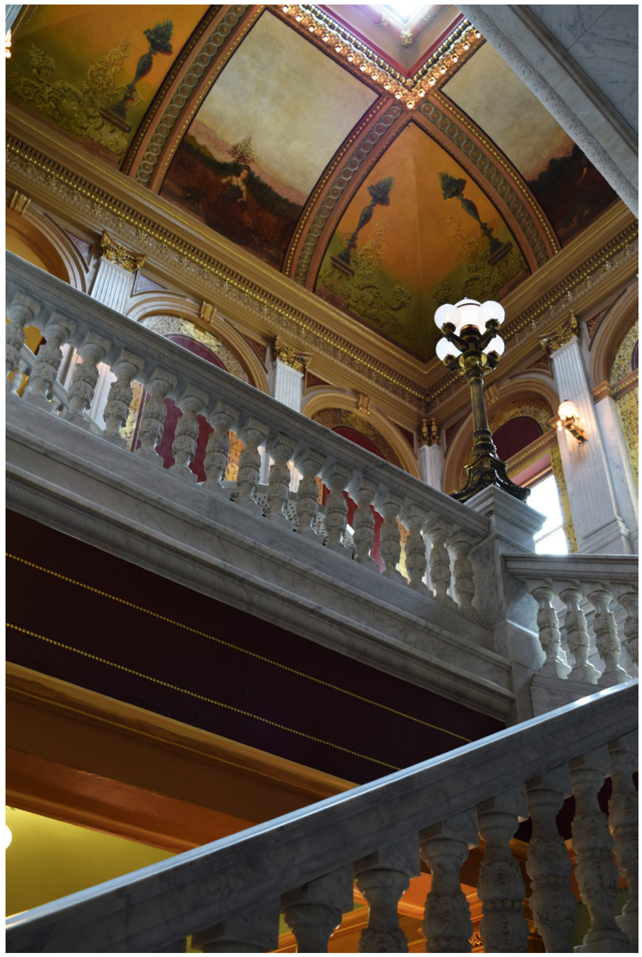

Photograph provided by LSC

View of Grand Staircase,
Senate Building

Chapter 7: Legislative Oversight

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The legislature's review and evaluation of selected activities of the executive branch is referred to as "legislative oversight." The legislative branch conducts oversight activities because it not only enacts new programs for the state, but also has a duty to ensure that existing programs are implemented and administered efficiently, effectively, and in a manner consistent with legislative intent.

While oversight is the specific focus of some legislative activities, it is an integral part of the legislative process that is often difficult to separate from the lawmaking process. Oversight is the focus of select committees and special oversight committees and also can be part of the hearings and work of standing committees. Oversight takes place during the review of administrative rules and when the Senate advises and consents to gubernatorial appointments. The budget process includes many oversight activities as the General Assembly weighs the relative worth of each program within the mandate to maintain a balanced budget. To some extent, legislators determine relative funding levels for programs on the basis of information they receive by questioning executive branch administrators during budget hearings.

In Ohio, legislative oversight probably has its origins in early statutory provisions that required various state agencies to submit annual reports to the General Assembly. Some reports were required to document the agency's expenditures, while others were intended to provide a more comprehensive description of the agency's overall performance. This manner of legislative oversight continues today in a slightly modified form, as most state agencies are required to file some type of annual report with the Legislative Service Commission (LSC), which in turn provides a list of all reports to each member of the General Assembly. The LSC also serves as a legislative budget and program oversight commission. The LSC has its own staff but may delegate to any committee it creates the responsibility to review state agencies and programs, state local assistance programs, and state laws.

Over the years, the legislature has:

- Created a legislative budget office within LSC to provide an independent source of fiscal information relating to state revenues and expenditures;
- Established a formal procedure for review of all administrative rules adopted by executive branch agencies;
- Established sunset laws and the Sunset Review Committee to formally evaluate state boards and agencies on a regular basis;
- Conducted several reviews of executive branch programs under LSC's authority to serve as a legislative budget and program oversight commission;
- Established occupational and licensing laws to regularly and formally review state occupational licensing boards by committees created by the Speaker of the House of Representatives and the President of the Senate.

