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State Legislative Oversight: **Washington**



Capacity and Usage Assessment

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

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



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Legislative Oversight in Washington State

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Summary Assessment

Although it appears that oversight of the executive branch occurs in Washington State, much of this oversight is conducted by non-legislative entities, such as the State Auditor’s Office. The legislature’s high professionalism and lack of term limits seem to contribute to a fair degree of institutional knowledge, which is evident in the substantial and informed questions posed by legislators to agency representatives during committee meetings where a large proportion of the legislature’s oversight of the executive happens. Washington’s citizens appear to value oversight and accountability in their state government as well.

Major Strengths

The insistence of citizens, through Initiative 900 in 2005, forces the State Auditor and the legislature to work together and to use audit information in the appropriations process. The existence of two well-funded audit agencies, the OSA and the legislative auditor, provide Washington’s legislators with an abundance of information. Bipartisan representation on oversight committees, and notably on the rules review committee, insures that the minority party has a voice in oversight even during periods of one-party government—the current situation.

Challenges

The “money” committees do not seem to use subcommittees to grill state agency officials about their budget requests. Instead, the House Appropriations Committee and the Senate Ways and Means Committee listen to presentations from their own staff about the various departments and public programs. The legislature’s lax use of the administrative rule review process dilutes its ability to check executive power. Likewise, it makes little or no use of its sunset and sunrise review powers. Moreover, the legislature’s inability to block or rescind executive orders affords the governor a fair degree of unchecked power, which current and past governors seem to have wielded rather frequently.

Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL) classifies Washington's legislature as a hybrid between a fully professional and part-time legislature.²⁴⁶¹ According to Haider-Markel (2009), "[t]he job is demanding . . . and many legislators consider it a full-time, or at least a 'two-thirds-time' position." Squire (2017) ranks Washington at 11th in the country in terms of professionalism. Most legislators receive an annual salary of \$47,776, with the House speaker and Senate majority leader each receiving \$56,853 per year, and the minority leaders of each chamber receiving \$52,314 per year.²⁴⁶² Each legislator also receives a \$120 per diem. As of 2016, the legislature had 793 total staff members, 536 of whom were permanent.²⁴⁶³ Washington legislators are not term-limited.²⁴⁶⁴ Washington's legislative cycle is two years long, alternating annually between budgetary and non-budgetary sessions. The budgetary sessions are limited to 105 days, but in 2013 the budgetary session lasted only 77 days. The non-budgetary sessions are capped at 60 days, but in 2014 it only ran 44 days. Washington's governor has the power to call special sessions of up to 30 days.²⁴⁶⁵

Ferguson (2013) ranks Washington's governor as the 17th most powerful in the country. Haider-Markel (2009), meanwhile, writes that "Washington governors have more formal powers than the nation's weakest governors (i.e., Alabama and Texas), but less than the strongest governors (i.e., Massachusetts and New York)." His mixed rating is attributed to the fact that Washington's governor possesses less than average power in areas like the "ability to control the entire executive branch, control the budget, and make appointments." The governor's limited ability to control the whole executive branch is derived from the fact that, besides the governor, the state has eight other separately elected executive positions. While this "weakens the governor's ability to assemble a loyal team across the top of the executive branch," the governor can still appoint the heads of major state agencies like transportation, health and human services, education, and natural resources, as well as "about 25 other senior-level administrative positions that make up the cabinet" (Haider-Markel, 2009). Washington's governors make extensive use of executive orders that have the force of law for cabinet-level state agencies, and the legislature has no option to override these orders. Yet, the legislature is able to call itself back into special session if it wants to override a gubernatorial veto. On the other hand, the Washington legislature must muster a two-thirds vote in both chambers to override the governor's veto.

A below average percentage (10.6%) of Washington's population is employed in state or local government, with 5% in the education sector, 1.4% in public safety, 1.6% in welfare, 1.8% in services, and .9% in other sectors (Edwards, 2006). It is the education sector that accounts for most of Washington's lower than average state and local government employment. The national average for percentage of state employment in the education sector is 6.1% of the population.

²⁴⁶¹ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 06/15/18.

²⁴⁶² <http://www.ncsl.org/research/about-state-legislatures/2017-legislator-compensation-information.aspx>, accessed 06/15/18.

²⁴⁶³ <http://www.ncsl.org/Documents/legismgt/StaffingData1979-2015.pdf>, accessed 06/15/18.

²⁴⁶⁴ <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>, accessed 06/15/18.

²⁴⁶⁵ <http://leg.wa.gov/legislature/Pages/Overview.aspx>, accessed 06/15/18.

Political Context

Washington's political culture is heavily influenced by the state's east-west divide, which also correlates with a rural-urban divide (Haider-Markel, 2009). The western part of the state, particularly in the Puget Sound region, tends to be more Democratic, while the more sparsely populated eastern part of the state, as well as other rural areas, typically lean Republican. Nevertheless, for much of the 20th century, Washington was notable for electing centrists from both parties, "a result of a primary election system that allowed independents to participate in any party's primaries" (Haider-Markel, 2009). That system, however, was ruled unconstitutional in 2000 after challenges by the Democratic, Republican, and Libertarian parties.²⁴⁶⁶ Subsequently, Washington became the first state in the country to adopt a "top two" primary system, whereby all candidates, regardless of party, appear on the same non-partisan ballot. The top two candidates with the most votes advance to the general election. Some have argued that the system is more fair, noting that "[c]onservative areas . . . are now likely to see two Republicans face off in November, while more liberal areas will find two Democrats on the ballot."²⁴⁶⁷ Others argue that the system has, even in politically mixed areas, disenfranchised many voters, particularly third party voters by effectively depriving them of any viable candidates for whom to vote.²⁴⁶⁸ Whether or not these electoral changes have contributed to partisan control of Washington's legislative chambers, Democrats have controlled both since 2005.²⁴⁶⁹ However, their numerical advantage is small (50-48 in the House and 26-23 in the Senate after a special election in November 2017)²⁴⁷⁰ and complicated by the fact that one Democratic senator often caucuses with the Republicans, thus muting the Democrats' dominance in the Senate.²⁴⁷¹ This could be seen as a remnant of Washington's former moderate to independent partisan traditions. Prior to these electoral changes, Republicans occasionally controlled one or the other legislative chamber, for example in 1997-98 and 2003-04 in the Senate and 1995-98 in the House. The governorship, meanwhile, has been controlled by Democrats since 1985, but often there were exceptionally close electoral victories.

