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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2025-01

### THE LEGISLATURE'S OVERSIGHT ROLE

One of the key roles of a legislative body is oversight of government operations and affairs in order to ensure effective lawmaking. Oversight allows a legislature to gain an understanding of the effectiveness and efficiency of government, develop legislation to address inefficiencies and needs, and share this information with the citizens of the state. As summarized by a report sponsored by the Levin Center at Wayne State, "Through oversight, legislators ensure that the executive and judicial branches of government comply with legislative intent and that public funds are used legally, effectively, and efficiently."<sup>1</sup>

### BACKGROUND

Courts have consistently held that oversight is inherent to the legislative process. In a 1909 case, the Wisconsin Supreme Court explained that, in order to carry out its lawmaking function, the Legislature has the general authority to investigate:

The legislature has very broad discretionary power to investigate any subject respecting which it may desire information in aid of the proper discharge of its function to make or unmake written laws, or perform any other act delegated to it by the fundamental law, state or national, and to proceed, with that end in view, by a duly authorized committee of one or both branches of the legislature and to incur reasonably necessary expenses, payable out of the public funds. [*State ex rel. Rosenhein v. Frear*, 138 Wis. 173, 176-77 (1909).]

The U.S. Supreme Court has similarly stated that the power to investigate is inherent in the power to make laws because "a legislative body cannot legislate wisely or effectively in the absence of information respecting conditions which the legislation is intended to affect or change." [*McGrain v. Daugherty*, 273 U.S. 135, 175 (1927).]

### Joint Committees With an Oversight Function

The Wisconsin Legislature has a long history of conducting oversight through statutory joint committees, which are supported by full-time legislative staff. In 1911, the Joint Committee on Finance (JCF) was created, which established a system for legislative oversight of the state budget process. Staff fiscal services have been made available to the JCF, and to all members of the Legislature, since 1963, to provide independent fiscal information services. The staff that provides these services was originally known as the legislative budget staff. In 1969, the

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<sup>1</sup> Lyke Thompson and Marjorie Sarbaugh-Thompson, *Checks and Balances in Action: Legislative Oversight Across the States* 9 (2019).

Legislative Fiscal Bureau (LFB) became a statutory legislative service agency. [LFB, Informational Paper #81, *Joint Committee on Finance* (Jan. 2023).]

In 1947, the Wisconsin Joint Legislative Council and staff were created and charged to conduct studies of matters of concern to the Legislature, either during or between sessions of the Legislature, and to report its recommendations to the next general or special session. [Ch. 444, Laws of 1947.]

The Joint Legislative Audit Committee has advisory responsibilities for the Legislative Audit Bureau (LAB), which conducts financial audits and performance evaluations of the executive branch. The committee was created by Ch. 224, Laws of 1975.

## **Standing Committee Investigation and Report Examples**

Standing committees also conduct legislative oversight in Wisconsin. The Legislature's standing committees were particularly active with respect to conducting investigations during the second half of the Twentieth Century. For example, in 1967, both houses of the Legislature approved Senate Joint Resolution 97, relating to a recess in the meetings of the 1967 legislature. One provision of this resolution authorized the standing committees to conduct oversight during the 1967 Legislature's interim. Specifically, the resolution permitted standing committees to:

Conduct, on instruction by the appropriate house or on the motion of the chairman with majority vote approval by the committee, studies, investigations and reviews, within the subject matter area customarily within the purview of the respective committee, regarding any matter which may then be appropriate to legislative inquiry.

Pursuant to this authority, the Assembly Committee on State Affairs adopted resolutions in 1968 to conduct comprehensive studies of "laws and regulations pertaining to the control of firearms, guns and weapons" and "the problem of drugs in Wisconsin." The committee held nine public hearings throughout the state on the topic of firearms and compiled a report: *Committee on State Affairs Report on Gun Control Legislation and "Stop and Frisk" Laws*, dated December 18, 1968. It appears that for the study on drug use in Wisconsin, public hearings were not held but, instead, a staff background paper was completed: *Staff Report to the Wisconsin Assembly Committee on State Affairs on Psychotoxic Drugs: Characteristics and Effects*, dated December 18, 1968. Other standing committees may have conducted oversight activities, as well, over that interim, but these are the only formal reports from that time.

