



# State Legislative Oversight: **Wisconsin**



## Capacity and Usage Assessment

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

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## Summary Assessment

The Wisconsin Legislature possesses a number of tools to effectively engage in oversight of the executive branch and in fact does engage in oversight. While much of the oversight is well intentioned bipartisan investigations, increased polarization of the legislature has led to calls for oversight that are motivated by partisan considerations, as the Foxconn deal demonstrates. The legislative support agencies are extensive and active and work closely with the pertinent committees. Furthermore, legislators appear to value oversight, and the members of the key oversight committees are knowledgeable of the issues and use the information the legislative analytic bureaucracies produce. In sum, legislative oversight in Wisconsin is supported by strong institutional resources, notwithstanding some problems that appear to reflect partisan polarization.

## Major Strengths

First, the presence of powerful joint committees in key areas of oversight is critical. For most of the past 50 years, the two chambers were controlled by different political parties. Thus, joint committees encouraged bipartisan oversight. These are the Joint Committee on Finance, the Joint Legislative Audit Committee, and the Joint Committee for Review of Administrative Rules. In most cases, these joint committees supersede the respective substantive committees in each chamber when investigating various state agencies. Furthermore, the way these joint committees, especially the finance and audit committees, use the primary analytic bureaucracies can provide a useful model for other states to emulate. Second, the Wisconsin Legislature appears to be protective of its legislative prerogatives and to zealously guard them from encroachments of executive power, often despite party loyalties, as the curtailing of gubernatorial veto powers demonstrates. Third, the fact that Wisconsin is not a term-limited state allows legislators to acquire enough knowledge and expertise in a specific committee's jurisdiction to engage in oversight. Finally, the ability of legislative support agencies (both audit and fiscal staff) to gather information about state contracts expands the oversight role of Wisconsin's legislators.

## Challenges

Wisconsin's governors have been willing to use, or perhaps abuse, the veto power to remove individual words from bills, individual letters from words, and digits from dollar amounts in appropriations bills—the so-called “Frankenstein” veto. The courts have facilitated this use of the veto, which means that legislative intent is regularly undermined by the executive branch. Recently, one-party control of the legislature (and the executive branch) has undermined the capacity of joint committees to facilitate bipartisan legislative oversight. The increased polarization of the legislature as well as the closely divided electorate and the competitive elections they produce provide incentives to conduct partisan based oversight to damage or embarrass members of the other party for electoral gain or advantages.

## Relevant Institutional Characteristics

Wisconsin possesses a legislature that can be considered among the most professional in the nation. Squire (2017) ranks it as the 10<sup>th</sup> most professional. This means that being a legislator in Wisconsin is the equivalent of a full-time job with ample compensation (approximately \$51,000/year), and the legislature itself has a decent number of supporting staff members (roughly 650 staff during session) (NCSL, 2009; NCSL, 2017a; NCSL, 2017b). These supporting staff members include personal staff, committee staff, partisan staff, and non-partisan professionals from legislative services agencies such as the Legislative Audit Bureau, Legislative Council, Legislative Fiscal Bureau, Legislative Reference Bureau, and Legislative Technology Services Bureau. The bulk of the legislative staff resides within each legislator's office. Based on examining the legislator's website, rank-and-file senators have three to four staffers, while chairs of committees or those in leadership positions employ five to seven staffers. In the assembly, representatives have two staffers per office, with those in leadership positions having anywhere from three to six staffers.

Also, the Wisconsin Legislature essentially has an unlimited session length, which gives legislators the ability to convene year-round for lawmaking purposes and oversight activities (NCSL, 2010). The Wisconsin Legislature may also hold special (sometimes known as extraordinary) sessions, which may be called by the governor or the legislature. In order for the legislature to call a special session, either a majority of the elected members of each house must submit a written request to the presiding officer of each house of the legislature, or the presiding officers of each house may jointly call a special session, but only for the purpose of resolving a challenge or a dispute regarding the determination of the presidential electors (NCSL, 2009). Despite the Wisconsin Legislature's unlimited session length, the Wisconsin Legislature convenes for special sessions up to twice a year on a regular basis. Since 2009, seven special sessions have been convened (LegiScan, 2017). Wisconsin utilizes a biennial budget, which for 2017-2019 was approximately \$76 billion.

Wisconsin does not have term limits for legislators (NCSL, 2015) or the governor. Senators serve four-year terms and Representatives two-year terms. Thus, it is quite possible for legislators in Wisconsin to have the time to learn the more complex parts of their jobs, including exercising oversight by monitoring state agencies.

In 2015, the Wisconsin Office of the Governor was assessed as fairly weak, ranking 39<sup>th</sup> nationally (Ferguson, 2015). Although the Wisconsin governor is not term-limited and has

extensive budgetary powers, including the line-item veto, there are many separately elected executive-branch officials, and the governor has fewer appointment opportunities than most other governors do. For example, the state treasurer and the state superintendent of public instruction are both separately elected, in addition to elections for the state's attorney general and secretary of state. Moreover, Ferguson rates gubernatorial veto power in Wisconsin as only moderate, possibly reflecting a battle over some controversial uses of the line-item (or individual letters and digits) veto by former Governor Thompson, which we discuss below.