Shor and McCarty (2015) rank Washington's legislature as highly polarized. The House is the sixth most polarized in the country, while the Senate is the fifth. This is partly attributable to Washington Democrats being among the most "liberal" in the country, while state Republicans are among the most "conservative." This is a clear departure from Washington's 20th century tradition of moderation.

²⁴⁶⁶ <https://www.sos.wa.gov/elections/research/history-of-washington-state-primary-systems.aspx>, accessed 06/15/18.

²⁴⁶⁷ <https://www.heraldnet.com/opinion/washington-state-beat-california-to-top-two-primary/>, accessed 06/15/18.

²⁴⁶⁸ <http://www.thestand.org/2015/08/washingtons-top-two-primary-is-limiting-choices-alienating-voters/>, accessed 06/15/18.

²⁴⁶⁹ http://www.ncsl.org/documents/statevote/legiscontrol_2002_2014.pdf, accessed 06/15/18.

²⁴⁷⁰ This election replaced a state Senator who, despite being a Democrat, caucused with Republicans giving that party control of the state Senate. Therefore, much of the information discussed in this report occurred while Republicans were in reality controlling the Senate despite being the minority party in the chamber.

²⁴⁷¹ http://www.ncsl.org/Portals/1/Documents/Elections/Legis_Control_071018_26973.pdf, accessed 7/22/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Washington State has two auditors: the Legislative Auditor, which reports to the Joint Legislative Audit and Review Committee (JLARC) and the State Auditor's Office (SAO), whose director, the state auditor, is a separately elected executive official.²⁴⁷² The Legislative Auditor, with a staff of 23 and a budget for 2017 of \$8.2 million²⁴⁷³ conducts performance audits at the request of the legislature through the JLARC and acts as committee staff for the JLARC. The legislative auditor is charged with making 'examinations and reports concerning whether or not appropriations are being expended for the purposes and within the statutory restrictions provided by the legislature . . .'" (RCW Section 44.28.080).

The SAO, with a staff of 375, conducts audits of state and local government entities, executing performance, financial, and "accountability" audits, as well as Federal Single Audits, "whistleblower investigations and IT reviews," and oversight of state contracts.²⁴⁷⁴ Most of the performance audits pursued by the SAO "have focused on large, state-level programs,"²⁴⁷⁵ and all of these are legally mandated or selected by the State Auditor rather than the legislature or governor. The separate Local Government Performance Center focuses on assisting local governments to "solve problems, reduce costs and improve the value of their services to citizens."²⁴⁷⁶ Its state appropriation for 2015 is nearly \$10 million.

In 2005, Washington's citizens passed ballot initiative I-900, which established the independence of the state auditor to determine which agencies to audit without interference from the legislature.²⁴⁷⁷ The initiative earmarks a small percentage of the state's sales tax to pay for the cost of the additional audits and reporting activities. Moreover, the legislature, especially the JLARC but also other relevant committees were required to hold hearing on the results of these audits. The results of SAO performance audits are widely distributed, and citizens can sign up to an e-mail listserv to receive notification of their publication. Audit reports are also presented to the legislature "in public hearings, typically held by the Joint Legislative Audit and Review Committee."²⁴⁷⁸ The state auditor is also required, under the I-900 initiative, to submit a report to the legislature annually by July 1 on the compliance of state agencies with audit recommendations. Between May 2017 and May 2018, the SAO completed nine performance audits,²⁴⁷⁹ and there are another 10 in progress, with estimated dates of completion between fall 2018 and mid-2019.²⁴⁸⁰ According to the SAO's most recent published progress report (2016), the auditor has made "more the 2,100 recommendations to state agencies and local governments," with agencies reporting that an average of 87% of these recommendations have been adopted or are in the process of being followed-up.²⁴⁸¹

²⁴⁷² <http://www.sao.wa.gov/Pages/default.aspx>, accessed 06/15/18.

²⁴⁷³ <http://fiscal.wa.gov/BudgetACurr>, accessed 7/23/18.

²⁴⁷⁴ <http://www.sao.wa.gov/about/Pages/default.aspx>, accessed 06/15/18.

²⁴⁷⁵ <http://www.sao.wa.gov/state/Pages/Aboutperformanceaudits.aspx>, accessed 06/15/18.

²⁴⁷⁶ <http://www.sao.wa.gov/local/Pages/LGPC.aspx>, accessed 06/15/18.

²⁴⁷⁷ <https://www.sos.wa.gov/elections/initiatives/text/i900.pdf>, accessed 06/18/19.

²⁴⁷⁸ <http://www.sao.wa.gov/state/Pages/Aboutperformanceaudits.aspx>, accessed 06/15/18.