In the 1970s, there are several examples of subcommittees that were formed by standing committees to report back to the full committee on a particular topic. In 1976, the Senate Commerce Committee created the Subcommittee on Small Business, and the Assembly Committee on Municipalities created the Subcommittee on Regional Planning.

In 1978, Assembly Resolution 19 directed the Assembly Committee on Local Affairs to investigate "the causes of gasoline, propane gas and fuel oil price differences throughout the state, including the allocation policies of gasoline, propane gas and fuel oil suppliers doing business in this state." The Assembly Committee on Local Affairs appointed the Subcommittee on Energy Products Pricing and Distribution to conduct the investigation.

In 1979, the chairs of the Senate Committee on Governmental and Veterans Affairs and the Assembly Committee on Criminal Justice and Public Safety established the Joint Senate-Assembly Committee on Problems in Wisconsin's Adult Correctional Institutions. The

committee was comprised of four legislators and 26 executive and legislative branch employees. As part of its investigation, the committee visited several prisons and interviewed inmates, correctional officers, social services staff, medical personnel, and wardens and issued a final report with recommendations.

In the early 1980s, at least four reports were prepared for the Joint Committee for Review of Administrative Rules (JCRAR):

- Report of the Special Subcommittee on Nursing Home Regulation (Feb. 1981).
- Report to Joint Committee for Review of Administrative Rules on Personnel Actions in the Bureau of Migrant and Rural Services (June 1981).
- The University Board of Regents and Central Administration's Policies and Implementation of Shared Governance (May 1982).
- Report of the Committee on 1983 Senate Bill 15, Concerning Denial of a Chauffeur's License to Anyone who Suffers From Epilepsy (Feb. 1983).

In 1989, the Senate Committee on Organization created the Senate Education Committee on Aging Schools to assess the condition of schools in the state. The committee conducted public hearings and conducted on-site inspections of 30 school buildings in urban and rural parts of the state. Its recommendations were set forth in *Children in Peril: A Preliminary Report of the Senate Subcommittee on Aging Schools*.

In the early 1990s, several reports were prepared relating to veterans and military affairs, including a report of the Assembly Committee on Veterans and Military Affairs Subcommittee on Employment and Training entitled, *Application of Priority Services to Veterans at Wisconsin Job Service Sites* (July 12, 1994).

## TOOLS FOR OVERSIGHT AND INVESTIGATION BY COMMITTEES

A legislative committee's oversight and investigation of state agency activities inform the lawmaking function of the Legislature. This oversight and investigation can accomplish several purposes, including the following:<sup>2</sup>

- **Legislative intent.** To determine whether an agency is following legislative intent in implementing a program or enforcing state law.
- **Program effectiveness.** To determine whether a program is achieving its goals, producing expected results, managed well, and effectively using taxpayer money, or to determine whether changes should be made to a program or whether a program should be continued or discontinued.
- **Financial decision-making and cost savings.** To determine whether agencies are good stewards of taxpayer money or whether agencies spend taxpayer money in a manner that is lawful and consistent with legislative intent, and to identify cost savings in programs or agency operations.

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<sup>2</sup> National Conference of State Legislatures (NCSL), *Legislative Oversight in the States*, LegisBrief (Nov./Dec. 2005); and NCSL, [Separation of Powers: Legislative Oversight](#). For information on congressional oversight and investigation, see Congressional Research Service, [Congressional Oversight Manual](#) 1-3 (March 31, 2021).

- **Administrative rules.** To review proposed administrative rules to determine whether an agency has statutory authority to promulgate a rule and whether a rule follows legislative intent.
- **Issues and concerns.** To review the circumstances surrounding an issue or concern that arises with agency activities and programs, and to develop remedies to prevent similar issues and concerns from arising in the future.