In 1930, Wisconsin voters approved a constitutional amendment granting the governor the ability veto items in appropriations bills by a margin of 62% to 37%. This amended Article V, Sec.10 of the Wisconsin Constitution so that "appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law."<sup>2584</sup> The vague language used to describe the line-item veto power over time resulted in the expansion of gubernatorial power through the creative interpretation of what constitutes a "part" of an appropriations bill. In contrast, most other states that allow a line-item veto have more specific and clear language when defining what the power entails. In comparison, the Michigan Constitution states that in Article V, §19 that the "governor may disapprove any distinct item or items appropriating moneys in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void . . ."<sup>2585</sup>

Since 1990, there have been several successful attempts to limit the governor's ability to use a line-item veto on appropriation bills. The efforts on the part of the legislature can be construed as "institutional oversight," but citizens and the courts have also played a role. Currently, the governor possesses a "partial" line-item veto. Past and current governors have used the line-item veto to change individual letters and numbers, called the "Vanna White" veto, which was used extensively by Gov. Tommy Thompson. Voters in 1990 approved a constitutional amendment passed by the legislature to eliminate this practice.<sup>2586</sup> This amendment was passed by a margin of 60% to 39%<sup>2587</sup> and amended Art. V, Sec.10 (1)(c) that "in approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill."<sup>2588</sup> The intent was to clarify the scope of the line-item veto and limit the ability of governors to form new words. However, this amendment left open the possibility of governors to change legislative intent by vetoing words to create new sentences altogether.

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<sup>2584</sup> <http://docs.legis.wisconsin.gov/constitution/wi/000230/000013>, accessed 9/14/18.

<sup>2585</sup> <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-chap1.pdf>, accessed 9/14/18.

<sup>2586</sup> This occurred after Gov. Thompson had radically altered a section of a passed appropriations bill that originally created a "complex mechanism for determining the tax credit that municipalities would receive for state school properties" (Weitzer 1993 p. 628). In this instance, Gov. Thompson vetoed words, letters, and numerical digits to turn a 100+ worded section into a seven-word sentence that had eliminated the tax credit's linkage to property altogether.<sup>2586</sup> In another instance Gov. Thompson changed the function and role of the Finance Committee through the creative use of the "Vanna White" veto. Prior to the 1991-1993 biennial budget, the governor was required by law to submit any spending proposals that pertained to the Milwaukee School District to the Joint Finance Committee for approval or modification. After Gov. Thompson's veto, the Joint Finance Committee was required to approve the governor's spending requests within 30 days, thereby turning an opportunity for legislative oversight of executive spending into a legally required rubber stamp of the governor's spending priorities as it pertained to the largest school district in the state.

<sup>2587</sup> [https://ballotpedia.org/Wisconsin\\_Governor\\_Partial\\_Veto\\_Authority\\_Amendment,\\_Question\\_1\\_\(April\\_1990\)](https://ballotpedia.org/Wisconsin_Governor_Partial_Veto_Authority_Amendment,_Question_1_(April_1990)), accessed 9/14/18.

<sup>2588</sup> <http://docs.legis.wisconsin.gov/constitution/wi/000230/000013>, accessed 9/14/18.

Gov. Scott Walker has also vetoed words to create new sentences and meanings in bills, called the “Frankenstein” veto. Unlike the “Vanna White” veto, where governors could veto single letters, digits, or punctuation, the “Frankenstein” veto allowed governors to veto words and numbers to “stitch” together new sentences and funding amounts that clearly altered the intent and meaning of bills. Again, voters in 2008 rejected the use of the line-item veto in this manner but some say Walker still attempts to change the meaning or alter the intent of passed legislation through the creative use of the veto (Wisconsin State Journal, 2018). Voters approved another constitutional amendment to curtail the veto power that passed by an overwhelming margin of 70.6% to 29.3%.<sup>2589</sup> This amendment added another subsection to Art. V Sec. 10(1)(c) stating the governor “may not create a new sentence by combining parts of two or more sentences of the enrolled bill.”<sup>2590</sup>

Two of the most aggressive uses of the “Frankenstein” veto were in 2003, when Democratic Governor Jim Doyle altered how much local municipalities would receive from the state from \$125 million to \$703 million by vetoing whole sections and words to link municipal funds to a larger source of funding unrelated to local governance. Then, in the same spending bill, the legislature changed the bonding authority the governor could exercise relating to transportation projects from \$140 million to \$100 million. In response, the governor surgically used the veto to change the bonding authority from \$100 million to \$1 billion.<sup>2591</sup> In this instance, the governor vetoed the number “4,” “1,” and a “\$,” to create a bonding authority of one billion dollars. The legislature objected and a compromise number of \$500 million was established.<sup>2592</sup> However, despite the passage of constitutional amendments in 1990, forbidding the veto of individual letters, numbers, and punctuation, and 2008, forbidding the veto of individual words to create new sentences, governors still utilize elements of the “Frankenstein” veto today. In 2018, Republican Gov. Scott Walker vetoed the word “Saturday” and “2-day” from a bill that created a sales tax holiday on the purchase of school supplies, thereby turning an intended two-day holiday passed by the legislature into a five-day tax holiday (Wisconsin State Journal, 2018).

While these attempts to expand executive power by altering legislative intent are to be expected in separated power type systems, these examples show a legislature that is fully engaged in checking excessive executive power at an institutional level. Clearly, there is a history of governors in Wisconsin using the line-item veto in creative and perhaps undemocratic ways, however, there is also a history of legislative and popular reactions to governors that go too far.

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<sup>2589</sup> [https://ballotpedia.org/Wisconsin\\_Partial\\_Veto,\\_Question\\_1\\_\(2008\)](https://ballotpedia.org/Wisconsin_Partial_Veto,_Question_1_(2008)), accessed 9/14/18.

<sup>2590</sup> <http://docs.legis.wisconsin.gov/constitution/wi/000230/000013>, accessed 9/14/18.

<sup>2591</sup> SECTION 683D. 20.866 (2) (uum) of the statutes is amended to read:

20.866 (2) (uum) *Transportation; major highway and rehabilitation projects.* From the capital improvement fund, a sum sufficient for the department of transportation to fund major highway and rehabilitation projects, as provided under s. 84.555. The state may contract public debt in an amount not to exceed ~~\$140,000,000~~ \$100,000,000 for this purpose.