²⁴⁷⁹ <http://www.sao.wa.gov/state/Pages/RecentReports.aspx>, accessed 06/15/18.

²⁴⁸⁰ <http://www.sao.wa.gov/state/Pages/PAWorkInProgress.aspx>, accessed 06/15/18.

²⁴⁸¹ http://www.sao.wa.gov/state/Documents/PA_2016_Performance_Audit_progress_report.pdf, accessed 06/15/18.

Although I-900 establishes the independence of the SAO, it requires that the JLARC “must consider the state auditor reports in connection with the legislative appropriations process” and “is required to report on the implementation of any State Auditor recommendations for legislative action.”²⁴⁸² Meetings at which the JLARC reviews the SAO audit reports are called “I-900 meetings,” and since January 2017 video of these meetings is archived online.²⁴⁸³ These meetings are public and feature testimony from SAO staff regarding the results of investigations carried out by the State Auditor. Typical I-900 meetings last an hour-and-a-half, and like regular JLARC sessions, the meetings consist of testimony and presentations about performance audits conducted by the State Auditor’s Office, as well as testimony from agency representatives and public comments. Committee members typically ask questions about the auditor’s findings. During an April 2018 hearing on IT security,²⁴⁸⁴ for example, legislators requested that the auditors follow up with the agencies reviewed to ensure that they were implementing recommendations in a timely manner. One committee member, noting that the report found that lack of clarity about state IT security standards, asked whether the Office of the Chief Information Officer (OCIO) or the legislature needed to do anything to resolve the issue. Another question pertained to the kinds of IT security information-sharing mechanisms that exist between agencies in the state.

During the same session, the committee also considered two²⁴⁸⁵ SAO reports²⁴⁸⁶ about the “Alternative Learning Experience” (ALE) program, which “is public education where some or all of the instruction is delivered outside of a regular classroom schedule,” including a major online component. In addition to taking testimony from and posing questions to staff from the SAO and the Office of the Superintendent of Public Instruction (OSPI) about certain shortfalls in the ALE program, the committee also engaged in a substantial dialogue with a concerned citizen who was opposed to the ALE program.

I-900 sessions are held separately from other JLARC meetings, which are usually devoted to consideration of the results of audits conducted by the state’s Legislative Auditor. JLARC itself “is comprised of an equal number of House and Senate members, Democrats and Republicans . . . [It] conduct[s] performance audits, program evaluations, sunset reviews, and other analyses . . . [and its] authority is established in Chapter 44.28 Revised Code of Washington.”²⁴⁸⁷ Members are appointed by the Senate president and House speaker, with a maximum of four members from any one party in each chamber.²⁴⁸⁸ The chair of the four-member JLARC Executive Committee rotates annually (House Democrats choose the chair one year, Senate Republicans the next year, and so on). The vice chair is appointed by the opposite party/chamber caucus. The Legislative Auditor is selected “from a list of applicants recommended by the executive committee.”²⁴⁸⁹

²⁴⁸² <http://leg.wa.gov/jlarc/I-900/Pages/I-900.aspx>, accessed 06/15/18.

²⁴⁸³ https://www.tvw.org/?option=com_tvwsearch&keywords=Legislative%20Audit, accessed 06/15/18.

²⁴⁸⁴ <http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1021044&isFinding=false&sp=false>, accessed 07/05/18.

²⁴⁸⁵ <http://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1021127&isFinding=false&sp=false>, accessed 07/05/18.

²⁴⁸⁶ http://www.sao.wa.gov/local/Documents/ALE_Accountability_2016_ar1016301.pdf, accessed 07/05/18.

²⁴⁸⁷ <http://leg.wa.gov/jlarc/Pages/aboutjlarc.aspx>, accessed 06/15/18.

²⁴⁸⁸ <http://apps.leg.wa.gov/rcw/default.aspx?cite=44.28&full=true>, accessed 06/15/18.

²⁴⁸⁹ <http://leg.wa.gov/jlarc/Documents/RulesOfProcedure.pdf>, accessed 06/15/18.

The JLARC executive committee consists of one legislator from each party/chamber caucus, elected by JLARC from among its 16 members.

Future JLARC audits for the next biennium are determined by the JLARC members “[a]t the conclusion of the regular legislative session of each odd-numbered year.”²⁴⁹⁰ JLARC issued eight reports in 2017, six reports in 2016, five in 2015, and seven in 2014 (JLARC-Audit and Study Reports). It also made 19 recommendations to agencies between 2013 and 2016, all of which were implemented or are in progress.²⁴⁹¹ Its 2015 Annual Report states that, “[b]etween 2011 and 2014, JLARC issued 32 recommendations directly to state agencies. Ninety-four percent of these recommendations have been implemented or are in the process of being implemented.”

In 2017, JLARC studies focused on land acquisition and regulation, youth homelessness, construction contracts, and health disparities. “Assignments to conduct studies are made by the Legislature and the Committee itself to reflect top public policy concerns.”²⁴⁹² The results of JLARC studies and details about their analyses are also made available to other legislative committees and other groups like the Pew Charitable Trusts, the NCSL, and the Evans School of Public Policy at the University of Washington.

Finally, the legislature is assisted in the budget process by the Legislative Evaluation and Accountability Program (LEAP), which is the legislature’s “independent source of information and technology for developing budgets, communicating budget decisions, and tracking revenue, expenditure, and staffing activity.”²⁴⁹³ LEAP is comprised of four senators and four representatives, with equal representation from both of the major political parties. Although it is technically a legislative committee, the committee supervises a staff that provides “consulting to legislative committees and staffs, and provides analysis and reporting on special issues at legislative request.” The state’s fiscal website²⁴⁹⁴ is also maintained by LEAP. This committee has a staff of 11 budget professionals, called consultants who perform this work at the direction of the LEAP committee. The state’s fiscal website consists of budget bills and documents and interactive maps and reports on topics such as state employment trends, K-12 education funding formulas, in addition to spending and revenue data.