Every committee in the Legislature, whether a standing committee, a study committee, or a special committee or task force, has a defined scope of jurisdiction. For example, each house has a committee on education that considers legislation and conducts oversight relating to K-12 education and the Department of Public Instruction. A committee may exercise oversight in its area of jurisdiction on a continuing or regular basis. For example, each house's committee on children and families holds an annual public hearing related to reported instances of egregious child abuse and neglect.<sup>3</sup> [s. 48.981 (7) (cr) 3. b., Stats.]

Alternatively, or in addition, a committee may exercise oversight as the need arises. Committee members and staff may learn about state agency activities through various sources, including the following:

- Audits of agency programs and operations, including audits conducted by the LAB.
- Agency reports submitted to the Legislature.<sup>4</sup>
- Action taken by agencies, including decisions made by an agency's governing body.
- Proposed administrative rules submitted to the Legislature or scope statements for proposed rules submitted to the Governor.
- Media reports.
- Information from constituents concerning interactions with agencies.

Primary examples of ways in which committees may exercise their inherent authority to oversee and investigate state agency activities are described below.

## Committee Meetings and Informational Hearings

Committee chairs may, at their discretion, schedule a committee meeting to hear testimony from and ask questions of agency staff or other persons on a particular matter within their subject-matter jurisdiction, often in the form of an informational hearing. Assembly Rule 14 (1) specifies that "[a]ny proposal referred to a committee, and any other business relevant to its title, may at the discretion of the chairperson be scheduled for public hearing." In the Senate, a committee chair's authority to schedule a meeting for the purpose of hearing testimony from agency staff is implied.

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<sup>3</sup> These hearings are held pursuant to statute; however, statutory authority is not required to hold such a hearing. In addition, this statute establishes a rule of the Legislature and would, therefore, not be enforceable by a court. In other words, it is within the Legislature's discretion to hold such hearings. [See *State v. Stitt*, 114 Wis. 2d 358 (1983).]

<sup>4</sup> For a list of agency reports submitted to the Legislature, see Legislative Reference Bureau, [Mandated Reports to the Legislature through the 2023-24 Legislative Session](#), no. 8 (Oct. 2024).

Current law permits any senator or representative, while acting as a member of a legislative committee, to administer oaths to persons to be examined before such a committee, though in practice, this is very rare. [s. 13.45 (6), Stats.]

## Information Requests

Executive branch agencies are required to provide information to legislative standing committees and to certain legislative staff, including the Legislative Council staff, which provides staff services to the standing committees. Specifically, state agencies and their officers and employees, as well as the governing bodies of local governments, are required to “assist legislative committees in the completion of their tasks.” Agencies must provide ready access to books, records, and other relevant information. Upon request, and within the limits of existing appropriations, agencies must also supply specialized staff assistance as the committee may require.<sup>5</sup> [s. 13.45 (7), Stats.]

The Legislative Council staff may call upon any state department, agency or officer, or any agency of any political subdivision, for such facilities and data as are available and such departments and agencies shall cooperate with the Legislative Council staff to the fullest possible extent. [s. 13.91 (intro.), Stats.]

Legislative Council staff’s access to state agency records recognizes its role in providing research and policy services to legislative committees. As explained by *Mason’s Manual*, “Ensuring the effective implementation and operation of state government programs is a legitimate responsibility of the legislature.”<sup>6</sup> The Legislative Council staff serves each standing committee and interim study committee, in part, to provide the committees with the expertise needed to oversee executive branch activities. In the late 1960s, the Assembly Speaker proposed expanding the role of the Legislative Council staff to serve the standing committees due to concern about the increasing size and scope of the executive branch. This proposal was part of a broader proposal to make Wisconsin’s system of standing committees more robust. The Speaker described the proposal as making the Legislature “a meaningful partner in our governmental system” and said that “standing committees operating in and out of session should initiate studies, collect data, evaluate, recommend, and oversee” in addition to considering bills.<sup>7</sup>