*The line-strike portion is the dollar amount the legislature repealed and the underlined amount is the new amended amount. So, in this instance, the veto of the line-strike figure keeps the “\$,” “1,” & “0,” whereas in the underlined proposed amount, it rejects the “\$1” portion of the amended figure, resulting in a new bonding authority of \$1,000,000,000.*

<sup>2592</sup> For a detailed discussion of the history of the “Frankenstein Veto” see Attorney Fred Wade’s PBS presentation. <https://www.pbs.org/video/university-place-the-frankenstein-veto-the-story-of-wisconsins-partial/>, accessed 6/12/18.

## Political Context

Over the last 50 years, Republicans have rarely controlled both of Wisconsin's legislative chambers. From 1978-2000, both chambers were either controlled by the Democratic Party or split between the Republican and Democratic Parties. This changed in 2002, when the Republican Party captured both chambers from 2002-2006 and from 2012-present (NCSL, 2017c).<sup>2593</sup>

Despite the Democratic Party's relative dominance of the Wisconsin Legislature over the last 50 years, the governorship of Wisconsin has tended to alternate between the Republican and Democratic Parties. Overall, divided government has tended to be the norm. However, instances of one-party control occurred from 1983-1987 (Democrats), briefly from 2002-2003 (Republicans), and more recently from 2011-present (Republicans) (NGA, 2017).

The popularity of the Tea Party Movement in recent years increased polarization among legislators in Wisconsin. Recent evidence suggests that both chambers of the Wisconsin Legislature are highly polarized along party lines (Shor & McCarty, 2015). Wisconsin's house has been ranked as the 10<sup>th</sup> most polarized lower legislative chamber, while Wisconsin's senate has been ranked as the 11<sup>th</sup> most polarized upper chamber, based on differences between median roll call votes for each party in each chamber. Adding to this polarized environment was the recall election of Gov. Scott Walker in 2012 and the flight of 14 Democratic senators to Illinois to prevent a quorum from being present when Gov. Walker curtailed the collective bargaining rights of state workers in 2011. The political impact of an aggressive Republican governor, controversial gerrymandering, a highly publicized protest by state senators, a politically motivated recall election, and President Trump's electoral win in 2016 have made Wisconsin a highly charged and polarized political environment. Currently, Republicans hold an 18 to 14 majority over Democrats in the senate, with one vacancy and a 63-35 majority in the assembly, with one vacancy.

## Dimensions of Oversight

### Oversight Through Analytic Bureaucracies

Effective and efficient legislative oversight by the Wisconsin Legislature could not be achieved without the Legislative Audit Bureau (LAB), a key nonpartisan legislative service agency (Wisconsin LAB, 2017b). The Legislative Audit Bureau receives its authority from s. 13.94, Wis. Stats., which grants them the power to "conduct post audits of the accounts and other financial records of departments." In conjunction with these post audits, the bureau may also "review the performance and program accomplishments of the department." Furthermore, the statute "grants the bureau access to financial records and other documents relating to certain state

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<sup>2593</sup> Republicans retain their majorities in both chambers through controversial gerrymandering processes. The U.S. Supreme Court recently ruled on *Gill v. Whitford* where Democrats claimed the currently drawn state representative and state senate districts constitute an "unconstitutional partisan gerrymander." The Supreme Court's unanimous decision remanded the case back to a lower court to determine if the plaintiffs had standing to sue, avoiding the larger question of the constitutionality of partisan gerrymandering and establishing a judicial standard as to what constitutes a gerrymandered legislative district.

and local entities, including records and documents that are confidential by law” (Wisconsin LAB, 2017a). Unlike other states, the state auditor does not serve a fixed term but is considered an “at-will” employee of the legislature. This unique connection may strengthen the responsiveness of the state auditor and the LAB overall to legislative requests and investigations (NASACT, 2015).

The Legislative Audit Bureau is directed by the state auditor, who is appointed by the Joint Committee on Legislative Organization (JCLO) based on a recommendation from the Joint Legislative Audit Committee (JLAC). The LAB currently is authorized to employ approximately 87 staff and has filled 73 positions. Operating with an approximate budget of \$6.2 million, plus an additional \$2.1 million in program revenue from audit contracts, these staffers conduct financial audits and performance audits of state agencies.<sup>2594</sup> The LAB has the authority to obtain information from agencies and has the power to issue subpoenas (NASACT, 2015).

Between 2013-2017, the LAB conducted roughly 15-35 financial audits and program evaluations, averaging 20 reports per year.<sup>2595</sup> The audit reports appear to be of high quality as indicated by the outside recognition of their policy impact by the National Conference of State Legislatures’ (NCSL) National Legislative Program Evaluation Society. Specifically, the NCSL recognized two of the LAB’s audit evaluations for their role in changing policy: Report 13-12, Supervised Release Placements and Expenditures; Report 14-14, Government Accountability Board.<sup>2596</sup>

Unlike some other states with high quality legislative oversight, Wisconsin does not balance the partisan representation on its oversight committees, instead providing opportunities for the chamber majority to overrule minority party concerns. The JLAC has advisory responsibilities for the LAB. It may direct the Bureau to conduct audits and evaluations, and it receives and reviews issued reports. The audit committee approved five audit requests and held seven public hearings in 2015 and 2016. The 10-member audit committee consists of the co-chairs of the Joint Committee on Finance, two majority and two minority party senators, and two majority and two minority party representatives.<sup>2597</sup> Unlike some other states where the composition of joint audit committees is bi-partisan, the Wisconsin Joint Legislative Audit Committee has a Republican majority of six-four (Wisconsin State Legislature, 2017b).