Oversight Through the Appropriations Process

After state agencies submit their proposed biennial budgets, the governor submits a proposed budget to the House Appropriations Committee and the Senate Ways and Means Committee. Each committee examines the governor’s proposal and prepares its own version of the biennial state budget. A conference committee then reconciles the two committees’ budgets, resulting in a final “legislative budget that is submitted to the full legislature for final passage.”

The governor has line-item veto power, and so “may veto all or part of the budget, thereby eliminating funding for certain activities; however, the governor cannot add money for an activity for which the legislature provided no funding.”²⁴⁹⁵ The legislature can override a

²⁴⁹⁰ <http://app.leg.wa.gov/RCW/default.aspx?cite=44.28.083>, accessed 06/21/18.

²⁴⁹¹ <http://leg.wa.gov/jlarc/AnnualReport/2017/default.html>, accessed 06/15/18.

²⁴⁹² <http://leg.wa.gov/jlarc/AnnualReport/2017/print.pdf>, accessed 06/15/18.

²⁴⁹³ <http://leap.leg.wa.gov/AboutLEAP.html>, accessed 06/21/18.

²⁴⁹⁴ <http://fiscal.wa.gov>, accessed 06/21/18.

²⁴⁹⁵ http://leg.wa.gov/Senate/Committees/WM/Documents/Publications/2016/2016%20CGTB_Final_website.pdf, accessed 06/15/18.

gubernatorial veto by a two-thirds vote, and, though this does occur at times,²⁴⁹⁶ in practice it “happens rarely.”²⁴⁹⁷

With one party control of the legislature, albeit narrow and recent, and the Democrats’ continuing control of the governorship, oversight of the executive in the domain of appropriations does not seem particularly robust, with House Democrats often siding with the governor. With one exception, Washington lawmakers have not been able to pass a budget on time since 2010, which has required the governor to repeatedly call special sessions. Much of this is attributable to partisanship when Republicans controlled the senate and Democrats control the house and the governorship, the situation until recently.²⁴⁹⁸ In the 2017 budget negotiations, higher education funding proved to be a major flashpoint, with house Democrats and the governor calling for increased taxes to pay for schools. School funding had been especially problematic because of a 2012 State Supreme Court ruling, known as the McCleary ruling, which “found the state had violated its constitution by underfunding K-12 schools and kicked off years of fierce debate in Olympia over school funding and policies.”²⁴⁹⁹ This ruling “forced lawmakers and Gov. Jay Inslee to pour billions of dollars into the K-12 school system.”

The budget that was ultimately passed²⁵⁰⁰ “provide[d] state workers and teachers with pay hikes, increase[d] funding for mental health programs, launch[ed] a new paid family leave program and create[ed] a new department focused on children,” all funded by “the largest-single increase in the state’s property tax in Washington history,” with more money coming from “collecting sales taxes on bottled water and online purchases and through tapping reserves.”²⁵⁰¹ However, the courts once again ruled that the plan “didn’t fully provide for schools by the September 2018 deadline . . . and suggested lawmakers further boost education funding.”²⁵⁰² A supplemental budget passed in 2018 addressed this, reducing the previously increased property taxes while ensuring that the state continued to meet its K-12 funding obligations.²⁵⁰³

The House Appropriations Committee (HAC) and the Senate Ways and Means (SWM) Committee hold hearings on the governor’s proposed budget and on agency budget requests. During 2017, the year in which the most recent biennial budget was developed, the HAC met 34 times from January through April. The SWM met 50 times during the same month. Although both committees are extremely active, an examination of their meeting agendas indicates that they spend a lot of time on legislation that is only tangentially related to the state budget. This is especially true for the HAC. For example, one HAC hearing (February 8th, 2017) devoted more than an hour to presentations on numerous bills that protected the rights of vulnerable populations: seniors victimized by financial cons, adult entertainment workers, child sex abuse victims, people with limited cognitive capacity, among others. Although some of these bills had

²⁴⁹⁶ <http://nwnewsnetwork.org/post/washington-lawmakers-announce-budget-deal-vote-override-inslees-vetoes>, accessed 06/21/18.

²⁴⁹⁷ <http://leg.wa.gov/legislature/Pages/Overview.aspx>, accessed 06/15/18.

²⁴⁹⁸ <https://www.seattletimes.com/seattle-news/politics/with-deadlock-in-olympia-inslee-calls-special-session/>, accessed 06/15/18

²⁴⁹⁹ <http://www.governing.com/topics/education/tns-washington-school-funding.html>, accessed 06/15/18.

²⁵⁰⁰

<https://app.leg.wa.gov/CMD/Handler.ashx?MethodName=getdocumentcontent&documentId=yD8drZBryOY&att=false>, accessed 06/21/18.

²⁵⁰¹ <http://www.seattleweekly.com/news/as-midnight-deadline-looms-lawmakers-pore-over-616-page-state-budget/>, accessed 06/15/18.

²⁵⁰² <http://www.governing.com/topics/education/tns-washington-school-funding.html>, accessed 06/15/18.

