



WAYNE STATE  
UNIVERSITY

Center for Urban Studies

## Legislative Oversight in New Hampshire

### Capacity and Usage Assessment

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

### Summary Assessment

The New Hampshire Legislature has some very strong oversight capacities and some very limited ones. The legislature has access to a variety of audit reports, though these reports are infrequently used. In areas where the governor lacks authority, committees step in and investigate issues. However, many oversight domains, such as advice and consent and the monitoring of state contracts, are left up to the executive branch rather than the legislative branch. Furthermore, administrative rules must be renewed every 10 years, but there are no other forms of automatic oversight mechanisms.

### Major Strengths

The New Hampshire Legislature has some qualities that other states could emulate. Standing committees do wield a fair amount of power over their policy domains, and the various special committees that are convened to investigate particular issues do result in legislative action. Additionally, the Office of Legislative Budget Assistant produces a variety of audits, though they appear to be seldom used by the legislature—legislators say that this is due to a lack of time and clear procedure.

### Challenges

The legislature can improve its oversight abilities. As mentioned, audit reports are infrequently used—sometimes recommendations are not acted upon and will reappear in subsequent audits. Also, most advice and consent issues and monitoring of state contracts are not in the hands of the two houses of the legislature at all, but are instead entrusted to the Executive

Council. De facto, this council, whose members are elected from districts (one each for five districts state-wide), functions as an additional branch of government that can exercise significant restraint upon the governor but appears to have no capacity to initiate policy. Finally, apart from administrative regulations, which must be renewed every 10 years, there are no sunset laws or other automatic oversight mechanisms. In short, New Hampshire should be considered a mixed and unusual example of oversight.

## Relevant Institutional Characteristics

The New Hampshire General Court is the 3<sup>rd</sup> largest legislature in the English-speaking world, with 424 total members (400 in the house of representatives and 24 in the senate). Despite its maximalist size, it is minimalist in the resources provided to members. Pay is low, at \$200 per two-year term for most legislators, and \$250 per two-year term for the president of the senate and the speaker of the house (NCSL, 2017). New Hampshire legislators do not receive a per diem. Legislators therefore need other sources of income. New Hampshire's legislature employs 150 people, with 129 being permanent staff (NCSL, 2015). Legislators are provided no full-time staff, and members of the house are not provided with offices to conduct their work. Members of the New Hampshire Senate must share offices (Haider-Markel, 2009). The NCSL (2017) classifies New Hampshire as having a "part-time lite" legislature, meaning that official duties entail the equivalent of a half-time job. The state is ranked last in terms of legislative professionalism (Squire, 2017). Despite their other constraints, legislators are not term-limited.

New Hampshire's governor is similarly weak and is tied with Texas for 8<sup>th</sup> place, among the least powerful state executive in the country (Ferguson, 2015), though the governor does retain the legislative veto and the power to call out the National Guard. Despite the limits on his or her power, the governor's \$127,443 salary stands in sharp contrast to the minimal pay received by the state's legislators. His or her power, however, is sharply curtailed by a body unusual across the states—an Executive Council. The governor shares appointment power and budget power with this group of five individually elected councilors, each representing one of five councilor districts in the state. The Executive Council appears to operate as a separate mechanism of accountability within the larger legislative and executive branch system. Currently, its membership includes three Republicans and two Democrats. Executive Councilors receive a salary of \$16,070, with an expense budget ranging from \$6,000 to \$9,000 depending on travel distance from the state capital. The Executive Council originated during colonial times to curb royal autocratic authority. During the colonial era, it operated as the upper chamber of the legislative assembly. The Executive Council describes itself as "without equal in the nation" and "the most democratic form of executive government in the nation, or elsewhere in the world."<sup>1</sup> Its mission continues to be a check executive branch authority.

The governor shares appointment powers with the Executive Council. Specifically, the governor appoints and the council confirms his or her appointments for roughly 300 non-classified positions on boards, commissions, and in state agencies. In this capacity, the Executive Council performs duties often performed by the upper legislative chamber in other states in the modern era. It is the council that exercises advice and consent powers over gubernatorial appointments. The Executive Council also monitors state agency spending and monitors most

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<sup>1</sup> <https://www.nh.gov/council/history/index.htm>, accessed 11/2/18.

state government expenditures. The council has veto power over gubernatorial pardons and over contracts with a value greater than \$10,000. Finally, it oversees the State Transportation Plan. New Hampshire's governors, moreover, are not solely responsible for nominating appointees to serve in key positions. For example, both the secretary of state and the state treasurer are elected by a majority of the legislature.