Most of the reports published by LAB appear to be required yearly audits of various Wisconsin programs, like the Wisconsin Lottery, Overall State Audit, and the Wisconsin Retirement Fund, and they can be either financial audits or performance audits. However, the LAB does conduct investigative audits that lead to increased legislative oversight and action. One such report focused on the Wisconsin Veterans Home at King where \$55 million in unauthorized transfers were made by the Wisconsin Department of Veterans Affairs (WDVA) over the course of a decade. This report was ordered at the request of the JLAC and contained specific recommendations on the accountability and transparency of the WDVA’s actions.<sup>2598</sup> There appeared to be chronic understaffing issues and deteriorating facility conditions at the state’s largest veteran’s home (Ferral, 2017a). According to the LAB’s audit, the Veterans Home at King transferred \$55 million to other Veterans Affairs projects while requesting more funding from the State Department of Administration for projects at King. This is after the state had

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<sup>2594</sup> <https://legis.wisconsin.gov/lab/media/2586/17-1full.pdf>, accessed 6/12/18.

<sup>2595</sup> <https://legis.wisconsin.gov/lab/media/2586/17-1full.pdf>, accessed 6/12/18.

<sup>2596</sup> <https://legis.wisconsin.gov/lab/media/2586/17-1full.pdf>, accessed 6/12/18.

<sup>2597</sup> <http://legis.wisconsin.gov/lab/joint-legislative-audit-committee/about-the-committee/>, accessed 6/4/18.

<sup>2598</sup> <https://legis.wisconsin.gov/lab/media/2622/17-8full.pdf>, accessed 6/4/2018.

invested approximately \$118 million over the last decade to improve the level of care and facilities at King.

As a result of the LAB's report on the Veterans Home at King, the Joint Finance Committee unanimously reinstated a measure requiring more oversight of the Wisconsin Veterans Trust Fund (VTF). The VTF is in the Wisconsin Department of Veterans Affairs and is used to provide an array of programs and services to Wisconsin's veterans. Programs range from tuition reimbursement, housing grants, to burial services.<sup>2599</sup> The VTF in recent years has had structural deficits and funding issues to the point of near insolvency (Ferral, 2016). In essence, the WDVA has been borrowing money from veteran's homes like the Veterans Home at King to keep the VTF stable and solvent. This in turn leads those veteran's homes to delay projects or ask for additional funds to maintain substandard services. The oversight measure would require the WDVA to seek approval from the appropriate committee "prior to making any money transfers from the state veterans nursing home to the Veterans Trust Fund" (Ferral, 2017b).

Another important component of the analytic bureaucracy in Wisconsin is the Legislative Fiscal Bureau. According to the Wisconsin Legislature's website, the Legislative Fiscal Bureau (LFB) "prepares a variety of papers to assist the Joint Committee on Finance during its deliberations on the state's budget, other legislation that the Committee addresses and requests under s. 13.10 and s. 16.505/.515 (passive review) of the statutes" (Wisconsin State Legislature, 2017a). So far during the 2017-2019 biennium, the LFB has produced 200+ budget papers.<sup>2600</sup>

In some instances, the LAB and the LFB work in tandem on oversight issues. These efforts are not directly coordinated but are oversight processes that are working parallel to each other. One of the most highly publicized oversight efforts by the LAB and LFB are the reports they produced regarding the Foxconn economic development project. This project is an effort by the Wisconsin Economic Development Corporation (WEDC) and the governor to bring Taiwanese electronics manufacturer Foxconn to Wisconsin to produce liquid crystal television and computer screens. This is an example of the state competing for businesses through tax credits and incentives. In this case, Foxconn was awarded nearly \$3 billion in tax credits and state subsidies. A key component of the agreement between Foxconn and the WEDC is \$1.5 billion in payroll tax credits in exchange for creating up to 13,000 jobs (McKinney, 2017).

Both the LAB and LFB have questioned whether Foxconn can meet the stated employment requirements of 13,000 new jobs and whether the 13,000 new jobs is an actual requirement to maintain the tax credits or merely suggested employment goals.<sup>2601</sup> Additionally, the LFB reported that WEDC failed to verify the job growth numbers, which supported the previous report by the LAB citing systematic job growth reporting failures within WEDC for all its programs and not just as it relates to Foxconn. Director Joe Chrisman of the LAB pointed to larger problems with WEDC's jobs verification process for all its development programs by stating directly that "WEDC cannot be certain about the numbers of jobs created or retained as a result of its awards."<sup>2602</sup> An interviewee stated that there have been ongoing issues with

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<sup>2599</sup> <https://dva.wi.gov/Documents/newsMediaDocuments/8.24.16%20-%20VTF%20condition.pdf>, accessed 6/4/18.

<sup>2600</sup> [https://docs.legis.wisconsin.gov/misc/lfb/budget/2017\\_19\\_biennal\\_budget/050\\_budget\\_papers](https://docs.legis.wisconsin.gov/misc/lfb/budget/2017_19_biennal_budget/050_budget_papers), accessed 6/15/18.

<sup>2601</sup> [http://docs.legis.wisconsin.gov/misc/lfb/bill\\_summaries/2017\\_19/0001\\_2017\\_wisconsin\\_act\\_58\\_foxconn\\_fiserv\\_10\\_4\\_17.pdf](http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0001_2017_wisconsin_act_58_foxconn_fiserv_10_4_17.pdf), accessed 6/15/18;

[https://docs.legis.wisconsin.gov/2017/committees/Joint/1691/100\\_october\\_24\\_2017/020\\_17\\_9full](https://docs.legis.wisconsin.gov/2017/committees/Joint/1691/100_october_24_2017/020_17_9full), accessed 6/15/18.

<sup>2602</sup> [https://docs.legis.wisconsin.gov/2017/committees/Joint/1691/100\\_october\\_24\\_2017/020\\_17\\_9full](https://docs.legis.wisconsin.gov/2017/committees/Joint/1691/100_october_24_2017/020_17_9full), accessed 10/11/18.



