



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in Idaho

Capacity and Usage Assessment

Oversight through Analytic Bureaucracies:	Limited
Oversight through the Appropriations Process:	Limited
Oversight through Committees:	Moderate
Oversight through Administrative Rule Review:	Moderate
Oversight through Advice and Consent:	Minimal
Oversight through Monitoring Contracts:	Moderate
Judgment of Overall Institutional Capacity for Oversight:	High
Judgment of Overall Use of Institutional Capacity for Oversight:	Moderate

Summary Assessment

The Idaho Legislature has some effective oversight mechanisms at its disposal including rules review, capacity to conduct detailed performance audits and evaluations, and opportunities to engage in oversight through the appropriations process. The use of these tools, however, raises questions about the motivation for oversight, especially through administrative rules review. Special interests appear to be empowered to exert substantial influence over rules. The legislature added to its oversight capacity of contracts in 2016, but it is too soon to tell how well they are utilizing these new reports.

Major Strengths

Idaho has a legislative audit division within its Legislative Service Office and an award-winning program evaluation unit. The reports these agencies produce, especially the program evaluations, are notably thorough. These reports appear to trigger legislative attention, follow up reports, and the passage of needed legislation to fix the problems identified in the reports. But reviewing only three or four programs per year is limited, albeit thorough, oversight. Idaho is one of only a few states with balanced partisan membership on its oversight committee. This probably contributes to its effective use of traditional mechanisms of oversight—committee hearings on audit reports. Contract monitoring by the legislature includes an annual review of contracts at the start of the legislative session starting in 2017, but this is too soon to assess whether this yields more than other state legislatures.

Challenges

The legislature has an especially powerful administrative rules review process. Knowledgeable observers in the state raise questions about the ability of special interests to dominate the legislative rules review process. Furthermore, rules appear to be rejected without negotiation between the agency and the legislature, a practice that we find in many other states when the legislature objects to a rule. The legislature rarely uses its power to oversee the qualifications of gubernatorial appointees. And when it does, it appears to focus on gender and personal characteristics of appointees rather than their qualifications for the position. Oversight of the budget consists of days of unanimous consent to the proposed budget items. The effect of one party government may be an important factor in the way these oversight resources are used.

Relevant Institutional Characteristics

When compared to other states, Idaho ranks fairly low at 35th on legislative professionalism (Squire, 2017). The National Conference of State Legislatures (NCSL, 2017) classifies Idaho's legislature as part-time due to its low pay and small staff. The legislature meets annually. Idaho is one of only 11 states in the nation that do not limit session length,¹ but even so, the sessions tend to be relatively short. The 2018 Regular Session lasted approximately 58 days from the date they convened on January 8 to the date they adjourned on March 28 (Idaho Legislature, 2018). Constitutionally, only the governor can call a special session.²

The Idaho Legislature may also hold a special (sometimes known as extraordinary) sessions, which may only be called by the governor (NCSL, 2009). Since 2010, the Idaho Legislature has convened for one of these special sessions -- in 2015 (LegiScan, 2018).

Legislators are paid \$17,017 annually, plus a \$129 per diem, “for members establishing a second residence in Boise; \$49/day if no second residence is established and up to \$25/day travel”. During 2015, the legislature had 136 staff members, 76 of whom are permanent. There are currently no term limits for Idaho legislators (NCSL, 2017).

According to the information provided in (Ferguson, 2015), Idaho's governor is tied for the 17th most powerful among the 50 states. According to Beyle (2008), Idaho's governor holds full responsibility over the budget making powers in the state. Furthermore, the governor may use a line-item veto on all bills, with a two-thirds majority vote of legislators required to override such veto (Beyle, 2008).

The size of Idaho's bureaucracy is about average when compared to the sizes of other state bureaucracies across the country. Approximately 11.7% of those employed in Idaho work in state and local government. Of these state and local government workers, 6.4% work in education, while roughly 1% work in safety, 2% in welfare, 1% in services, and 1% in other areas (Edwards, 2006).

Political Context

¹ <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx>, accessed 11/24/18.

