Chapter 7
Legislative Oversight

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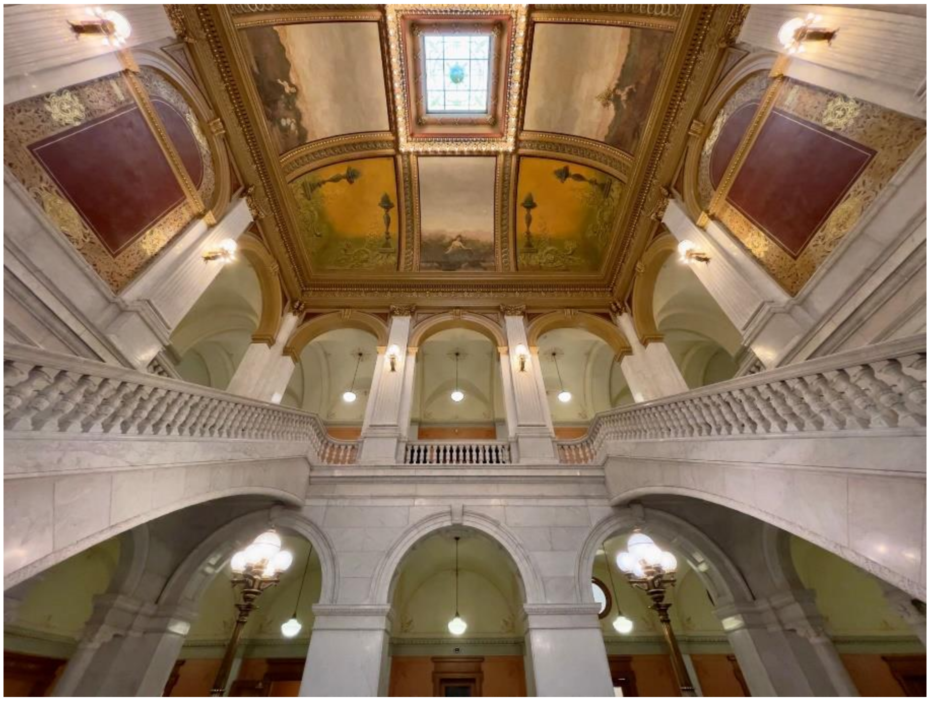

View of Grand Stair Hall, Senate Building

What is Legislative Oversight?

The legislature's review and evaluation of selected activities conducted by the executive branch is referred to as "legislative oversight." The legislative branch conducts oversight activities because it has a duty to ensure that programs enacted by it are implemented and administered efficiently, effectively, and in a manner consistent with legislative intent.

In Ohio, legislative oversight likely originated as a result of early statutory provisions that required various state agencies to submit annual reports to the General Assembly. Some reports were required to document an 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 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 and 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; and
- Established a sexennial review process by which standing committees of the House of Representatives and the Senate formally evaluate state occupational licensing boards.

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. Examples of legislative oversight committees are the Joint Medicaid Oversight Committee and the Ohio Health Oversight and Advisory 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. Additional information about rulemaking procedures appears in Chapter 10.

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. No more than three members from each house may be of the same political party. JCARR is primarily responsible for reviewing proposed and adopted rules.

Invalidation Recommendations

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 rule if the rule is a proposed or revised proposed rule and…	JCARR may recommend that the General Assembly invalidate a rule if the rule is an adopted rule and…
…the rule conflicts with the legislative intent of the statute under which it was proposed	…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
…the rule improperly incorporates material by reference	…the agency failed to properly incorporate material by reference
…the rulemaking agency failed to demonstrate that the rule's regulatory intent justifies its adverse impact on businesses in the state	…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
…the rulemaking agency failed to justify the proposed adoption, amendment, or rescission of a rule containing a regulatory restriction	…the agency failed to justify the retention of a rule containing a regulatory restriction
…the rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires	…the rule implements a federal law or rule in a manner that is more stringent or burdensome than the federal law or rule requires
…the rule exceeds the scope of its statutory authority	
…the rule conflicts with another proposed or existing rule	
…the rulemaking agency failed to prepare a complete and accurate rule summary and fiscal analysis as required by statute	

Agency Failure to Adopt Rule

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

Oversight Regarding States of Emergency

Ohio law grants the General Assembly oversight authority to extend or terminate states of emergency declared by the Governor. Specifically, the law limits a state of emergency declared by the Governor to 90 days, unless it is extended by a concurrent resolution of the General Assembly for up to an additional 60 days per extension. After a state of emergency declared by the Governor has been in effect for 30 days, the General Assembly has the authority, by adopting a concurrent resolution, to terminate the state of emergency.

