

Chapter 5. Legislative Oversight

The Executive Branch is responsible for administering State government, and oversight of executive activity is an important function of the legislature.

The oversight function is continuous and ongoing, and it may occur as a byproduct of other legislative activities. Through the annual appropriations process, for instance, State agencies and administrators are required to justify their proposed expenditures. Likewise, the development of new legislative proposals may require a survey of existing government activities. Since it involves constant monitoring, inquiry, and communication, oversight does not, for the most part, have the formalized processes and forms of the legislative and appropriations functions. Nevertheless, it is possible to identify several mechanisms by which the General Assembly oversees executive action. This chapter discusses four mechanisms: formal; budget-related; legislative; and informal.

Formal Mechanisms

Audits

The Office of Legislative Audits of the Department of Legislative Services is responsible for conducting audits of all agencies within the Executive and Judicial branches of State government. Audit reports are submitted to the Joint Audit and Evaluation Committee of the General Assembly, the agency audited, as well as other State officials. Copies of audit reports are also available to the public either in print or through the website of the Office of Legislative Audits (www.ola.state.md.us).

Section 2-1220 of the State Government Article provides that the Office of Legislative Audits must conduct a fiscal/compliance audit of all agencies at an interval ranging from three to four years. These audits determine whether an agency has properly managed its fiscal operations, established effective systems and controls, used State resources as intended, and complied with legal requirements. Electronic data processing operations of State agencies are subjected to review during these audits. The office also is authorized to conduct performance audits. A performance audit may evaluate whether an agency is operating in an economic, efficient, and effective manner or determine whether desired program results have been achieved.

Furthermore, the office may conduct special audits and reviews at the request of the Joint Audit and Evaluation Committee. The office also reviews the annual financial statements of local governments, community colleges, boards of education, and library boards.

Standing, Statutory, and Special Committees

Committees of the General Assembly are continually involved in oversight. Standing committees will often visit State facilities during the legislative interim and meet with officials to discuss how agencies are implementing programs and services. Many statutory committees have been established to let legislators focus on specific areas, such as the management of public funds; unemployment insurance; fair practices and State personnel law; children, youth, and families; legislative information technology; open government; health care delivery; and workers' compensation.

From time to time the General Assembly establishes special committees to monitor executive action or to consider a particular problem. The relevant executive agencies report to the special committee and address any concerns their members express. Examples of special committees created in recent years include those that addressed issues relating to vaccine oversight, economic security, pensions, substance abuse, cannabis referendum and legalization, and agricultural land preservation.

Oversight of Proposed Regulations

Many executive agencies are authorized to adopt regulations to carry out the laws they administer. Maryland's Administrative Procedure Act (Title 10, Subtitle 1 of the State Government Article) establishes the process for adopting proposed regulations. It provides the legislature a means for overseeing the issuance of regulations and encourages cooperation and discussion between the Legislative and Executive branches.

The Joint Committee on Administrative, Executive, and Legislative Review is an integral part of the regulatory approval process. The Administrative Procedure Act requires agencies to submit proposed regulations to the committee at least 15 days before the regulations may be sent to the *Maryland Register* for publication. Publication of a proposed regulation triggers a 45-day review period. The agency may not formally adopt a regulation until the review period expires. If the committee cannot complete an appropriate review within 45 days, it may extend the review period.

The committee, through the assistance of the Department of Legislative Services, reviews regulations for conformity with statutory authority, compliance with legislative intent, and fiscal impact. The committee is not required to take any action during the review period. By a majority vote, the committee may oppose the adoption of the regulation. In this case, the agency may withdraw the regulation, propose a modified regulation, or submit the regulation to the Governor with a statement justifying the agency's refusal to modify or withdraw the regulation.

When the committee opposes a regulation and the agency refuses to withdraw or modify it, the law authorizes the Governor to "consult with the Committee and the [agency] in an effort to resolve the conflict" (Section 10-111.1 of the State Government Article). After notifying the

President, the Speaker, and the committee, the Governor may instruct the agency to modify or withdraw the regulation, or may approve its adoption.