² https://ballotpedia.org/Article_III,_Idaho_Constitution, accessed 11/24/18.

The Republican Party currently controls Idaho's governorship, as well as both chambers of its legislature. The governor's office has been occupied by a Republican since 1995. The Idaho House of Representatives has been controlled by the Republicans since 1960; and Republicans currently hold a 59-to-11 majority. Idaho's senate has also been held by the Republicans since 1960, with the exception of 1991-92, in which the chamber was evenly split. Republicans currently hold a 29-to-6 majority in the senate (Ballotpedia-Idaho Legislature, House & Senate).

According to Shor and McCarty's (2015) criteria, Idaho has the 7th most politically polarized senate in the country, and the 11th-most polarized house. Idaho Senate and House Republicans are the 15th and 10th most "conservative" in the country, respectively. Senate and house Democrats are the 34th and 25th most "liberal," respectively.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

Idaho's analytic bureaucracy consists of the Legislative Services Office and the Office of Performance Evaluations. The Legislative Services Office's authority is described in Idaho Statutes 67-701 through 67-704. According to these statutes, the Legislative Council, a committee comprised of 14 legislators,³ is responsible for appointing the director of the Legislative Services Office (LSO) and for overseeing the office's operations. The LSO consists of a staff of approximately 70 professionals divided into the following four divisions: The Legislative Audit Division, the Budget & Policy Analysis Division, the Research and Legislation Division, and the Information Technology Division (LSO Website-Organizational Chart). The first three of these units provide analytic support to legislators, while the fourth division, Information Technology, maintains computer equipment for the legislature.

The Legislative Audit Division is the largest of the LSO units with 27 staff members (LSO-Audit Staff) and a 2015 state appropriation of \$1.2 million (NASACT, 2015). It "audit[s] the State of Idaho's Comprehensive Annual Financial Report (CAFR), perform[s] the Statewide Single Audit for federal funds expended, and perform[s] management reviews of each executive department of state government at least once in a three-year period" (LSO-Audit). There are roughly 200-300 total agency specific reports available on the Idaho Legislature's website, some of which are nearly a decade old. During 2017, the Legislative Audit Division produced eight products described as audits and management reviews.

The Budget and Policy Analysis Division assists legislators in the budget process. Furthermore, they are responsible for four documents published annually: The Legislative Budget Book, the Legislative Fiscal Report, the Fiscal Source Book, and Idaho Fiscal Facts. The Budget and Policy Analysis Division has 11 staff members (LSO-BPA Staff).

"Research and Legislation is the section of the nonpartisan Legislative Services Office that conducts research for legislators, drafts legislation, staffs legislative study committees, reviews administrative agency rules, and provides information on the legislative process and

³ These are the Speaker of the House, the President Pro Tempore of the Senate, the majority and minority leaders of both chambers and four Senators and four Representatives, two from each political party.

legislative history to the public and other state agencies” (LSO-Research). It has 13 staff members.

The other Idaho analytic bureaucracy, the Office of Performance Evaluations (OPE), is a “nonpartisan, independent office of the Legislature,” that evaluates “whether state government programs and agencies are operating efficiently and cost-effectively and are achieving intended results” (Idaho Legislature-Office of Performance Evaluations). The OPE bases its work on the standards of the American Evaluation Association and the National Legislative Program Evaluation Society of the NCSL, leaning toward reports that would be described as program evaluation rather than auditing (interview notes, 2018; Risley, 2008). The OPE receives its authority and direction from the Joint Legislative Oversight Committee (JLOC), which is described in more detail in the section on Idaho’s “Oversight Through Committees.” The OPE is currently staffed by eight individuals with backgrounds in the social sciences: political science, economics, and psychology (Idaho Legislature-Office of Program Evaluations). In 2017, OPE produced two new performance evaluations plus two follow-up reviews of previously reviewed departments.⁴ In addition to its reports, OPE names bills passed as a result of an evaluation and produces short, graphic infused highlight sheet for each report. These highlight sheets are direct and easy to read. As an indication of the quality of its work, OPE received the Outstanding Evaluation Award in 2016 from the American Evaluation Association for its evaluation of ISEE and Schoolnet.⁵