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<sup>5</sup> In recent years, committees and individual legislators have increased their requests for information using Wisconsin’s Public Records Law. Agencies are required to provide access to public records as soon as practicable and without delay, unless an exception applies. Under the Public Records Law, a “record” is broadly defined to mean any material that has been created or is being kept by the agency on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics. However, there are a number of specific exceptions to the Public Records Law. For example, agencies are prohibited from releasing certain personally identifiable information, which may be redacted when appropriate. Agencies may also decline to release a record when, under a balancing test, the harm to the public interest resulting from inspection would outweigh the public interest in full access to public records. [ss. 19.32 to 19.36, Stats.] Therefore, using this body of law versus the Legislature’s inherent and statutory authority to obtain information will likely result in receiving less information, depending upon the request. As noted, the Public Records Law requires agencies to respond to requests “as soon as practicable and without delay,” as measured relative to their immediate workload. As there is no similar provision under s. 13.45, Stats., a legislative request may be considered part of an agency’s immediate workload and, therefore, should presumably be addressed more quickly in order to respond to the immediacy of the legislative need. State agency responsiveness to public records requests versus requests based upon legislative authority demonstrates a misunderstanding of the roles of the branches and, arguably, a breakdown in communication between the branches.

<sup>6</sup> Paul Mason, *Mason’s Manual of Legislative Procedure* (2020 ed.); s. 795.10, Stats.

<sup>7</sup> Wisconsin Assembly Journal for the Seventy-Eighth Regular Session, at 8-11 and 1,514-1,526.

## Formal Studies and Investigations

### Under Joint Rule 84 (3)

Recognizing committees' inherent authority to investigate, Joint Rule 84 (3) provides that standing committees may conduct studies, investigations, and reviews that are "within the subject matter area customarily within the purview of the respective committee, regarding any matter that may then be appropriate to legislative inquiry." This may be done on instruction by the appropriate house or on motion of the chair with majority vote approval by the committee. In the case of duplication or overlapping areas of original inquiry, the subject matter area assigned to each committee and scope of each committee's inquiry is defined and delimited as follows: (1) in the case of an Assembly committee, by the Assembly Speaker; (2) in the case of a Senate committee, by the Committee on Senate Organization; and (3) in the case of a joint committee, by the Joint Committee on Legislative Organization.

### By Subcommittees

Assembly Rules authorize a committee chair to appoint a subcommittee "to consider specified subjects and report to the parent committee." [Assembly Rule 11 (2).] Senate Rules similarly provide that a committee chair may appoint a subcommittee to "take charge of any part of the committee's business and to report to the committee," which includes conducting a study to investigate issues that are within a committee's purview. [Senate Rule 24.] For example, in 1975, the chair of the Senate Commerce Committee created a Subcommittee on Small Business to investigate the problems of small businesses in Wisconsin. The subcommittee held a series of public hearings on the topic, and, with assistance from the Legislative Council staff, issued a 20-page report on its recommendations for legislation and improvements to executive agency activities.<sup>8</sup>

### Subpoena Power

When a committee is "appointed to investigate any subject matter," it may issue subpoenas as part of the investigation. Subpoenas may compel witness testimony or the production of records. [s. 13.31, Stats.] The statutes do not specify the means by which an authorization to investigate must be provided for a committee to have the authority to issue subpoenas and, to date, investigations have been authorized through a resolution or joint resolution.

To survive a court challenge, a resolution authorizing an investigation must meet certain criteria for the committee to be authorized to issue subpoenas. In *Goldman v. Olson*, a federal district court analyzed whether a resolution, which authorized an investigation of antiwar demonstrations on the University of Wisconsin-Madison campus in the 1960s, was sufficient to permit a committee to compel certain witness testimony. The court held that a resolution authorizing an investigation must define the subject matter of the investigation in a manner that is sufficiently explicit and clear in order to afford the witness a reasonable basis for judgment as to whether a particular question is pertinent to the subject matter under investigation.