The process differs for a regulation proposed for emergency adoption. An emergency regulation may take effect immediately if the adopting agency declares that emergency adoption is necessary, submits the regulation to the committee together with a fiscal impact statement, and receives the committee's approval for the emergency adoption. Committee approval is usually given by a majority vote of the committee, although under exigent circumstances committee approval also may be given by the presiding chair or, if the presiding chair is unavailable, by the co-chair. The committee staff polls the committee in person, by phone, or in writing to obtain the vote of the committee members. If any committee member requests a public hearing on the emergency adoption of a regulation, the committee must hold the hearing, and approval of the emergency adoption may be given only by a majority vote of members present and voting at the public hearing or at a subsequent meeting. Unless the Governor declares that immediate adoption is necessary to protect the public health or safety, the committee may not approve the emergency adoption of a regulation earlier than 10 business days after receipt of the regulation by the committee. As part of its approval of an emergency regulation, the committee may impose any condition, and the committee is required to impose a time limit not to exceed 180 days on each request for emergency status. By majority vote at a public meeting, the committee may rescind approval of an emergency regulation.

In addition to overseeing the issuance of individual regulations, the committee is responsible for the periodic review and evaluation of all State regulations. The purposes of this review and evaluation are to determine whether an agency's regulations continue to be in the public interest and supported by statutory authority and judicial opinions and whether they are obsolete or otherwise appropriate for amendment or repeal. Every eight years each agency is required to prepare an evaluation report that contains proposed amendments, repeals, or reorganizations of the agency's regulations. The committee reviews the evaluation report and may submit comments and recommendations.

The General Assembly also has the power to pass public local laws. It shares this power with Baltimore City; the 17 counties that have either a charter or code home rule form of government; and the municipal corporations in the State, all of which have home rule powers as granted by the Maryland Constitution. The power to regulate elections and to license and regulate the manufacture and sale of alcoholic beverages is reserved exclusively to the General Assembly.

Program Evaluation

At the direction of the Joint Audit and Evaluation Committee, the Office of Program Evaluation and Government Accountability conducts evaluations of government activities and/or units. The office evaluates the efficiency, effectiveness, and economy with which resources are used; determines whether desired program results are achieved; determines whether a program aligns with the unit's mission; evaluates whether a program duplicates another program or activity within another unit; evaluates whether the governmental activity or unit operates in an

open, accountable, fair, and nondiscriminatory manner; and determines the reliability of specified performance measures.

The office selects and conducts evaluations at the direction of either the Joint Audit and Evaluation Committee or the department's Executive Director. The Office of Program Evaluation and Government Accountability also develops a workplan, generally annually, in consultation with the Joint Audit and Evaluation Committee.

Evaluation reports are publicly available on the Department of Legislative Services website and are provided to, among others, Joint Audit and Evaluation Committee members, the Presiding Officers, and committees of jurisdiction. On occasion, the Joint Audit and Evaluation Committee requests a hearing for an evaluation, where both the Office of Program Evaluation and Government Accountability and the subject of the evaluation have the opportunity to present and respond to questions. The office will also present evaluations to relevant committees at their request.

Executive Nominations

Many important Executive Branch appointments require the advice and consent of the Senate. These appointments include all cabinet secretaries and members of various boards and commissions. Judges appointed to the District Court and the appellate courts by the Governor also must receive Senate confirmation.

Nominations are considered by the Executive Nominations Committee in the Senate. House confirmation is limited to local appointments as required by statute, with nominations considered by the House Rules and Executive Nominations Committee. Hearings and deliberations on nominations allow the General Assembly to consider the qualifications of the Governor's nominees and examine their perspectives on their roles in the positions to which they are appointed. The committee may recommend for or against confirmation of the nominee. Confirmation by the full Senate (or the House, when necessary) requires approval by a majority of the membership.

Budget-related Mechanisms

There are a few legislative actions associated with the budget process that can serve as oversight mechanisms, such as budget hearings, budget language, and the *Joint Chairmen's Report*. A brief review of these actions follows.

Budget Hearings

Hearings before the budget committees bring executive agencies into contact with legislators on a regular basis. The agencies testify in support of their budgets and, by extension,

their programs. It is not unusual for legislators to question agencies on the policy implications of the programs, not just the budgetary aspects. Budget hearings are conducted only during session.

Budget Language

In some cases, the General Assembly inserts language into the budget bill to impose conditions or restrictions on agency expenditures. As part of the enacted budget bill, this language has the force of law. The conditions imposed in the budget may require reports or involve the passage of related legislation.