Interviewees stated that the reason that the OPE and Legislative Audit are located in separate parts of the legislature is because the former is perceived to need to meet a higher standard of independence while the latter need only be non-partisan (interview notes, 2018). OPE has a process for creating evaluations that embodies this higher standard of independence. Any legislator can request OPE produce an evaluation, but that request must be made to the JLOC. The committee gathers the requests and votes on which requested evaluations OPE will conduct. Although OPE has the authority to determine the scope of the audit, staff often engages in non-binding consultation with the Joint Legislative Oversight Committee to reduce the chance of a misunderstanding about this. Once the scope is set, the OPE works confidentially on the evaluation. Upon completion of the evaluation, the OPE sends an advance copy for review to the JLOC so that members have a chance to read and review the findings before a meeting at which the JLOC votes on whether to release the report. Practitioners state that reports have always been released. But legislators with advance copies of the report have tried to convince OPE to reconsider or change findings before the meeting. These requests have all been rejected by the OPE (interview notes, 2018).

In contrast, the process for the legislative audit division requires greater ongoing collaboration with legislators. In addition, the audit division unlike OPE is working with the legislature as a whole, not just a single committee. Interviewees state that the OPE and Legislative Audit Division have never collaborated on a report, but occasionally the OPE will ask the Audit Division about one of their reports if it is relevant to an evaluation (interview notes, 2018).

Oversight Through the Appropriations Process

⁴ <https://legislature.idaho.gov/ope/reports/>, accessed 11/24/18.

⁵ <https://www.eval.org/p/cm/ld/fid=57#Outstanding%20Eval>, accessed 8/27/18.

Idaho's appropriations process is initiated by the governor, who makes budget recommendations during the first five days of the legislative session. Next the Joint Finance and Appropriations Committee (JFAC) amends the gubernatorial recommendations and prepares appropriation bills for submission to both legislative chambers. This committee consists of 20 legislators, 10 from each chamber based on their membership on the Senate Finance Committee and the House Appropriations Committee. Consequently, the partisan composition of the committee reflects the supermajority held by Republicans in both chambers. Currently 16 Republicans and four Democrats serve on the JFAC. Appropriations bills require only a simple majority vote by both houses of the legislature to pass (Idaho Constitution Article IV Sections 10 and 11, LSO-Comprehensive Annual Financial Report, 2017, p. 118).

The JFAC's authority is described in Idaho Statutes 67-432 through 67-440. The most important of these is the power to, "review the executive budget and the budget requests of each state department, agency and institution," and the power to, "conduct such hearings as it may deem necessary and proper" (Idaho Statute 67-435).

Based on the exceptionally detailed meeting minutes of the JFAC, it is clear that meetings include presentations by agencies, their staff analysts, occasional questions from committee members, and votes on whether to recommend that the legislature approve each line item in the budget. The committee met 34 times during the month of January, 38 times in February, and 18 times in March during 2018, generally with two sessions per day. These meeting minutes also reveal that the committee refers to the agency reports of the LSO's Legislative Audit Division. LSO staff often made presentations on items in the budget. However, despite what appears at first glance to be effective oversight during the appropriations process, there were only a few recurring issues that triggered multiple substitute motions. For example, these include: wolf control, opening new liquor stores and expanding Sunday hours for liquor stores, carry-over funds for opioid prevention until federal funds were disbursed, and cybersecurity updates. But there were dozens and dozens of items without any Nay votes or only one or two objections. The document with all of the 2018 minutes for these discussions and votes is 319 pages long.⁶ Each vote and related discussion is approximately one page of text. We estimate that there were more than 250 votes with unanimous support (LSO-Joint Finance and Appropriations Committee Website).