Activities That Include Oversight

Legislative Committees with Oversight Functions

In the General Assembly, the work of standing committees, select committees, and task forces may include oversight activities. The most direct and formal oversight functions are carried out by special or select committees created to review very specific and narrowly defined issues. These committees may consist exclusively of legislators or they may include legislators as part of a broader committee membership. The work of these committees may be assisted by LSC staff, agency staff, or the committee's own staff. An example of a legislative oversight committee is the Joint Medicaid Oversight Committee.

Review of Administrative Rules

The legislature's review of administrative rules is another way in which the General Assembly oversees the executive branch. A "rule" is a formal written statement of law that state agencies adopt to carry out statutory policies and administer programs. The General Assembly's role in the rulemaking process is the review and possible invalidation of proposed and adopted rules.

The Joint Committee on Agency Rule Review (JCARR) is the vehicle through which the General Assembly exercises its rulemaking oversight. JCARR consists of five members of the House of Representatives appointed by the Speaker of the House and five members of the Senate appointed by the President of the Senate, with no more than three members from each house being of the same political party. JCARR is primarily responsible for reviewing proposed and adopted rules.

JCARR may recommend that the General Assembly invalidate a proposed or adopted rule, but the power to invalidate a rule is vested solely in the General Assembly. JCARR may recommend that the General Assembly invalidate a proposed rule on the grounds that (1) it exceeds the scope of its authority, (2) it conflicts with the legislative intent of the statute under which it was proposed, (3) it conflicts with another proposed or existing rule, (4) it improperly incorporates material by reference, (5) the rulemaking agency has failed to prepare a complete and accurate rule summary and fiscal analysis as required by statute, or (6) has failed to demonstrate that the rule's regulatory intent justifies its adverse impact on businesses in the state.

An adopted rule may be invalidated if any of the following applies: (1) the agency, in reviewing the rule and in recommending its continuance without amendment or rescission, improperly applied the review criteria specified in the Revised Code, (2) the rule has an adverse impact on business and the agency has failed to demonstrate that the regulatory intent of the rule justifies its adverse impact, or (3) the agency failed to properly incorporate material by reference.

Finally, JCARR may require an agency that apparently has failed to adopt a rule as required by statute to appear before JCARR. If JCARR believes the agency has failed to adopt a rule the agency is required to adopt, JCARR may advise, but not require, the agency to commence rulemaking procedures.

Additional information about rulemaking procedures appears in Chapter 11.

Sunset Provisions

A "sunset" provision is a provision enacted by the General Assembly that places an expiration date on an entire act or part of an act. The purpose of a sunset provision is to force a systematic evaluation of an agency or program by establishing a specific date for the termination of the law creating the agency or program. An agency or program cannot be continued beyond the sunset date unless the General Assembly reenacts the authorizing statute or repeals the automatic termination provision.

Sunset Review Process

The Sunset Review Law automatically terminates most state boards, commissions, committees, and councils four years after they are established unless they are continued by new legislation. The Sunset Review Committee, established by the law, reviews individual agencies according to a schedule set forth in the law except for agencies that are specifically exempt from the law. The Committee receives a report from all agencies subject to review, holds public hearings concerning those agencies, and recommends a bill to the General Assembly regarding the future of the agencies. For each agency being reviewed, the recommended bill may propose that the General Assembly renew or abolish the agency, transfer the agency's functions to another agency, or amend or repeal statutes in order to improve the agency's usefulness, performance, or effectiveness. The Sunset Review Committee is composed of three Senators, three Representatives, and three individuals appointed by the Governor with the advice and consent of the Senate. A Sunset Review Committee must be created to function during each odd-numbered General Assembly. The latest Sunset Review Committee will conduct agency reviews in calendar years 2019 and 2020 during the 133rd General Assembly.