²⁵⁰³ <http://www.spokesman.com/stories/2018/mar/09/washington-lawmakers-send-inslee-12-billion-supple/>,

financial implications for the state, they were not part of the debate about the biennial budget. At another HAC hearing, (January 30th, 2017), several agency budgets were presented, but not by people from the agencies or from the governor's office, but rather in Powerpoint presentations by legislative staff. The HAC did, however, have the governor's representative, David Schumacher from the Office of Financial Management (OFM), present the executive budget. But in the HAC, there was less oversight and time spent more legislating on non-budget topics.

The SWM hearings more closely resembled budget-related hearings in other states than did the meeting of the HAC. The governor's office presented the budget to the committee during the January 11th, 2017 hearing, sending David Schumacher from the OFM to provide information and answer questions. There was an extensive discussion of the governor's requests. Legislators asked several pointed questions about the governor's priorities and willingness to fund or cut various items in the two budgets provided—a budget based on existing revenue and a proposed budget that include additional sources of revenue requiring legislative action. Legislators pressed Mr. Schumacher by stating that the things the governor really cared about must be the items in the budget based on existing revenue. He resisted this assertion, saying that the second budget reflected what the governor wanted to do for the state. At a subsequent SWM meeting, held on January 12th, 2017, the committee listened to a presentation on the governor's capital budget given by Jim Crawford of the Office of Financial Management. The committee then heard testimony for numerous citizen groups and other advocates for various portions of the governor's capital budget.

In a January 31st, 2017 meeting, committee staff presented an overview of budgets for four agencies, all in the general area of natural resources. Then the heads of these agencies presented more detailed budget requests and information about each of their departments. These were the Department of Fish and Wildlife, Parks, Natural Resources, and Ecology. Questions from legislators directed toward the Director Unsworth from the Department of Fish and Wildlife ranged from pointed to hostile. The committee members disputed the department's assessment of the quality of its service, complained personally about how much hunting licenses cost (more than \$100 per year for a combined big and small game license), and reminisced about bygone times when there were no restrictions on harvesting razor clams. At the end of his testimony the committee chair chastised him saying, “. . . I understand you have a funding issue and a big challenge to take on I'm happy to help you on that but I will not accept you showing up in misleading this committee thank you for your service and have a good day sir” (in the second hour of the hearing at the 10:57 minute mark).²⁵⁰⁴

These hearings clearly demonstrate that the Senate, which at that time was not controlled by the governor's party, was willing and able to ask tough questions of the executive branch administrators and staff who testified. Some of this may have been motivated by partisanship, but it appeared from the information discussed that there was a genuine disagreement about whether the public was satisfied with the service provided by Department of Fish and Wildlife field staff. Clearly enforcing restrictions on people who might have grown up without limits on the number of fish that could be harvested might provoke citizens, but the department director failed to defend his agency or its requests for increasing fees. That Senators challenged him on the accuracy of the information he presented demonstrates that they can and will exercise oversight when necessary. On the other hand, the House does not appear to pursue this responsibility. Instead it focuses on hearing testimony on legislation and letting staff summarize

²⁵⁰⁴ <https://www.tvw.org/watch/?eventID=2017011402>, accessed 1/20/19.

budget requests. The HAC hearing on the natural resources budget (January 18th, 2017) consisted of a presentation by committee staff rather than presentations by agency personnel.

Oversight Through Committees

Apart from subpoena power, no specific oversight authority is granted through the state constitution or the House or Senate rules. There is, however, evidence that oversight-type activities are conducted by the various standing committees. Archived video from a Senate Transportation Committee meeting on January 9, 2018,²⁵⁰⁵ for example, shows committee members listening to a presentation from the Senior Budget Assistant to the governor outlining the governor's proposed 2018 Supplemental Transportation Budget. Committee members then posed questions about proposed fee exemptions for electric vehicles and increased gasoline taxes, with one member noting the potential inequities in a plan that effectively penalized people who did not drive electric vehicles. The committee also asked whether several transportation infrastructure projects that were in the early stages of completion might be impacted by the steep decline in transportation revenues reported by the governor. Representatives from the department replied that those projects were currently on track, but that future projects could be jeopardized. The committee then asked questions of the secretary of the Department of Transportation, including inquiries concerning equity, diversity, and outreach, cost recovery from Amtrak related to the 2017 train derailment near the city of DuPont, whether the Department of Transportation has developed plans to keep the Interstate 5 corridor open during blockages, and how best to keep roadways in a state of good repair given budget constraints.

The Senate State Government, Tribal Relations, and Elections Committee, is another active standing committee that “considers issues related to the processes of state government, including procurement standards, agency rulemaking, and emergency management.”²⁵⁰⁶ This committee considered a variety of issues in 2018 including automatic voter registration, support services for veterans, and modifications of the duties of the State Auditor--all topics that examine the performance of state agencies and the impacts of agency rules.

The House Business & Financial Services Committee outlined its plan to conduct oversight of insurance, banking, and financial services regulations, as well as the implementation of recent legislation relevant to such sectors, which also involved taking testimony from agency representatives: “Satisfying the committee's oversight responsibility requires conferring with appropriate regulatory agencies regarding new and ongoing issues, implementation of recently enacted legislation, and proposals for new legislation.” To this end, on November 16, 2017, the committee held a meeting during which reports were taken from agencies “on the implementation of previously enacted legislation, significant regulatory issues, and legislative priorities for 2018.”²⁵⁰⁷ The chair opened the meeting saying that the committee wanted, not just to pass bills, but to know how they were implemented. During the course of this meeting, which lasted for nearly two hours, agency representatives made presentations about their activities and took substantive and specific questions about programs and policy from members of the committee.²⁵⁰⁸

²⁵⁰⁵ <https://www.tvw.org/watch/?eventID=2018011077>, accessed 06/18/18.