As an example of these hearings, the January 11, 2018 hearing⁷ consisted of 15 "agency presentations" (generally staff analysts made these presentation) on specific budget line items. The presentations were summarized in one or two paragraphs in the meeting minutes. There were questions asked by committee members after only four of these 15 presentations. When questions were asked, it appears that the committee member sought clarification about information in the presentation. One example was a presentation by an analyst of information on the budget request from the Department of Agriculture to hire two additional organic inspectors using funds generated by fees. In response to a committee member's question the analyst clarified that these are fees dedicated for organic producers and the amount in the fund is based on the yields from prior year—it is not general inspection funds. The motion then passed unanimously. This is the typical of oversight in these hearings, with the exception of the rare line item that generated "nay" votes. Therefore, while there is oversight, it is not an in-depth probing of the pros and cons of a program nor even as assessment of a program's effectiveness or

⁶ <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/jfacmin.pdf>, accessed 5/9/18.

⁷ https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/standingcommittees/180111_jfac_0800AM-Minutes.pdf, accessed 9/21/18.

performance. The entire hearing lasted one hour and 15 minutes, which included the time to call roll and perform other routine committee administrative procedures. This means that each line item received about 10 minutes of the committee's time.

Therefore, it is not clear how much oversight is being exercised. Our review of media reports has not revealed any notable examples of budget-related oversight. This level of agreement on the budget could reflect the one-party dominance of state government. Republicans have a supermajority on the committee (16 R to four D), and the Republicans control of the executive branch.

Oversight Through Committees⁸

The Idaho Legislature has standing committees for each chamber as well as a few (five in 2018) joint standing committees. One of these joint committees, the Joint Legislative Oversight Committee (JLOC) is established and its functions delineated by Idaho Statutes 67-457 through 67-464. Committee members are appointed by the Legislative Council, with an equal number of members from each party and each chamber of the legislature. Additionally, the two co-chairs of the committee represent each chamber and each political party. The committee's "purpose [is] conducting performance audits or evaluations, and reviewing all records related thereto, of any state agency at any time as the committee deems necessary" (ID Statute 67-457). In their attempt to realize this purpose, the committee has the authority to appoint a director of legislative performance evaluations (67-457). Currently, this appointee heads the OPE. Also worth noting are the subpoena powers granted to the committee's co-chairpersons (67-460). Furthermore, performance evaluations conducted under the authority of the committee are made available to the agency under evaluation, the governor, and all members of the legislature (67-461).

The committee has tasked the OPE with eight reports (six performance evaluations and two "follow-up reports") over 2017 and '18. These are extensive reports of 100 pages or more. One of the reports conducted in 2017 received the Notable Documents Award given by the Legislative Research Librarians, a staff section of the National Conference of State Legislatures. The release of the reports involves a committee hearing with discussion of the contents of the report and directions from committee members for follow up reports. The reports we examined included a list of consultants (three for each report) that included an academic from an Idaho university and professionals with advanced degrees in a field related to the report (Idaho Legislature-Office of Program Evaluations-Reports).

The JLOC met seven times in the last two years (2017 and 2018). Meeting minutes are very detailed, describing the various reports and follow-up reports that the committee commissioned. It appears that the state agencies that were reviewed have made some progress implementing committee recommendations (Idaho Legislature-Office of Program Evaluations-Oversight Committee Minutes).

The legislature also relies on the creation of interim committees to study issues it endeavors to address, and legislative action was taken on some of the recommendations. Two

⁸ The Idaho legislature has a range of committee types: standing, joint standing, interim, special, compensation (employee and legislative), and the legislative council. <https://legislature.idaho.gov/committees/>; The "Idaho State Senate Policy Manual, Procedures and General Information" provides a glossary of terms defining standing committee: "regular committees of the legislature set up to perform certain legislative function." In addition to this definition, the document list all 10 standing committees of the Senate and 14 of the House (pg. 43) <https://legislature.idaho.gov/wp-content/uploads/PoliciesAndProcedures.pdf>, accessed 11/22/18.

examples demonstrate this use of interim committees: The Interim Purchasing Laws Committee and the Interim Foster Care Committee. The former will be discussed in detail in the section titled “Oversight Through Monitoring of State Contracts.” The latter was an evaluation, initiated in 2016, of the state’s foster care system. Two years later in 2018, the committee recommended the state should do more to keep siblings together in foster care, improve services, and create a citizen review panel to look at cases that are more than 120 days old (Rydalch, 2018). In that same year, the legislature passed most of these recommendations in the Child Protective Act by providing more review and oversight of the foster care system.⁹ Creating and charging interim committees with developing oversight recommendations and passing them into law is an important mechanism of oversight in Idaho. Interviewees have said that these interim committees are not always for legitimate oversight, rather sometimes they are there to generate interest in an issue or for purely partisan reasons. However, interviewees were clear that sometimes these committees are for legitimate oversight, stating:

