prior to the hearing (interview notes, 2018). Given this opportunity to confer informally, the *pro forma* nature of the hearings could indicate that concerns over the rules are dealt prior to the official hearing.

It is rare that the legislature uses its strict sunset review to allow existing rules to expire. Since 2005, only a handful of rules have been terminated, and the legislature has a history of extending all rules beyond the expiration date (Shwartz, 2010). Yet, this power is occasionally used. For example, in a recent hearing the Government Operations Committee rejected a Tennessee Department of Transportation rule to allow gas stations along the interstate highways to advertise on their signs, thereby affecting the business of billboard operators and owners (interview notes, 2018). These examples notwithstanding, the current structure of delayed implementation of rules followed by an automatic yearly sunset for all rules is a very time-consuming procedure for a legislature with such a short session and limited staff resources.

Schwartz (2010) considers the binary choice of terminate or not as inefficient and ineffective because it does not help improve or adjust rules—in his words, calibrating rules (p. 371). It appears that reviewing all rules on a yearly basis may contribute to *pro forma* hearings rather than targeted effort directed at specific problems. This is the same committee that met to determine whether the state would still have a Department of Corrections, as discussed in the previous section. Therefore, the workload seems exceptionally heavy even for a committee that can meet during the interim.

Oversight Through Advice and Consent

The Tennessee governor has the ability to appoint numerous individuals to a wide range of boards and commissions. In October 2017, current governor Bill Haslem appointed 217 individuals to 95 boards and commissions.²²⁵⁹ There no evidence that these appointments were considered with in-depth hearings in the respective senate committee of jurisdiction. However, in the recent past there have been some outright rejections of the governor's nominees for the University of Tennessee Board of Trustees. The general assembly passed legislation reducing the size of the board from 27 to 12 members and correspondingly rejected four of Governor Haslem's 10 appointments (Humphrey, 2018). This effort to revamp the UT Board of Trustee structure was designed to give the governor and by extension the general assembly more control over the board and the UT university system in general (WATE 6, 2018). This effort probably

²²⁵⁷ <http://wapp.legislature.state.tn.us/apps/videowrapper/default.aspx?CommID=400023>, accessed 10/27/18.

²²⁵⁸ http://tnga.granicus.com/MediaPlayer.php?view_id=392&clip_id=15151, accessed 10/27/18.

²²⁵⁹ <https://www.tn.gov/governor/news/2017/10/16/haslam-makes-appointments-to-state-boards-and-commissions.html>, accessed 10/27/18.

has more to do with on-going issues between the general assembly and the UT system, than the governor and his choices for the Board of Trustees.

However, in the area of judicial appointments there is a great deal of contention between the governor, the legislature, and between both houses of the general assembly. In 2014, Tennessee voters approved by 60%-39% margin, a constitutional amendment giving the legislature the power to confirm judicial appointments made by the governor to fill vacancies.²²⁶⁰ Since approval the general assembly has had issues crafting a system to confirm judges that does not disproportionately favor one house over the other (Associated Press, 2015). The amendment allows the house and senate to confirm or deny judicial appointments within 60 days of the start of the annual legislative session. If the appointments are not acted on within that timeframe, the appointment is automatically approved. However, the amendment is vague regarding the mechanism to be used by the general assembly, which has resulted in an impasse between the upper and lower houses.²²⁶¹ As recently as 2016, the general assembly still debating whether to vote as one body, with senators and house members each casting one vote, or to vote as separate chambers, each needing to confirm the nominee (Sher, 2016). Ultimately the general assembly decided that the two chambers will vote separately on confirmation, and the nominee will need to be confirmed by both chambers.²²⁶²

As noted earlier, Tennessee's governor can issue executive orders dealing with all of the categories of such orders described in the Book of the States (Council of State Governments, 2015). Moreover, there is no opportunity for legislative input on these orders. In addition, they do not have to meet the specifications of the state's administrative procedures act.

Oversight Through Monitoring of State Contracts

Major non-competitive state contracts are approved and overseen by the Joint Fiscal Review Committee. Fiscal Review comments and reviews all contracts that exceed \$250,000 and extend beyond one year.²²⁶³ Other contracts are approved or monitored by the Department of General Services (DGS) Chief Procurement Officer's office, which is located in the executive branch.²²⁶⁴ The DGS website provides a "contract dashboard" where all issued contracts can be viewed and provides a level of transparency that is easily accessible.²²⁶⁵ Furthermore, all contracts that are up for bid are available at the DGS website, with detailed instructions on how to bid on the contracts and become a vendor for the state.²²⁶⁶ The level of transparency available for contract awards, combined with the oversight of the Fiscal Review Committee, and the follow-up of any Waste and Fraud Hotline notifications by the Investigations Section of the comptroller's provides a level of contract monitoring that appears to be fairly comprehensive. While it would take pulling information from several different sources, it is not an impossible task to have effective contract monitoring through these various committees, agencies and

²²⁶⁰ [https://ballotpedia.org/Tennessee_Judicial_Selection,_Amendment_2_\(2014\)](https://ballotpedia.org/Tennessee_Judicial_Selection,_Amendment_2_(2014)), accessed 10/27/18.