The court found that the resolution at issue was vague, but that the investigation itself had not been conducted in a manner that violated requirements for the witnesses' due process. The court recognized that it may not be possible for the Legislature to precisely define the scope of an investigation at the outset. Specifically, the court found that "the very process of legislative investigation must often be tentative and uncertain" and that the resolution authorizing the

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<sup>8</sup> Senate Subcommittee on Small Business, *Report to the Senate Commerce Committee* (Nov. 10, 1976).

investigation in the case should be analyzed as it was applied, versus based on its language. [285 F. Supp. 35 (W.D. Wis. 1968).]

Courts have not set forth precise boundaries of the specificity required for issuance of a legislative subpoena. However, it seems clear that the requirements for specificity and clarity articulated in *Goldman* must be met before a committee can enforce compliance with the subpoena.<sup>9</sup>

Depending on the circumstances, other constitutional limits may apply to the use of subpoena power. For example, the *Goldman* court held that if an investigation affects First Amendment freedoms, the Legislature must also show a substantial relationship between the information sought and a state interest or concern.

Procedurally, a subpoena must: (1) refer to the authorization of the committee to investigate; (2) state the nature of the investigation; and (3) state where, when, and before whom the witness is required to appear and, if applicable, produce records and documents. A subpoena must be signed by the presiding officer and chief clerk of the Senate or Assembly. [ss. 13.31 to 13.33, Stats.; Assembly Rules 3 (1) (o) and 5 (1) (j).]

## **OTHER OVERSIGHT AUTHORITY GRANTED BY THE CONSTITUTION AND STATUTES**

The Legislature oversees state government through several mechanisms, including audits conducted by the LAB, the budget process, Senate confirmation of gubernatorial appointments, and administrative rulemaking, in addition to formal investigations and information requests by legislative committees, discussed above.

### **Legislative Audits**

State legislatures have historically established audit agencies to conduct fiscal or financial audits of state contracts to account for the use of government funds. In the late 1970s, there was a concerted effort to establish audit agencies that also conducted performance audits. These types of audits help determine the effectiveness of government in achieving public goals.<sup>10</sup>

In Wisconsin, the LAB,<sup>11</sup> led by the state auditor, conducts the following types of audits:

- Financial audits.
- Performance evaluations.
- Fraud, waste, and mismanagement investigations.
- Best practice reviews.

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<sup>9</sup> A subpoenaed witness who fails to appear before a standing committee may be compelled to appear through a summary process, which commands the sergeant-at-arms, “in the name of the State of Wisconsin,” to take the body of the person who failed to attend and bring that person before the committee to testify or provide books, records, documents, or papers, as ordered in the subpoena. [s. 13.32, Stats.] In addition, if a witness refuses to appear, testify, or produce records and documents pursuant to a subpoena from an authorized investigatory committee, the witness may be found in contempt by the Senate or Assembly. The committee chairperson certifies, to the Senate or Assembly, a witness’s refusal to appear, testify, or produce records and documents. [ss. 13.26 (1) (c), 13.27, and 13.34, Stats.]

<sup>10</sup> Thompson at 10.

<sup>11</sup> For more information, see the [“About Us” section](#) of the LAB website.



The state auditor is responsible for conducting several financial audits and performance evaluations required by statute and the completion of audits and evaluations as directed by the Joint Legislative Audit Committee. The state auditor is appointed by the Joint Committee on Legislative Organization, on the recommendation of the Joint Legislative Audit Committee.<sup>12</sup>

In order to provide effective oversight information to the Legislature, the LAB has access to all departments and to any books, records, or other documents, maintained by the departments and including any such books, records, or other documents that are confidential by law in order to conduct financial audits and performance evaluations of the executive branch and to investigate allegations made to the Fraud, Waste, and Mismanagement Hotline. [s. 13.94 (intro.), Stats.]