Joint Chairmen's Report on the Budget

As part of the *Joint Chairmen's Report* on the budget bill, the budget committees include "narrative" that expresses the committees' intent. This language may include recommendations or instructions to agencies and usually requests that the agencies report back to the budget committees at specified dates. This narrative is not part of the budget bill, is not passed by the General Assembly, and, therefore, does not have the force of law. Nevertheless, as an expression of the legislature's intent, it has considerable impact on the executive agencies. The legislature's budget staff from the department follows up on items in the *Joint Chairmen's Report* and reports its findings and recommendations to the budget committees.

Legislative Mechanisms

Bills

Often legislative requirements, conditions, or statements of intent are written directly into bills that are reflective of the legislative oversight role. Statements of legislative intent may be included in a bill's uncodified preamble or in a codified or uncodified section of the bill. The text of a bill may include language that places requirements, restrictions, or conditions on the actions of the executive agency responsible for carrying out the legislation. Bills may also contain oversight mechanisms such as special reporting, advice and consent, and special auditing requirements.

Joint Resolutions

The intent of the legislature is sometimes embodied in a joint resolution. Again, as part of its oversight function, the legislature, on occasion, will utilize resolutions to request an executive agency to study a problem or recommend that the Governor and General Assembly either take or refrain from taking a specified action. While most joint resolutions do not have the force of law, they do have a degree of impact because they are passed by both houses of the General Assembly and are expressions of legislative interest and concern. For further discussion of resolutions, please see "Chapter 3. Legislation."

Termination Provisions

In some cases, the legislature includes a termination provision in a bill that will nullify the force and effect of the bill after a specific period of time, usually one to three years. A termination provision allows the legislature to assess the effectiveness of a new law or program before deciding whether to extend it permanently or for another limited period.

Contingency Provisions

When the legislature wishes to impose certain conditions before an enactment can take effect, it will include contingency language (usually uncodified) that delays or prevents the enactment from taking effect until a specific event or occurrence takes place, such as an agency submitting evidence that it has complied with certain federal requirements.

Reporting Requirements

Frequently, the General Assembly exercises oversight by statutorily requiring an executive agency to issue a report that is later reviewed by the legislature (usually through a committee). Many agencies are required to issue regular annual reports on various aspects of their operations. In many cases reports are mandated on specific issues.

Agency reports give legislators the opportunity to be informed about executive action and make further inquiries. In some cases, a committee will hold a hearing at which an agency will respond to inquiries about the findings in a report.

The submission of agency reports to the General Assembly is governed by Section 2-1257 of the State Government Article. Reports are sent to the Department of Legislative Services in both electronic and print form, added to the legislature's library collection, and available electronically through the library's online catalog. Reports are distributed by an agency to all members only with written permission from the President and the Speaker.

Legislative Committee Review Requirements

Occasionally, the General Assembly includes provisions in bills that require legislative review before an executive agency can take an action. This review can take several forms. In some cases, an agency must notify either the Legislative Policy Committee or a specified standing committee before taking action. This notification triggers a review period during which the committee can offer comments or request further information. In other provisions, the approval of the General Assembly is required before the agency may act.

Staff Activities

The Department of Legislative Services has broad statutory authority to review and study the administration and operation of State agencies and to prepare reports for consideration by the General Assembly. The activities, including management studies and performance audits, are carried out by units of the department, usually in conjunction with a legislative committee.

Informal Mechanisms

Legislative oversight does not always occur through a formal process. Instead, legislators influence executive action through informal avenues.

Hearings

Hearings, especially during the legislative interim, are frequently used as a means of focusing attention on an issue of concern to a committee. A committee may use a hearing to ask an executive official to explain a given action or to outline plans for future action.

Site Visits

During the legislative interim, committees will often arrange to visit State facilities and other locations. These site visits express legislative interest in the operations of a facility or program and give legislators the opportunity to view its operations firsthand.

Constituent Inquiries

Legislators and their staff frequently contact executive agencies on behalf of constituents. This constituent service familiarizes legislators with the workings of government programs and may highlight problem areas.

Monitoring

Public meetings or hearings of various executive bodies are frequently attended by legislators or legislative staff. In this way, the General Assembly monitors the activities of these units and reflects its interest in them.

Informal Interaction

Legislators and staff frequently contact executive officials by telephone, mail, email, and in person. This informal interaction promotes consultation between the branches of government, sharing of information and data, and identification of points of dispute.