²⁵⁰⁶ <http://leg.wa.gov/Senate/Committees/SGTE/Pages/default.aspx>, accessed 06/19/18.

²⁵⁰⁷ <http://leg.wa.gov/House/Committees/Documents/interim2017.pdf>, p. 12. Accessed 7/23/18.

²⁵⁰⁸ <https://www.tvw.org/watch/?eventID=2017111060>, accessed 06/19/18.

Although the LEAP committee, described in our discussion of analytic bureaucracies, is a critical conduit of information to the rest of the legislature on financial issues, it only met once during 2017. This meeting, held on January 18th, 2017 covered an agenda item, Interim Projects Update, but there are no documents or minutes that provide information about what these projects were, let alone whether legislators were engaged with the information presented. The committee met twice in 2018—once in January and once in June. The documents available for the June 12th, 2018 meeting include a table showing the reporting responsibilities of LEAP Staff.²⁵⁰⁹ The chart provided in the committee documents lists specific budget reporting systems followed by a brief explanation of the use of this system and the corresponding legislative committee served by this reporting system. The specific committees listed are the chambers’ capital committees, appropriations or ways and means committees, and transportation committees.

The House of Representatives Office of Program Research provides a detailed description of intended committee objectives through its 2017 Interim Plans document. This document summarizes committee plans to conduct oversight of various executive branch agencies. In some cases, committee members’ familiarity with reports conducted by state agencies and the analytic bureaucracy is evident. For example, the Appropriations Committee Work Plan on K-12 Public School Funding gives background information on the 2012 McCleary ruling, previous legislation pertaining to the school funding problem, issues remaining to be addressed in that domain, and the committee’s plan to deal with them in the upcoming legislative session.

Oversight Through the Administrative Rules Process

The rulemaking process in Washington is governed by the Washington Administrative Procedure Act (RCW Section 34.05.310).²⁵¹⁰ That statute contains explicit provisions for legislative review of proposed and existing rules and establishes a Joint Administrative Rules Review Committee (JARRC) for that purpose. The committee has eight members; two from each party in each chamber, subject to approval by their respective caucuses. “Nonpartisan staff from both Senate Committee Services and House Office of Program Research regularly review all emergency, proposed, and adopted administrative rules as they are filed with the Code Reviser's Office.” According to statute, “[a]ny person may petition the rules review committee for a review of a proposed or existing rule or a proposed or existing policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent.” The Committee has subpoena power, and witnesses may be compelled to testify before it if necessary. The committee may also “establish ad-hoc advisory boards, including but not limited to ad-hoc economics or science advisory boards to assist the committee in its rules review functions.”

After review, the committee “may recommend to the legislature that the original enabling legislation serving as authority for the adoption of any rule reviewed by the committee be amended or repealed.” Otherwise, the committee may also find that a rule does not adhere to its legal intent or procedure, or that an agency has implemented a policy without a formal rule. Once such a ruling has been made, agencies have seven days in which to “notify the committee of its

²⁵⁰⁹ <https://app.leg.wa.gov/committeeschedules/Home/Document/173442#toolbar=0&navpanes=0>, accessed 1/19/19

²⁵¹⁰ <http://app.leg.wa.gov/rcw/default.aspx?cite=34.05>, accessed 06/19/18.

intended action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules.” If the agency’s response is deemed insufficient, “a majority vote of [committee] members . . . [may] prepare and file a formal objection,” or “by a majority vote of its members, recommend suspension of the rule to the Governor.”²⁵¹¹ The JARRC also has the ability to review already existing rules, and the legislature can pass legislation requiring an agency to repeal a rule that is found to be wanting. SB 5055,²⁵¹² which was discussed by the Senate State Government, Tribal Relations, and Elections Committee, sought to modify the review process, with rule suspension occurring at the time in which a majority of the JARRC’s members object to an agency rule. That bill, however, has not yet made it out of committee.

The JARRC does not meet during legislative sessions, only during the interim, and its interim meetings are infrequent—fewer than a dozen in the 15 years between 1996 and 2010 (Schwartz, 2010). The committee’s website contains no documentation of committee activities since 2013,²⁵¹³ and there is no archived audio or video available for the 2017-18 biennium. Prior to that, the committee only met twice in 2016 and twice in 2015.²⁵¹⁴ Despite Swartz’s criticism of the JARRC committee efforts as “quite inconsistent and sporadic,” he argues that the economic impact analyses done by state agencies in Washington are among the best in the nation.

Despite being “rare”²⁵¹⁵ when hearings do occur, however, they seem to be fairly substantial, and are occasionally politically charged. One meeting, held on June 9, 2016, considered whether or not WAC 162-32-060,²⁵¹⁶ which covers gender-segregated facilities, was adopted by the Washington Human Rights Commission in full accordance with the law, including the Administrative Procedures Act. According to one Republican lawmaker, “[f]or the Human Rights Commission to unilaterally make a [Washington Administrative Code] change — they’re not an elected body . . . They’re making decisions that widely affect the public although they’re not elected and held accountable to the public in the same fashion.”²⁵¹⁷ However, after an hour-and-a-half of testimony from the chair of the Human Rights Commission, numerous concerned citizens, business organizations, and social justice activists, a motion to the effect that the rule was not properly adopted failed to pass. Previously, the issue had come before the Senate Commerce and Labor Committee, which voted to send SB 6443²⁵¹⁸ to the full Senate for a vote. The bill, which ultimately failed in a 24-25 vote, would have required the Human Rights Commission to repeal the law and blocked it from ever making a new rule that “involves the subject of gender-segregated facilities.”²⁵¹⁹

²⁵¹¹ <http://leg.wa.gov/JointCommittees/JARRC/Pages/Process.aspx>, accessed 06/19/18.