Another constraint on New Hampshire's governor's institutional powers is the lack of line-item veto with respect to the budget. Governors also serve terms of only two years, meaning they must campaign almost continually for reelection. However, the governor is not term-limited. Finally, the bureaucracy is small; in New Hampshire, 9.8% of the state's workforce is employed by either local or state government, with the national average being at 11.3%. They are tied with Minnesota and Wisconsin for having the fourth smallest bureaucracy, at both the national and local levels (Edwards, 2006). Also, many gubernatorial-council appointees serve for terms that are longer than the governor's or the councilors' two-year terms.

## Political Context

New Hampshire has been characterized as “among the most conservative states” (Haider-Markel, 2009), and state politics is routinely dominated by the Republican Party. New Hampshire's political culture has been described as “moralistic,” while at the same time valuing an individualistic and libertarian ethic that has led to the affirmation in the state constitution of gender equality and same-sex civil unions, among other things (Haider-Markel, 2009). Liberals and Democrats sometimes win office as Republicans, which has had the effect of “reduc[ing] cohesion within the Republican Party” (Haider-Markel, 2009). Recent years, however, have seen some gains by Democrats, as evidenced by their growing share of the legislature. Still, few elections have resulted in substantial gains for the Democratic Party in New Hampshire, with the 2006 midterm election being the only contemporary example of a Democratic sweep. Democratic governors are elected with low frequency, with four governors out of 12 since 1980 having been Democrats.

Currently, New Hampshire is the only Republican trifecta in the Northeast. As of March 2018, the governor is Republican, partisan control of the house is in the hands of 227 Republicans (with 173 Democrats), and the senate is controlled by 14 Republicans (with 10 Democrats). In 2010, however, Democrats controlled the lower legislative chamber, and in 2018, it is considered a battleground state legislature with the potential to shift to Democratic control. The New Hampshire Senate has consistently been controlled by the Republican Party during this decade, but the size of the Republican majority in the chamber is shrinking. Despite this competitive political climate, there is not much polarization between the political parties. The house is ranked as the 21<sup>st</sup> most polarized in the country, while the senate is rated as the 17<sup>th</sup> most polarized (Shor & McCarty, 2015). The history of liberals and Democrats running as Republicans described by Haider-Markel (2009) could explain this.

## Dimensions of Oversight

### Oversight Through Analytic Bureaucracies

The principal analytic bureaucracy in New Hampshire is the Office of Legislative Budget Assistant (OLBA). The legislative budget assistant (LBA) is appointed by the Joint Legislative Fiscal Committee each session. The OLBA's mission is twofold; (1) to provide technical staff to assist the legislature and its committees in the areas of finance and accounting, and; (2) to conduct audits and provide oversight of the executive and judicial branches. These two functions are delegated into two divisions of the OLBA: the budget and audit divisions, respectively (OLBA, 2017). The Budget Division, which employs six people, including a court reporter and an administrative assistant, "provides technical staff assistance in the areas of finance, accounting, and budgeting to members of the legislature and its committees . . . assists in preparing the operating and capital budgets . . . provides assistance to special study committees and commissions . . . [and] reviews all programs or activities of state government" (OLBA). The Audit Division is much larger, with a staff of 23 people, including a director of audits and an administrative assistant. Its duties are to "conduct audits of state agencies and programs, providing oversight over the executive and judicial branches of government." The Audit Division is also responsible for the Statewide Single and the Comprehensive Annual Financial Report (OLBA). Some audits, including the Lottery Commission, the Retirement System and other investment plans, and the Turnpike System, are conducted by external, private sector firms, namely KPMG, LLP and Price Waterhouse Cooper, LLP, under contract with the OLBA. The LBA budget for 2017 was \$5.28 million in a state budget of \$5.89 billion, or 9/100<sup>th</sup> of 1%.