Interim committees allow [legislators] to get into the weeds on a sticky issue. Occasionally one of [the Office of Performance Evaluation’s] findings results in an interim committee and there are times that an interim committee results in [OPE] doing an evaluation. Interim committees are a common and important feature in the accountability environment because we have very few full time legislative staff, so germane committees just don’t typically have the resources to tackle a bigger issue for too long. The interim committees give a specialized focus and can tailor staffing needs accordingly . . . [Interim Committees] can be a tool used for accountability (interview notes, 2018).

Oversight Through the Administrative Rules Process

Per Idaho Statute 67-5291, standing committees may review any administrative rule, whether new or existing, temporary or permanent. A rule may be rejected by concurrent resolution, if the review finds that the rule is inconsistent with the law or its intent. Idaho is unusual in that the State Supreme Court has upheld the legislature’s right to reject a rule, stating that a rule does not “rise to the level of statutory law.”¹⁰ Most rejected rules are on the basis that they violate legislative intent. Other scholars as well as interviewees say that legislative intent is often used for the purpose of blanket rejections with a dim resemblance to the actual legislative intent that enabled the regulation (Schwartz, 2010, interview notes, 2018). An interviewee estimated that in the case of 99% of rejected rules, the agency does have the authority to make the rule, but the legislature can block any rule for any reason (interview notes, 2018). “[T]he legislature has no trouble shoehorning any policy objection into its ‘legislative intent’ criterion, and no standards govern the unofficial executive branch review” (Schwartz, 2010). Most agencies use negotiated rulemaking and carefully solicit stakeholder input). Another source asserts that agencies negotiate rules with the legislature because anyone can come forward at a legislative rules hearing—including the affected industry—and get a rule rejected (interview notes, 2018). A separate source believes that the practice continues because no organized interest

⁹ https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/2018_Key_Actions.pdf, accessed 11/22/18.

¹⁰ <https://www.courtlistener.com/opinion/1234158/mead-v-arnell/>, accessed 11/22/18.

has stepped forward to finance a legal challenge on the grounds that a rejected rule is in fact consistent with the initial legislative intent (interview notes, 2018).

In recent years, both the Idaho House and Senate each introduced several concurrent resolutions rejecting administrative rules in recent years. For example, during 2017, the house of representatives introduced 12 concurrent resolutions involving administrative rules, five of which resulted in the rejection of an administrative rule by both houses of the legislature.¹¹ Also during 2017, the senate introduced eight concurrent resolutions involving administrative rules, four of which resulted in the rejection of an administrative rule by both houses of the legislature.¹² Schwartz (2010) reports that “the legislature only rejects rules, and rarely uses its power to modify or calibrate rules.” Therefore, the legislature appears to effectively block executive branch efforts to promulgate rules.

In Idaho, all rules are given a sunset each and every year. In 2018, HB666 was the bill dealing with the continuation of all administrative rules and was passed on a 54-14-2 vote. Practitioners state that this bill regularly has 10-15 “nays” from Republican leadership in the house. According to sources, their votes are understood to mean “we don’t want your stinkin’ rules!” (interview notes, 2018). The rules sunset, the relative ease of rejecting a rule, the lack of sustained agency pushback to assert rule making authority, and the courts’ acquiescence tilt the balance of power in rulemaking heavily toward the Idaho Legislature. Moreover, this legislative oversight appears highly susceptible to influence from special interests (interview notes, 2018; Schwartz, 2010).