WEDC's reporting of job growth and overall transparency of its contract since its creation in 2011. While there have been very few legislative changes to WEDC's reporting and transparency over the years, the scrutiny and high turnover in the top positions have forced the agency to make changes on its own (interview notes, 2018). A review of WEDC's website shows a wealth of information regarding contracts, loans, and other incentives it has given to businesses to spur economic growth.<sup>2603</sup>

Further complicating the Foxconn agreement is the LFB's analysis that Wisconsin may not see the benefits of the tax awards and incentives to Foxconn for nearly 25 years, if at all. Some legislators have raised concerns over what share of the \$3 billion in incentives Foxconn is obligated to pay back through job creation. The LFB report states that Foxconn will benefit from close to \$1.45 billion in construction credits, tax exemptions, and other infrastructure improvements regardless of how many jobs it creates.

Legislators, specifically members of the Democratic minority, have raised serious concerns over the agreement. In a series of town hall style meetings, legislators have used the LFB and LAB reports to highlight the hidden costs of building the Foxconn plant. Specifically, Representative Gordon Hintz argued that local municipalities have awarded additional incentives that were never a part of the agreement or approved by the legislature.<sup>2604</sup> Racine County and the Village of Mt. Pleasant have provided over \$764 million in incentives as well as igniting a new debate over local use of eminent domain by designating new retirement homes as "blighted" (Pomplun, 2018). Not surprisingly, this has led to several lawsuits challenging the blighted designation by the affected residents due to Wisconsin's vague eminent domain laws (Torres, 2018; Beck, 2018). For WEDC to begin negotiations with Foxconn, the legislature needed to pass legislation giving WEDC the ability to offer the tax incentives on the scale needed to attract Foxconn. The enabling legislation had a group of fiscally conservative Republicans opposed to such a large taxpayer commitment while Democrats from the Racine and Kenosha area, where the plant is to be located, voted in favor of the bill on the promise of economic development and jobs (interview notes, 2018). At this point, there are serious reservations whether Wisconsin will ever break even on its investment and if reporting procedures at WEDC are adequate to monitor \$3 billion in taxpayer investments.

## Oversight Through the Appropriations Process

Legislative oversight during the appropriations process is largely conducted by the Joint Committee on Finance (JCF). Statutory references to the JCF can be found in s. 13.09-13.11, 16.47, 16.505, 16.515, and 20.865 (4), Wis. Stats. Essentially, these statutes allow the JCF to examine all legislation that deals with state income and spending, including legislation that appropriates money, provides for revenue, or relates to taxation. Furthermore, the joint committee must give final approval to a wide variety of state payments and assessments. The JCF consists of eight senators on the Senate Finance Committee and eight representatives on the Assembly Finance Committee. These members belong to both the majority and minority party in each house. However, the makeup of the committee reflects the majority control of the

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<sup>2603</sup> <https://wedc.org/>, accessed 6/15/18.

<sup>2604</sup> <http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/12360>, accessed 6/15/18.

Republicans. On the 16-member committee, 12 members are Republican and four are Democrats. Oversight is typically conducted through public hearings and executive sessions.

The previously discussed Legislative Fiscal Bureau (LFB) is the oversight tool the Joint Committee on Finance uses to conduct oversight. The joint committee uses the LFB as its primary source of information and legislative recommendations when dealing with issues of oversight. Records available on the Wisconsin Legislature's website indicate that since February 2017, the Joint Committee on Finance has held 13 public hearings and 26 executive sessions. During public hearings that were held earlier this year, agencies made presentations of their budget proposals and no public testimony was taken during the briefings. In most hearings and executive sessions, LFB staff members were called as witnesses and gave presentations on a variety of budget topics. While the LFB and joint committee websites do not have any televised or audio archives of hearings, some are available at the Wisconsin Eye.<sup>2605</sup> These hearings show legislators who are engaged and concerned over issues of oversight and specifically, spending issues.<sup>2606</sup> While the LFB is the key legislative agency for compiling the biennial budget, it is also the key agency for monitoring state agencies and how they spend appropriated funds.

## Oversight Through Committees

In Wisconsin, the substantive committee, or “standing” committee, with jurisdiction over an agency is the authority for actively conducting oversight hearings. However, this oversight is primarily the jurisdiction of two important committees that were described previously: The Joint Legislative Audit Committee and the Joint Committee on Finance.

The authority of the Joint Legislative Audit Committee (JLAC) is defined in s. 13.53, Wis. Stats., which grants the committee advisory responsibilities for the Legislative Audit Bureau. Their involvement in the appointment of the state auditor is explained in the previous section on the analytic bureaucracy. Essentially, the JLAC may “direct the state auditor to undertake specific audits and review requests for special audits from the individual legislators or standing committees.” However, “no legislator or standing committee may interfere with the auditor in the conduct of an audit” (s. 13.53, Wis. Stats.). After conferring with the state auditor, other standing committees, and agencies on the findings of the Legislative Audit Bureau, the JLAC is empowered to pursue several different courses of action including holding public hearings, relaying information to the standing committees or the legislature if legislative action is necessary, and introducing legislation themselves. The JLAC consists of the co-chairpersons of the Joint Committee on Finance, plus two majority and two minority party members from each house of the legislature. Although this tilts the committee membership toward the majority party in the chambers, it provides for some representation of minority party views in the oversight process, especially if one political party has a supermajority in both chambers.

The JLAC is the primary channel through which oversight is done, and the Legislative Audit Bureau (LAB) is the primary tool it uses to investigate state agencies. As stated above in the analytic bureaucracy section, the LAB conducts a wide range of audits and produces reports for legislators with recommendations for legislative action. The LAB website provides all the reports that are statutorily required or have been requested by JLAC. Audio of the JLAC

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<sup>2605</sup> <http://www.wiseye.org/>, accessed 6/13/18.