²²⁶¹ Article VI, Section 3: <http://www.capitol.tn.gov/about/docs/TN-Constitution.pdf>, accessed 10/27/18.

²²⁶² <http://www.tba.org/info/amendment-2-to-the-tennessee-constitution>, accessed 10/27/18.

²²⁶³ <http://www.capitol.tn.gov/joint/committees/fiscal-review/>, accessed 10/27/18.

²²⁶⁴ <https://www.tn.gov/generalservices/procurement.html>, accessed 10/27/18.

²²⁶⁵ <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/contract-information/all-contracts-dashboard.html>, accessed 10/27/18.

²²⁶⁶ https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST, accessed 10/27/18.

departments. Moreover, the Fiscal Review Committee’s website has seven hearings from 2017 and 2018 where each contract is discussed and voted on to be awarded or extended.²²⁶⁷ After an examination of several hearings, it appears that there is little discussion of the merits of the contracts or the performance of these contracts by the committee members. There is a routine quality to the hearings, suggesting that a lot of groundwork about the contracts is done prior to the hearings themselves.²²⁶⁸ Moreover, performance of private contractors, such as CoreCivic, is a major problem in Tennessee, as it is in many other states. Thus, despite having more tools to oversee contracts, it is not clear how effectively Tennessee’s general assembly monitors this method of delivering state services. Given that the review is conducted by the Fiscal Review Committee, the oversight may involve financial accounting rather than performance monitoring.

Oversight Through Automatic Mechanisms

Tennessee has comprehensive sunset provisions that require the Joint Government Operations Committee to review every agency, board, or commission in the state once every eight years (Council of State Governments, 2016). Tennessee’s sunset procedures are derived from statute, specifically the Tennessee Governmental Entity Review Act (Sunset Law), and the Office of the Comptroller is responsible for conducting these sunset reviews for the legislature.²²⁶⁹ In FY17 the comptroller’s Department of Audit conducted 19 performance reports under the Governmental Entity Review Act, reviewing boards as small as the Board of Chiropractic Examiners to an agency as large as the Department of Safety and Homeland Security.²²⁷⁰

In some cases, the issues identified by the comptroller did not require legislative action or even necessitated a hearing by the Joint Government Operations Committee. A performance audit of the Department of Safety and Homeland Security found four out of the five previous recommendations of the comptroller’s previous reviews had been resolved and two more issues required the attention of the department.²²⁷¹ An examination of the hearings of the Joint Government Operations Committee in the 109th general assembly session yielded no hearings on this performance audit or any of the other 19 reports conducted under the Sunset Law which would have jurisdiction.²²⁷² However, as discussed in the section on “Oversight Through Committees,” some agency audits trigger lengthy hearings and raise questions about whether to terminate an entire state agency—specifically TDOC.

Additionally, while the comptroller’s Division of Audit conducts a large number of reviews and provides a large amount of information on its website, it is not clear how many agencies or boards have actually been abolished or consolidated since passage of the Sunset Law. The comptroller’s office is a large legislative bureaucracy with ample budgetary resources. Tennessee’s legislature is part-time, and several committees, such as the Government Oversight Committee, have broad agendas. Consequently, it appears that the legislature cannot engage in extensive oversight on all of its possible oversight targets. Audits by the comptroller might be

²²⁶⁷ <http://wapp.capitol.tn.gov/apps/videowrapper/default.aspx?CommID=400004>, accessed 10/27/18.

²²⁶⁸ http://tnga.granicus.com/MediaPlayer.php?view_id=391&clip_id=14281, accessed 10/27/18.

²²⁶⁹ <http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf>, accessed 10/27/18.

²²⁷⁰ <http://www.comptroller.tn.gov/repository/SA/2017annualreport.pdf>, accessed 10/27/18.

²²⁷¹ <http://www.comptroller.tn.gov/repository/SA/pa16109.pdf>, accessed 10/27/18.

²²⁷² <http://wapp.legislature.state.tn.us/apps/videowrapper/default.aspx?CommID=400005>, accessed 10/27/18.

enough to solicit compliance from agencies and boards, without legislative action. However, it is just as likely that the committee of jurisdiction and the legislature broadly, are not in session long enough to carefully examine the massive amount of reporting being conducted by the Division of Audit.

Methods and Limitations

There are archival video recordings of hearings that are easy to access, and committee agendas readily available and easily accessible. We contacted 12 people to request interviews and were able to interview two people about legislative oversight in Tennessee.

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