Oversight Through Advice and Consent

Various executive branch appointments require senatorial approval (Council of State Governments, 2017). Idaho news media indicates that the senate occasionally rejects gubernatorial appointments. During 2013, the senate rejected a Fish and Game Commission appointee (Associated Press, 2013), citing concerns over her hunting and fishing experience that some said left her ill-prepared to set policy governing Idaho’s wildlife on the seven-member commission” (Oregonian, 2013). The article also notes that this was the first time a gubernatorial appointee was rejected in decades. More recently, during 2018, the senate, “declined to confirm a woman to the state Board of Medicine because of an online comment she made about the LGBTQ community” (Idaho Statesman, 2018).

The governor has statutory authority to enact executive orders (Council of State Governments, 2017). Most of these powers are implied rather than specified in statute. There is no formal provision that grants the governor the power to reorganize the executive branch. Executive orders are not subject to legislative review nor are they governed by the state’s administrative procedures act, according to the Book of the States. Idaho’s current governor issued 13 executive orders in 2017. Some address administrative changes to meet a fuel shortage—an emergency. Other executive orders make policy, however. An example of the latter is order 2018-07, “Establishing a Policy for Nuclear Energy Production and Manufacturing in Idaho.”¹³ Despite the potential for an issue involving nuclear energy production to generate public concern and legislative debate, the legislature lacks any resources to oversee gubernatorial orders such as this.

¹¹ <https://legislature.idaho.gov/sessioninfo/2017/legislation/minidata/>, accessed 11/22/18.

¹² <https://legislature.idaho.gov/sessioninfo/2017/legislation/minidata/>, accessed 11/22/18.

¹³ <https://gov.idaho.gov/mediacenter/execorders/eo2018/EO%202018-07.pdf>, accessed 8/27/18.

Oversight Through Monitoring of State Contracts

State contracts are monitored by both the Department of Purchasing and the issuing agency. Recent scandals have prompted direct legislative action. An illegally awarded broadband contract (Richert, 2014) for schools cost (Richert, 2016) the state approximately \$40 million (Boone, 2017) after the plaintiff—a rival broadband company who did not receive the contract—sued and won, alleging the contract was illegally awarded to higher-cost vendors. The costs were connected to a variety of sources: unutilized and underutilized sunk costs; local schools contracting for service in the interim, which were found to be at “prices far cheaper than what the state was paying;” court costs (the legal battle took place over seven years); payments awarded to the plaintiff; and payments to the FCC for failing to follow grant requirements (Boone, 2017). The judge was particularly critical of the Department of Administration, stating “DOA refuses to acknowledge that its bid process in this case was and remains fatally flawed” (The Spokesman, 2014a). The DOA head resigned shortly thereafter (Associated Press, 2015). The scandal served as a focusing event for the legislature to take action. They took a two-pronged approach: (1) create an interim committee to revise the state’s purchasing and procurement laws, and; (2) direct the Office of Performance Evaluation to conduct a performance evaluation. These activities resulted in legislation that increased agency internal control mechanisms and initiated reporting to the legislature. Overall, the procedures for contracting have been improved, and the added layer of reporting has increased the capacity for legislative oversight in this area.

In 2013, The Office of Performance Evaluations produced a report “Strengthening Contract Management in Idaho”¹⁴ which identified key deficiencies: three quarters of contracting staff had not been trained through the Division of Purchasing; and a lack of monitoring both in terms of written guidelines at the Division of Purchasing and monitoring activities by the agencies engaged in contracting.¹⁵ A hearing was held on the report in which the Director of the Department of Administration said additional staffing would be necessary to adopt the recommendations, and the committee asked OPE to perform a follow up review in six months.¹⁶ The legislature acted by passing four bills: removed the higher education exemption from procurement rules, directed the Department of Administration to address findings in the OPE report, appropriated funds to DOA to increase monitoring, and specified to the Division of Purchasing that they are to create rules regarding purchasing.¹⁷ In a hearing on the follow-up report lawmakers expressed surprise that contracts amounted to such a large sum—\$2.6 billion—and many of those contracts were entered into by state officials who are exempt from purchasing rules, including the legislature, the judiciary, and the offices of statewide elected officials like the state superintendent (The Spokesman, 2014b).