<sup>2606</sup> <http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/12345>, accessed 6/14/18.

hearings are available at the LAB's website. These hearings demonstrate that legislators are actively engaged in oversight and using the non-partisan expertise of the LAB to address serious issues across the policy spectrum.<sup>2607</sup>

Records available on the Wisconsin Legislature's website indicate that just about every committee in the Wisconsin Legislature has held public hearings this year. The number of hours varies depending on the committee, however, each committee has held between three to seven public hearings and executive sessions, on average. Wisconsin Eye has a variety of different hearings from the JLAC as well as the Joint Committee for Review of Administrative Rules (JCRAR). In one hearing of the JCRAR, a variety of subjects was covered. Subjects ranging from emergency vehicles licensure, rules and procedures for a pilot sobriety testing program, and the requirement for pharmacists to display their license were explored in depth by six Republicans and four Democrats.<sup>2608</sup> In most instances, the committee members appear to be well informed of the issues surrounding the various subjects and ask pertinent questions of the witnesses.

In the case of Wisconsin, unlike other states, oversight is more systematic and less reactive due in part to the integrated use of the LFB and LAB by the respective joint committees. These legislative agencies are the essential tools to conduct oversight. The joint nature of these committees ensures that the legislature as an institution will approach oversight issues from a more unified posture, thus, eliminating many intra-legislative branch conflicts that often arise in legislatures where joint committee actions are de-emphasized.

In contrast to the activities of the LFB, LAB, and their associated joint committees, other standing committee oversight efforts appear to be sporadic and influenced by partisan differences. An example of this is the decreased presence of Department of Natural Resources staff at standing committee hearings, specifically, the Committee on Sporting Heritage, Mining and Forestry. Since 2011, the DNR has stopped providing information and expertise to the Committee on Sporting Heritage, Mining and Forestry on issues relating to water and resource management (Verburg, 2016) and on the effects of Chronic Wasting Disease (CWD) on the state's deer population (Murphy, 2017). While legislation moved through the committee to address CWD and was signed by the governor,<sup>2609</sup> at the committee level, there appears to be little to no input from the state agency on the impact of the bill or how it would fit with current policy. The frustration with a lack of DNR response was summed up best by Sen. Kathleen Vinehout, who lamented her inability to get any information from the agency (Murphy, 2017). A LAB audit found that there was high turnover of staff, a significant decrease in the enforcement of wastewater violations for municipal and industrial sites from 2005 to 2014, and a significant lack of enforcement of its own policies regarding issuing notice of violations.<sup>2610</sup> However, despite the lack of oversight by the appropriate standing committees in the senate and assembly, it was the Joint Legislative Audit Committee authorized the audit report that brought many of the DNR's issues to light.

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<sup>2607</sup> <http://legis.wisconsin.gov/lab/joint-legislative-audit-committee/hearings/>, accessed 6/12/18.

<sup>2608</sup> <http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/12449>, accessed 6/12/18.

<sup>2609</sup> <https://docs.legis.wisconsin.gov/2017/proposals/sb68>, accessed 9/18/18.

<sup>2610</sup> <http://legis.wisconsin.gov/lab/reports/16-6full.pdf>, accessed 6/28/18.

## Oversight Through the Administrative Rules Process

The Joint Committee for Review of Administrative Rules' involvement in the administrative rules process serves as an important check on executive branch agencies. Statutory references to the Joint Committee for Review of Administrative Rules (JCRAR) can be found in s. 13.56, 227.19, 227.24, 227.26, 227.40 (5), and 806.04 (11), Wis. Stats. These statutes establish JCRAR's authority to prevent proposed rules from being promulgated and to suspend rules that have already been promulgated (confirmed by the Council of State Governments) (Wall, 2016). The JCRAR consists of five senators and five representatives, and the membership from each chamber must include representatives of both majority and minority parties; the balance for the 2017-18 session was six-four in favor of Republicans.

Regarding the administrative rules process, the process may initially begin with an agency proposing a rule to the legislature. After the Legislative Council Administrative Rules Clearinghouse staff review the rule for statutory authority to promulgate the rule and the legal language, it is then assigned to an appropriate standing committee for review.<sup>2611</sup> The rule must then be referred to the JCRAR regardless of whether the standing committee has objections to the rule or not. The JCRAR has thirty days to review the rule, which may be extended for an additional thirty days if necessary, and during this time the JCRAR may decide to either uphold or reverse the standing committee's action. The JCRAR may also object to a proposed rule or portion of a rule on its own accord. If the JCRAR objects or concurs with the objection of a standing committee, then JCRAR can introduce bills concurrently in both houses to prevent promulgation of the rule. If in either house the bill is enacted, the agency may not adopt the rule unless specifically authorized to do so by subsequent legislative action. Alternatively, if the JCRAR disagrees with a standing committee's objection, the JCRAR may overrule the standing committee and allow the agency to adopt the rule. The JCRAR may also request the agency to modify a proposed rule (Wisconsin State Legislature, 2016).

In the instance where the JCRAR wishes to suspend a promulgated rule, the JCRAR must first hold a public hearing. The suspension of the promulgated rule must be based on one or more of the following reasons: absence of statutory authority; an emergency related to public health or welfare; failure to comply with legislative intent; conflict with existing state law; a change in circumstances since passage of the law that authorized the rule; a rule that is arbitrary or capricious or imposes undue hardship, or; a rule affecting the construction of a dwelling that would increase the cost of construction by more than \$1,000. Within thirty days following the suspension, the committee must introduce bills concurrently in both houses to repeal the suspended rule. If either house bill is enacted, the rule is repealed, and the agency may not promulgate it again unless authorized by the legislature. If a bill in either house fails to pass, the rule remains in effect and may not be suspended again except for the rules increasing the construction of a dwelling by more than \$1,000; these are suspended until specific legislation authorizing them is enacted (Wisconsin State Legislature, 2016).