Additionally, beginning the day a state of emergency is declared, the General Assembly may do any of the following by adopting a concurrent resolution:

- Rescind, in whole or in part, any order or rule issued or adopted by the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Attorney General, or Treasurer of State; by an administrative department or administrative department head; or by a state agency in response to the state of emergency, including an order authorizing an agency to adopt, amend, or rescind rules on an emergency basis;
- Invalidate, in whole or in part, a rule adopted or amended on an emergency basis by an agency in response to the state of emergency;
- Authorize a rule rescinded by an agency, in response to the state of emergency, to be readopted, in whole or in part.

The Governor, within 60 days of the General Assembly rescinding an order or rule, may submit a request to the General Assembly to allow a department, department head, or state agency to reissue or readopt a rescinded order or rule in whole or in part. After a review, the General Assembly may adopt a concurrent resolution authorizing the request.

Oversight Regarding Public Health

The General Assembly may rescind (1) a special or standing order or rule for preventing the spread of contagious or infectious disease issued by the Ohio Department of Health (ODH) or (2) an action taken by the Director of Health to investigate, make inquiry, and take prompt action to control and suppress the cause of disease or illness. At any time after ODH issues a special or standing order or rule, or the Director takes an action described above, the General Assembly may rescind that standing order or rule or action, in whole or in part, by adopting a concurrent resolution. If the General Assembly takes such action, the Governor may, within 60 days and on behalf of ODH or the Director, submit a request to the General Assembly to permit ODH or the Director to issue a special or standing order or rule or take an action that the General Assembly rescinded. After reviewing the request, the General Assembly may adopt a concurrent resolution authorizing ODH or the Director to issue, in whole or in part, the order or rule or take the action that had been rescinded.

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 continue 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. However, certain agencies are specifically exempt. 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 General Assembly. Which agencies the Sunset Review Committee will review during the 136th General Assembly depend on when the agency was created or previously renewed by the Sunset Review Committee.

Occupational Regulation Review

The Occupational Regulation Review Law automatically terminates any state occupational licensing board that is not renewed by an act of the General Assembly within six years of the board's creation or last renewal.

Every biennium, the Speaker of the House and the President of the Senate must direct a standing committee of each chamber to review about 33% of the state's occupational licensing boards. As part of the formal review process, each occupational licensing board must submit to the standing committees a report describing the board's purpose, workload, budget, and staffing. In addition, LSC is required to provide staff assistance to both of the committees. The House committee selects and reviews the boards the first year of the biennium, and the Senate committee reviews the same boards the second year of the biennium. Each committee must discern whether the boards under review have adequately demonstrated a public need for their continued existence and publish a report of the committee's findings and recommendations. Such findings and recommendations may be in the form of a bill. The House committee must issue its report by November 1 of the first year of the biennium and, if the committee's report includes a bill, the House of Representatives must consider it by the end of the year. Similarly, the Senate committee must issue its report by November 1 of the second year of the biennium and the Senate must consider any bill offered by the committee by the end of the biennium.

The Occupational Regulation Review Law also requires LSC to prepare and issue a report each biennium on about 33% of the more than 600 occupations that are subject to state regulations. The report must compare the regulations for each occupation to the state's general policy of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms. In practice, LSC's report generally covers 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. Although not required by statute, LSC's report also compares Ohio law governing the occupations to the laws of the surrounding states.

Finally, the Law requires LSC staff to report on introduced bills that substantially change or enact occupational regulations. This report (1) explains the bill's regulatory framework in the context of Ohio's general policy on occupational regulations, (2) compares the regulations governing the same occupation in other states, and (3) examines the bill's potential impact on employment, consumer choice, market competition, and cost to government. The report must generally be published before the bill is reported by committee. Otherwise, a $^2/_3$ supermajority vote is required for a favorable committee report.

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. See Chapter 8 for a detailed discussion of the budget process.

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 for 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; and
- Transfer funds and appropriations or parts of appropriations.

Controlling Board Actions

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); and
- 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.