The Interim Purchasing Laws Committee received the benefit of the OPE reports and a mandate to review the “antiquated” purchasing laws on the books that date to the 70s (Richert, 2015). Their work resulted in the passage of HB 538¹⁸ that updated the state purchasing and

¹⁴ <https://legislature.idaho.gov/ope/reports/r1302/>, accessed 11/22/18.

¹⁵ <https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r1302.pdf>, accessed 11/22/18.

¹⁶ <https://legislature.idaho.gov/wp-content/uploads/OPE/JLOCMInutes/min130121.pdf>, accessed 1/22/18.

¹⁷ <https://legislature.idaho.gov/ope/reports/r1302/>, accessed 11/22/18.

¹⁸ <https://legislature.idaho.gov/sessioninfo/2016/legislation/H0538/>, accessed 11/24/18.

procurement laws¹⁹ including but not limited to: new training for all state officers and employees; stipulated ethical expectations (Idaho State Code Section 67-9233; KTVB, 2016); individual prohibitions (Idaho State Code Section 67-9230) and penalties (Idaho State Code Section 67-9231); require competitive bid exempt entities to establish policies and procedures relating to the administration, management, monitoring and other oversight of contracts (Idaho State Code Section 67-9219(2)); and all state entities, including those exempt from the competitive bid requirements, must report their contracts annually to the legislature on the first day of regular session indicating for each contract the amount, duration, the parties, and the subject (Idaho State Code Section 67-9219(4)).²⁰ This requirement includes sole-source (no-bid) or multi-year contracts with a lifetime value of \$1.5 million or more. We are told by sources that this marks significant shift from prior procurement practice by getting the legislature directly involved via annual reports and spelling out expectations for actors involved in procurement with corresponding penalties (interview notes, 2018).

But not all of OPE's recommendations were adopted. Despite the new law, more than half of all tax payer money falls outside the competitive bid process because many of the exemptions identified by OPE have survived in the new law (Idaho State Code Section 67-9203(3); Corbin, 2016a). For example, the State Superintendent for Public Instruction granted a no-bid contract to a temporary employment agency to hire her chief policy officer (Corbin, 2016b). A common argument for keeping exemptions to the competitive bid process is that many of these exempt entities are headed by an elected official, which means their constituency would ultimately have say on whether or not the contracts were appropriate. We found this argument referenced by interviewees and contemporaneous reporting cited throughout this section. Media reports suggest that these issues might be addressed in the 2017 session by the State Procurement Laws Committee (Corbin, 2016a), but that committee is not listed among those for the 2017 interim²¹ or 2018 session. Thus, it appears that the legislature has gained some capacity to oversee state contracts, but there are loopholes and room for improvement in the process.

Oversight Through Automatic Mechanisms

Oversight through Sunset Legislation: Sunset legislation may be “selectively” attached to “programs or legislation” (Baugus & Bose, 2015; Council of State Governments, 2016). Recent evidence suggests that Idaho is being encouraged to add sunset clauses to more legislation. For example, right wing groups, such as the Idaho Freedom Foundation, have advocated the use of such legislation (Idaho Freedom Foundation Staff, 2012). Also, there have been news articles discussing legislation with sunset provisions that have emerged during the 2018 regular session (Rydalch, 2018; Russell, 2018). At this point, however, Idaho reviews programs and legislation only selectively.

¹⁹ <http://myemail.constantcontact.com/News-from-Governor-C-L---Butch--Otter.html?soid=1104363258036&aid=p9t0qrAgPkA> accessed 8/21/18.

²⁰ <https://legislature.idaho.gov/statutesrules/idstat/Title67/T67CH28/SECT67-2805/>, accessed 11/24/18.

²¹ <https://legislature.idaho.gov/sessioninfo/2017/interim/interimcommittees/>, accessed 11/24/18.

Methods and Limitations

In Idaho, 10 people were interviewed out of the 11 people that were contacted. Idaho's legislature also provides public and online access to audio (in the form of a video file), minutes, and agendas for their committee meetings. Overall, Idaho is very responsive and provides useful resources, however, having access to transcripts and video for committee meetings would help us better assess the legislature's levels of oversight more accurately.

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