²⁵¹² <http://apps2.leg.wa.gov/billsummary?BillNumber=5055&Year=2017&BillNumber=5055&Year=2017>, accessed 06/21/18.

²⁵¹³ <http://leg.wa.gov/JointCommittees/JARRC/Pages/Meetings.aspx>, accessed 06/19/18.

²⁵¹⁴ <https://www.tvw.org/archives/?term=Joint+Administrative+Rules+Review+Committee&search-archives=1>, accessed 06/19/18.

²⁵¹⁵ <https://www.heraldnet.com/business/costly-new-state-building-code-impact-unknown/>, accessed 07/05/18.

²⁵¹⁶ <https://app.leg.wa.gov/wac/default.aspx?cite=162-32-060>, accessed 06/19/18.

²⁵¹⁷ <https://www.washingtontimes.com/news/2015/dec/31/transgenders-in-washington-state-to-use-restrooms-/>, accessed 06/19/18.

²⁵¹⁸ <http://lawfilesex.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/6443%20SBA%20CL%2016.pdf>, accessed 06/18/19.

²⁵¹⁹ <http://www.spokesman.com/stories/2016/jan/27/hundreds-gather-in-olympia-to-testify-on-bill-addr/#/0>, accessed 06/19/18.

It appears that Washington’s legislature has the power to monitor executive agency rules, but it appears to infrequently use the tools it possesses. Moreover, when it asserts its prerogatives, it appears that the motivation is sometimes political rather than in the interest of good government.

Oversight Through Advice and Consent

The Washington State Legislature has exceptionally modest powers to check gubernatorial orders or appointments. Part of this involves the limited appointment power of the state governor, but also due to the fact that the governor does not need to seek legislative approval for policy made through executive orders.

Most executive officers in Washington are elected officials, and most agency heads that the governor appoints are not subject to legislative confirmation.²⁵²⁰ Likewise, Supreme Court and Superior Court judges are elected by popular vote, though the governor may appoint judges when a vacancy occurs; these appointments are effective until the next general election. Washington also has “200-plus boards and commissions to which [the governor] appoints citizen members.”²⁵²¹ A substantial number of recent appointments to such bodies have required senatorial approval.²⁵²² The governor also appoints the officials of “educational, reformatory, and penal institutions . . . with the advice and consent of the Senate.”²⁵²³ Unlike in many other states, after the appointments are made, nominees serve until the Senate considers them, either rejecting or confirming them. Sometimes, they do not have hearings.²⁵²⁴ According to one legislator, “There are some of the appointments that members of the Senate are saying: ‘Really? That’s the right choice?’ But it’s whether it rises to that standard of defeat, and I don’t know of anybody who has risen to that threshold.” Votes are occasionally held to reject an appointee, but it happens extremely rarely. Prior to the 2016 rejection of Gov. Inslee’s nominee for the Secretary of the Department of Transportation, the last refusal by the Senate to confirm a nominee occurred in 1998.²⁵²⁵ The appointee had already been in her position for three years when the vote occurred.²⁵²⁶ Indeed, when the Senate voted to reject the appointment, the governor blasted it as “scurrilous, underhanded, dishonest” and described himself as “deeply disturbed” by what he characterized as an “election-year stunt.”²⁵²⁷

²⁵²⁰ <https://www.nga.org/files/live/sites/NGA/files/pdf/book-of-the-states/BOSTable4.10.pdf>, accessed 06/19/18.

²⁵²¹ <https://www.governor.wa.gov/boards-commissions>, accessed 06/19/18.

²⁵²² <https://www.governor.wa.gov/boards-commissions/boards-and-commissions/recent-appointments>, accessed 06/19/18.

²⁵²³ <https://law.justia.com/constitution/washington/constitution-13.html>, accessed 06/20/18.

²⁵²⁴ <https://www.theolympian.com/news/politics-government/article25317055.html>, accessed 07/05/18.

²⁵²⁵ <https://www.washingtonpolicy.org/publications/detail/senate-rejects-confirmation-of-state-transportation-secretary-other-major-department-heads-quit-governor-inslees-administration-as-2016-legislative-session-reaches-halfway-point>, accessed 07/05/18.

²⁵²⁶ <https://www.seattletimes.com/seattle-news/transportation/transportation-secretary-lynn-peterson-ousted-by-state-senate/>, accessed 07/05/18.

²⁵²⁷ <https://www.seattletimes.com/seattle-news/politics/inslee-gop-should-be-ashamed-for-firing-of-wsdot-chief/>, accessed 07/05/18.

In Washington, the governor has the power to issue executive orders carrying the force of law for the state’s cabinet agencies. This is established in Washington State statute.²⁵²⁸ Unlike many states, Washington governors appear to issue executive orders relatively frequently. Gov. Inslee has issued 31 such orders since 2013,²⁵²⁹ while his predecessor issued 42 executive orders from 2005-2012.²⁵³⁰ Whereas in many states executive orders often pertain to declaring states of emergency, days of commemoration, and flying flags at half-staff, in Washington, executive orders cover a wide range of topics, including state agency enterprise risk management, efficiency and environmental performance, autonomous vehicles, and the creation of a variety of boards and commissions. The legislature does not have any power to block or rescind such orders (Book of the States). Moreover, in Washington these orders are not governed by an administrative procedures act or by any public filing or publication procedures (Book of the States). This gubernatorial power appears to be quite expansive, although these orders have the “force of law” only for the state’s cabinet agencies.