## State Appropriations

Article VIII, Section 2 of the Wisconsin Constitution provides that “[no] money shall be paid out of the treasury except in pursuance of an appropriation by law.” The power of appropriation of funds allows the Legislature to set the policy of the state through the biennial budget act and subsequent transfers or allocations of funding.<sup>13</sup>

The LFB director, or the director’s designated employees, shall have access to all state agencies and to any books, records, or other documents maintained by such agencies and authorities relating to their expenditures, revenues, operations, and structure. [s. 13.95 (intro.), Stats.]

## Administrative Rule Review

In Wisconsin, the Legislature plays a significant role in administrative rule promulgation. Overseeing this process allows the Legislature to respond to proposed administrative rules for which there is no statutory authority and to monitor whether rules are drafted in a way that accords with legislative intent and is accessible to the public.<sup>14</sup>

When an agency intends to promulgate a permanent administrative rule, the proposed rule must be submitted to the Legislature for review by a standing committee in each house and JCRAR before it may go into effect. The standing committees and JCRAR may request modifications to a rule, object to a rule, waive committee jurisdiction over a rule, approve a rule, or take no action on a rule. Standing committees are not required to approve a rule by affirmative action.<sup>15</sup> [ss. 227.19 and 227.26, Stats.]

## Senate Confirmation of Gubernatorial Appointments

State law specifies when an appointment to office must be confirmed by the Senate. Also, the Senate rules and statutes set forth the process by which the Senate confirms a nomination

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<sup>12</sup> As in Wisconsin, 30 other state legislatures select the state auditor, and the state auditor typically reports directly to a legislative audit committee. In other states, the auditor is a separately elected executive branch officer, who may or may not work closely with the legislature. In a couple of states, the state auditor office is a division of an executive branch agency working under an elected official, such as the secretary of state or the comptroller. In 10 states, there is a legislative auditor and an elected state auditor. [Thompson at 18-19.]

<sup>13</sup> For a complete description of the budget process, see LFB, [State Budget Process](#), Informational Paper #78 (Jan. 2023) and Legislative Fiscal Bureau, [Joint Committee on Finance](#), Informational Paper #81 (Jan. 2023).

<sup>14</sup> For a complete description of the administrative rulemaking process, see Legislative Council, [Administrative Rulemaking](#), Information Memorandum (July 2024).

<sup>15</sup> For additional information on committee action on administrative rules, see Part IV of Legislative Council, [Assembly Committee Procedures and Powers, 2023-25 Legislative Session](#) (March 2023) and [Senate Committee Procedures and Powers, 2023-25 Legislative Session](#) (March 2023).



received from a board or the Governor for such appointments. For example, the process by which a cabinet secretary is appointed to office is by the Governor's nomination and the advice and consent of the Senate. [s. 15.05 (1) (a), Stats.] Similarly, members of commissions or boards are appointed by the Governor's nomination and with the advice and consent of the Senate. [ss. 15.06 (1) and 15.07 (1), Stats.]

When a nomination for an appointment is submitted to the Senate, as required by law, the Senate President must refer the nomination to the standing committee that the Senate President deems to be the most appropriate to pass upon the qualifications of the candidate. [Senate Rule 22.] The Ethics Commission then forwards copies of a nominee's statement of economic interests to the members of the committee to which the nomination is referred.<sup>16</sup> [s. 19.43 (3), Stats.] The standing committee reports its findings and recommendations regarding a nominee to the Senate in writing. [Senate Rule 22.] Nominations may be considered, and the nominees with the advice and consent of the Senate may be appointed during any session of the Senate. The vote is taken by ayes and noes. [Senate Rule 22.]

If an individual's confirmation for an office is rejected by the Senate, the individual may not hold the office, be nominated again for the office, or perform any of the duties of the office during the legislative biennium. [s. 13.127, Stats.]

This information memorandum was prepared by Anne Sappenfield, Director, on January 6, 2025.

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<sup>16</sup> In practice, the Ethics Commission submits a nominee's statement to the Senate Chief Clerk, who forwards it to the clerk of the committee to which the nomination was referred. The standing committee clerk then distributes the statement to all committee members.