Occupational Licensing Board Review

The Occupational Licensing Board Review Law, enacted effective April 5, 2019, automatically terminates any occupational licensing board that is not renewed by the General Assembly within six years of its creation or its last renewal. Each biennium, the Speaker of the House and the President of the Senate must direct a standing committee to review about 33% of the state's occupational licensing boards. As part of the process, each board that is under review must submit to the committee a report containing the board's purpose, workload, budget, and staffing. LSC must provide staff assistance to the committees reviewing the boards, and each committee must publish a report of its findings and recommendations. Recommendations may be in the form of a bill.

The law also requires LSC to prepare and issue a report each biennium on about 33% of the approximately 600 occupations that are subject to regulation by the state. The report must compare the current regulatory scheme for each occupation with the state's general policy on occupational regulation. In practice, LSC's report will cover licensed and board-regulated occupations that are slated for review in the following biennium, thus allowing the standing committees of the new biennium to use LSC's report for guidance in conducting their review.

In addition, LSC staff must report on any introduced bills that propose to substantially change or enact occupational licensing regulations. This report must compare the changes to the law governing the particular board, compare other state's regulatory schemes, and list the potential impact of the changes on employment, consumer choice, market competition, and cost to government.

Fiscal Oversight

The General Assembly utilizes a number of oversight procedures during the budget process, including the enactment of statutory reporting requirements, which may be instituted to monitor an agency's expenditures of state and federal funds. A standard provision adopted in the creation of some boards and commissions is a requirement that the board or commission prepare and submit an annual spending report to the General Assembly.

The budget process provides for a retrospective view of past appropriations and a prospective examination of requested appropriations. The budget document prepared by the Governor and the Office of Budget and Management includes this information. Legislative oversight is carried out throughout the hearings on the budget bill, which involve substantial interaction between legislators and agency representatives.

Controlling Board

The Controlling Board offers yet another means through which legislators can provide oversight and control of agency appropriations and expenditures. It consists of six legislators and the Director of Budget and Management or the Director's designee, who serves as president. Legislative members include the chairperson or vice-chairperson of the House Finance Committee as designated by the Speaker of the House, the chairperson or vice-chairperson of the Senate Finance Committee as designated by the President of the Senate, two members of the House of Representatives appointed by the Speaker of the House (one from the majority party and one from the minority party), and two members of the Senate appointed by the President of the Senate (one from the majority party and one from the minority party). The President of the Controlling Board is responsible for preparing the proposed agenda for each Board meeting at which state agencies submit specific requests to the Board. These requests may seek approval for the transfer of funds within a state agency or a transfer of appropriated funds from one fiscal year to the next. Additionally, agencies may ask the Controlling Board to waive competitive bidding requirements under specified conditions.

The Controlling Board has authority to do the following:

- Release appropriated funds that, by law, require Board approval before expenditure;
- Authorize certain purchases to be made by state agencies without competitive selection;
- Authorize expenditures from revenues not anticipated in the current appropriations act;
- Transfer funds and appropriations or parts of appropriations.

The following are examples of Controlling Board actions:

- Transfers of funds from one fiscal year to another;
- Transfers of all or part of an appropriation within a state agency's budget (but not between state agencies);
- Temporary transfers of funds included in the emergency purposes appropriation of the Controlling Board.

The Controlling Board may not take any action that does not carry out legislative intent regarding program goals and levels of support expressed in prevailing appropriation acts.

Advice and Consent to Gubernatorial Appointments

As authorized by the Ohio Constitution, statutes often require members of state boards and commissions appointed by the Governor to be confirmed by the Senate. The Senate's advice and consent are also required for the Governor's appointments of agency heads. The Senate may use these advice and consent powers to exercise legislative oversight by reviewing the background and qualifications of individuals selected to assume policymaking positions in state government.