The complexity of the administrative rulemaking process that has been described suggests that partisanship can affect legislative oversight rather drastically. For example, if each chamber of the legislature is controlled by a different party, it may be relatively difficult for the JCRAR to block or suspend a rule. However, if each chamber of the legislature is controlled by the same party and the governorship is controlled by the other party, then the JCRAR may have

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<sup>2611</sup> [http://docs.legis.wisconsin.gov/misc/lc/briefing\\_book/ch05\\_admrules.pdf](http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch05_admrules.pdf), accessed 9/18/18.

ample ability to block or suspend a rule. In short, both chambers must agree to block the new rule. Additionally, economic impact assessments (EIA) are conducted on all germane rules prior to submission to the Legislative Council staff.<sup>2612</sup> If an EIA indicates over \$20 million in compliance costs or impact on local governments and business, the agency must submit the rule to Department of Administration (DOA) for review and for the DOA to conduct a report. In this instance, the agency may not submit the rule to the legislature until the DOA has issued its report to the relevant agency.<sup>2613</sup> This excludes the Department of Public Instruction, which reports all scope statements and EIAs to the Superintendent of Public Instruction.

Some of the JCRAR hearings are available at the Wisconsin Eye website. Based on these recordings, JCRAR does appear to play an active oversight role. The JCRAR website indicates that the JCRAR has held seven public hearings and seven executive sessions so far this year. During public hearings that were held this year, the JCRAR discussed anywhere between one-five administrative rules or bills per hearing.

In Wisconsin's recent 2017-18 session, several attempts were made by the Republican controlled legislature to significantly alter the administrative rule-making process which would make it significantly harder for state agencies to promulgate new rules. Had these measures passed, it would have made new rule promulgation more difficult and made the elimination of existing rules easier. Assembly Bill 384 and Senate Bill 295 would have required every administrative rule to sunset automatically after nine years, unless renewed by the agency with the approval of the legislature (AP Wire Service, 2017). Assembly Bill 384 was passed by the assembly, but the bill was not passed by the senate before the legislative session ended, effectively killing the bill for the rest of the 2017-2018 session.

In another instance, the senate passed a bill that would have required any administrative rule that costs businesses over \$10 million over two years to be approved by the legislature or it would be automatically rejected (Associated Press, 2017). This bill also was not acted upon by the assembly before adjournment, which effectively killed the bill. In both instances, conservative free market interest groups and research firms had made these two changes key elements of their 2017-18 legislative agenda and have aggressively challenged the constitutional authority agencies have to promulgate new rules (WisPolitics, n.d.; Wigderson, 2017).<sup>2614</sup> The drive to constrain rule-making achieved some success in the latest session through the passage of SB-015. This bill changed the process by which state agencies can make scope statements prior to gaining approval to make a new rule. Under the old law, agencies issued a scope statement that had to be approved by the governor prior to drafting the new rule. Currently, before gubernatorial approval, the agency must first submit any scope statement to the Department of Administration to determine if the agency has the legal authority to promulgate the rule as stated in the scope statement. Only after that determination is made can the governor approve or reject the statement.<sup>2615</sup> These efforts on the part of the Republican majority and supporting interest groups are part of an effort to limit the ability of state agencies to make rules without legislative or gubernatorial input. The partnering of the governor and the legislature on these bills suggests that this is less a legislative check on the executive branch than it is an effort to limit government regulation overall.

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<sup>2612</sup> [http://docs.legis.wisconsin.gov/misc/lc/briefing\\_book/ch05\\_admrules.pdf](http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch05_admrules.pdf), accessed 9/18/18.

<sup>2613</sup> [http://docs.legis.wisconsin.gov/misc/lc/briefing\\_book/ch05\\_admrules.pdf](http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch05_admrules.pdf), accessed 9/18/18.

<sup>2614</sup> [https://www.wmc.org/wp-content/uploads/WMC\\_LegAgenda\\_2017-18\\_FINAL\\_lo.pdf](https://www.wmc.org/wp-content/uploads/WMC_LegAgenda_2017-18_FINAL_lo.pdf), accessed 6/27/18.

<sup>2615</sup> [https://docs.legis.wisconsin.gov/2017/related/fe/sb15/sb15\\_DOA.pdf](https://docs.legis.wisconsin.gov/2017/related/fe/sb15/sb15_DOA.pdf), accessed 6/27/18.

## Oversight Through Advice and Consent

The advice and consent power of the Wisconsin Senate allows the legislature to block executive appointments (see Rule 22 of the Rules of the Wisconsin Senate). However, records of nominations do not provide any evidence of a recent nominee being blocked by the Wisconsin Senate. Rather, there appears to be an informal avenue where the governor withdraws nominations that meet resistance from the senate, usually after they have been referred to the appropriate standing committee. So far during the 2017-2018 regular session, the governor has submitted 174 total nominations, of which 83 are in committee, seven are available for scheduling, 18 have been withdrawn by the governor, and 66 have been confirmed (Wisconsin State Legislature, 2017c). The number of nominations withdrawn indicates that the legislature oversees these appointments even though the process is handled informally rather than through a public vote.

On the other hand, not all battles over appointees are handled discreetly, and it appears that the confirmation power of the senate has recently been used in clearly partisan ways. In response to the highly contentious and partisan nature of the recall of Gov. Scott Walker in 2012, the Republican legislature abolished the Government Accountability Board (GAB), which oversaw campaign finances in the state. After the election, the GAB investigated whether the Walker campaign illegally coordinated campaign expenditures and efforts with outside groups. In response, the legislature dissolved the GAB and the Wisconsin Elections Commission and the Wisconsin Ethics Commission. Unlike the GAB, which monitored both election and ethics issues, the new Ethics Commission and Elections Commission are separate entities. Then earlier this year, the Wisconsin Senate voted to remove two holdover staffers from the GAB that were the respective directors of the Elections Commission and Ethics Commission. While Republicans stated that the move was necessary to expunge any remaining partisanship from the GAB and eliminate those who were associated with bad practices of the GAB (Greenblatt, 2018),<sup>2616</sup> Democrats claimed it was a political reprisal by Republicans.<sup>2617</sup>

Wisconsin's governor is not empowered to reorganize state government or create government agencies using executive orders; this power belongs to the legislature. Annual lists of legislation include numerous bills that reorganize various state agencies.