The governor, however, does not have the power to reorganize state agencies.²⁵³¹ Agency reorganization must be carried out through legislative action, though governors often work with lawmakers to ensure that bills are introduced, as occurred in 2011 when former-Gov. Christine Gregoire signed a bill that consolidated several state agencies into a new Department of Enterprise Services (DES).²⁵³²

Oversight Through Monitoring of State Contracts

Washington state law (RCW 39.26.220) requires the state auditor to issue a “report of contract audit and investigative findings, enforcement actions, and the status of agency resolution to the governor and the policy and fiscal committees of the legislature.” This report details performance, compliance and accountability, and fraud or whistleblower-related audits carried out by the State Auditor in relation to state contracts.²⁵³³

The JLARC, through its relationship with the State Auditor, seems to have some ability to monitor state contracts. An April 2018 report, for example, reviewed the costs and savings to the state that accrued as a result of the 2011 government reorganization which created the Department of Enterprise Services. According to the JLARC report,²⁵³⁴ the law requires DES to “monitor and measure the costs and performance of private sector contracts,” but found that “[b]ased on available data, JLARC staff cannot determine the effect that contracting these services had on costs or performance.” The legislative auditor therefore recommended that DES improve its performance measures as related to contracting, as well as its documentation

²⁵²⁸ <https://web.archive.org/web/20170205021303/https://www.nga.org/files/live/sites/NGA/files/pdf/BOSTable4.5.pdf>, accessed 06/20/18.

²⁵²⁹ <https://www.governor.wa.gov/office-governor/official-actions/executive-orders>, accessed 06/20/18.

²⁵³⁰ <https://www.governor.wa.gov/office-governor/official-actions/executive-orders/executive-orders-archive/>, accessed 06/20/18.

²⁵³¹ <https://www.seattletimes.com/seattle-news/politics/inslee-takes-up-pen-whens-theres-a-legislative-deadlock/>, accessed 06/20/18.

²⁵³² <https://www.washingtonpolicy.org/publications/detail/governor-signs-agency-consolidationcontracting-reform>, accessed 06/20/18.

²⁵³³ http://www.sao.wa.gov/resources/Documents/ContractsReport_RCW_39-26_2017.pdf, accessed 06/20/18.

²⁵³⁴ <http://leg.wa.gov/jlarc/reports/2017/DESoFMcontracting/pf/default.html>, accessed 06/20/18.

procedures.²⁵³⁵ Once again, we see that the legislature uses the audit process to insert itself into the state contract monitoring process.

Oversight Through Automatic Mechanisms

Baugus and Bose (2015) classify Washington’s use of sunset mechanisms as “discretionary,” which “allows the legislature to choose which agencies and statutes to review.” In Washington, the JLARC is empowered by statute to review the application of such mechanisms to specific laws. Sunset reviews are conducted according to criteria outlined in RCW 43.131,²⁵³⁶ which pertain to compliance with legislative intent, performance measures, efficiency, public interest, and other common criteria. Sunsetting does not appear to be very common in Washington; only four reviews seem to have been conducted since 2011, and 18 since 1995.²⁵³⁷ JLARC’s revised Biennial Work Plan lists seven other scheduled sunsets between 2019 and 2028.²⁵³⁸

Washington also makes use of sunrise reviews in two domains: health and business professions. This means, for example, that the Department of Health “makes recommendations to the legislature on health profession credentialing proposals and proposals to add new insurance mandates.”²⁵³⁹ In general, a sunrise review is intended to be “an evaluation of a proposal to change the laws regulating health professions in Washington. The legislature’s intent, as stated in Chapter 18.120 RCW, is to permit all qualified people to provide health services unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Changes to the scope of practice should benefit the public.”²⁵⁴⁰

Moreover, “[t]he legislature further finds that policies and standards set out for regulation of the health professions in chapter 18.120 RCW have equal applicability to other professions. To further the goal of governmental regulation only as necessary to protect the public interest and to promote economic development through employment, the legislature expands the scope of chapter 18.120 RCW to apply to business professions.”²⁵⁴¹ For businesses, it is the Department of Licensing that is charged with conducting sunrise reviews.²⁵⁴²

²⁵³⁵ http://leg.wa.gov/jlarc/AuditAndStudyReports/Documents/DES_PF_Presentation.pdf, accessed 06/20/18.

²⁵³⁶ <http://app.leg.wa.gov/RCW/default.aspx?cite=43.131>, accessed 06/20/18.

²⁵³⁷ <http://leg.wa.gov/jlarc/AuditAndStudyReports/Pages/default.aspx>, accessed 06/20/18.

²⁵³⁸ <http://leg.wa.gov/jlarc/Documents/2017-19%20work%20plan%20approved%204.8.18.pdf>, accessed 06/20/18.

²⁵³⁹ <https://www.doh.wa.gov/AboutUs/ProgramsandServices/HealthSystemsQualityAssurance/SunriseReviews>, 06/20/18.

²⁵⁴⁰ <https://www.doh.wa.gov/portals/1/Documents/Pubs/631009.pdf>, accessed 06/20/18.

²⁵⁴¹ <http://app.leg.wa.gov/RCW/default.aspx?cite=18.118.005>, accessed 06/20/18.

²⁵⁴² <http://www.dol.wa.gov/about/sunrise.html>, accessed 06/20/18.

Methods and Limitations

Of the five people we contacted in Washington to request information about legislative oversight, we were able to interview two of them. Archival recordings of hearings are available along with a machine-generated transcript of the hearing. Occasionally there are links to relevant documents.

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