Gov. Scott Walker issued dozens of executive orders annually—319 total during his eight years in office. Most of these are unremarkable—flying the state flag at half-staff to honor various state and national heroes, to remember Pearl Harbor, to authorize the state's National Guard to aid other state's experiencing disasters. The legislature has no authority to oversee

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<sup>2616</sup> <http://www.governing.com/topics/politics/gov-wisconsin-republicans-ethics-election-officials.html>, accessed 1/10/18.

<sup>2617</sup> In another instance, the Senate confirmed an attorney with deep ties to the Republican Party as the primary legal counsel for the DNR. Further complicating the appointment is the fact that the attorney has no background or experience in legal areas that pertain to natural resource management and regulations associated with environmental protections. This appointment was the result of reforms made in 2011 that changed the classification of some civil service jobs to political appointments. This appointment is part of larger efforts to constrain the policy and rule-making power of the DNR that was previously discussed in oversight by standing committees sections. While many of these actions can be construed as blatantly partisan, it is important to note that it is only within the last decade that Republicans have experienced unified control of Wisconsin's government and that some changes to how previously established agencies and commissions functioned is to be expected with the corresponding Democratic opposition to such measures.

executive orders other than to pass legislation. A small sample of these orders indicates that they are not the sort of orders that legislators would find objectionable.

## Oversight Through Monitoring of State Contracts

The monitoring of state contracts and spending falls under the purview of both the Legislative Audit Bureau (LAB) and the Legislative Fiscal Bureau (LFB). For example, the LAB produces an annual report that reviews the state's financial statements and spending compiled by the Department of Administration.<sup>2618</sup> However, the main burden for monitoring state contracts is done by the Department of Administration (DOA). The DOA is an executive agency that supports the governor by developing and implementing the state budget. In addition to those efforts, the DOA supports state agencies with procurement and financial management.<sup>2619</sup> A relatively new program, the State Transforming Agency Resource (STAR), is the state's centralized contract and procurement database. It was designed to increase consistency in agency procurement and reporting. Implemented in 2015, the system is fully on-line and legislators and other audit agencies are now increasingly able to see how agencies are or are not reporting contracts. In the recent LAB investigation and hearing on the State Fair Park's failure to report its contracting and procurement practices, the STAR system was mentioned repeatedly as a solution to help mitigate the State Fair Park's uneven reporting.<sup>2620</sup> However, since the system is relatively new and was implemented in phases, it is unable to help legislators or auditors identify long term or systematic reporting problems with state agencies. STAR does hold promise as useful tool for future oversight and from observed hearings legislators appear to be optimistic about the program's usefulness.

Although the executive branch Department of Administration takes the lead in contract monitoring, the legislative support bureaucracies (audit and fiscal staffs) have some authority to investigate contracting problems directly. The new computer tracking system, STAR, provides more information and greater access to information for the legislative staff, which enhances legislative oversight of state contracts.

In addition to the STAR program, the State Controller's Office, located within the DOA, publishes the Comprehensive Annual Financial Report (CAFR). The CAFR reports the state's financial activity and provides accurate measures of the state's financial position.<sup>2621</sup> While the report is easily defined as oversight and originates within the executive branch, the comprehensive nature of the report and the adherence of the report to acceptable accounting practices makes the report a valuable resource for other auditing agencies like the LAB and LFB.

## Oversight Through Automatic Mechanisms

Wisconsin allows its legislature to add sunset provisions to pieces of legislation, but it is not required nor is it a common addition to Wisconsin's laws (Baugus & Bose, 2015).

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<sup>2618</sup> <http://legis.wisconsin.gov/lab/media/2720/18-3full.pdf>, accessed 6/15/18.

<sup>2619</sup> <https://doa.wi.gov/Pages/home.aspx>, accessed 6/28/18.

<sup>2620</sup> <http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/12351>, accessed 6/28/18.

<sup>2621</sup> [https://doa.wi.gov/DEBFCapitalFinance/2017/2017\\_CAFR\\_Linked.pdf](https://doa.wi.gov/DEBFCapitalFinance/2017/2017_CAFR_Linked.pdf), accessed 6/28/18.

## Methods and Limitations

For Wisconsin, out of the six people we contacted, three people were interviewed. There are archives for assembly, senate, and joint agendas<sup>2622</sup> as well as minutes.<sup>2623</sup> According to an interviewee, the Wisconsin Eye provides the only archived video and audio of committee hearings (interview notes, 2018), although, the Joint Legislative Audit Committee also provides audio for their committee hearings.<sup>2624</sup> The Wisconsin Eye provides joint committee hearings, however, there is no indication that they provide standing committee hearings for the separate chambers. Transcripts are unavailable for assembly and senate committee hearings (interview notes, 2018), and there is no indication that transcripts are available for joint committee hearings, either. This limited availability of archival material makes it difficult to be fully confident of our assessment of Wisconsin's legislative oversight practices.

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<sup>2622</sup> <https://docs.legis.wisconsin.gov/2017/related/hearings>, accessed 12/27/18.

<sup>2623</sup> <https://docs.legis.wisconsin.gov/2017/related/records>, accessed 12/27/18.

<sup>2624</sup> <http://docs.legis.wisconsin.gov/2017/committees/joint/1691>, accessed 12/28/18.



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