Between 2015 and 2016, the OLBA released 27 audit reports, 16 of which were financial audits and 11 were performance audits. We are told performance audits are initiated in the Legislative Performance Audit and Oversight Committee, then communicated to the Joint Legislative Fiscal Committee, which is responsible for approving the audit before staff can begin work on it. The Joint Legislative Fiscal Committee can only block an audit with a unanimous vote. Therefore, we are told most audits are approved for initiation. Also, an informal practice has developed of staff developing an audit scope and presenting it to legislators on the Performance Audit and Oversight Committee for approval or amendment (interview notes, 2018). Once the scope is approved, the audit plan is created, executed, and then audit staff present the report to the Joint Legislative Fiscal Committee. The Joint Legislative Fiscal Committee is responsible for routing any suggested legislative changes to the relevant standing committee and the Executive Departments and Administration Committee in both the house and senate (RSA 14:31 VI).

In the New Hampshire House, the Executive Departments and Administration Committee is responsible for reviewing all performance audits (House Rule 30 (g)) and all audits to be reviewed by their relevant subject matter committee (House Rule 31). The New Hampshire Senate rules are silent regarding committee review of audits. Very rarely will a standing committee take up a routed audit report, but occasionally they will hold a hearing or a series of hearings, sometimes jointly, to question audit and agency staff (interview notes, 2018). An example of this is the House Health, Human Services, and Elderly Affairs Committee holding a hearing on unspent funds allocated to services with wait lists and will be discussed in the section titled "Oversight Through the Appropriations Process." Executive order number three in 2014 requires audited agencies to provide a remedial action plan report within 30 days of the audit's publication and then semiannually provide a progress report, both of which are to be published on the Department of Administrative Services' website. In addition to the committees and entities already named, copies of the completed audit report are given to the governor, the house speaker, the senate president, the Department of Administrative Services Commissioner, and the

executive officer of the audited agency (RSA 12:31-a I (c)).

Audits include recommendations to agencies. We are told that audit staff and agency staff attend the hearing for the audit report and sometimes the Joint Legislative Fiscal Committee will ask the agency to report back regarding audit recommendation (interview notes, 2018). There is also an executive order requiring all recommendations to be routed to the Department of Administrative Services. Some audits make explicit recommendations to the legislature regarding changes to the existing law to improve the function of the agency under report. During 2015 and 2016, the LBA reports that 31 of its 261 “observations and recommendations” called for legislative action. However, legislative action arising from OLBA reports does occur, even though it does not appear to be very common. One instance was an audit of the Department of Health and Human Services’ Division of Child Services. The report made two recommendations; (1) that the state create alternative child support collection services, particularly, online child support payment mechanisms, and; (2) that Child Services prioritize grandparents whenever possible when appointing child guardians (OLBA, 2015). Both recommendations were eventually acted upon in the following two sessions (2016 and then in 2017, respectively).

Transcripts from a meeting of the Joint Legislative Fiscal Committee suggest that recommendations contained in audit reports are frequently ignored. One representative said that he was as a little “disturbed . . . that some of [the recommendations] have carried over from audit to audit” without any action being taken (Fiscal Committee, 2018). The Performance Audit Oversight Committee seems to suggest that the results of audits are not always acted upon because of a lack of time and clear procedures for disseminating information. One senator complained that “[t]here’s no follow-up process” for when the results of an audit are referred to the appropriate committee. This lack of process has led to a situation in which many audits are, in the words of other committee members present at the meeting, “lost in the shuffle,” despite the fact that performance audits are “the single most important function that we do . . . this is how we monitor the performance of our government” (Legislative Performance Audit and Oversight Committee). Thus, it would seem that confusion over how the legislature should handle audits means that this form of oversight is limited. An audit produced by OLBA on the Community College System New Hampshire will be discussed in the section “Oversight Through Committees.”

## Oversight Through the Appropriations Process

Although New Hampshire’s legislature meets annually, it only prepares a budget biannually. Neither the governor nor the legislature are constitutionally required to submit a balanced budget, although the governor is required by statute to do so. The legislature, however, is not required to pass a balanced budget. After agencies submit requests to the Commission of the Department of Administrative Services, they are sent to the governor. Pending public hearings, the governor then prepares a budget and sends it to the general court (the legislature). At this point, “[u]sing the governor’s budgets as a starting point, the house prepares and approves its own budgets, which are then submitted to the senate. The senate prepares and approves its budgets based on the house proposals” (State of New Hampshire Information Statement, 2016). A final budget is drafted by a joint committee from both chambers and, once approved by the legislature, is submitted to the governor. The governor does not have the power

to line-item veto, however, and must either approve or veto the entire bill, subject to override by the legislature.

The Budget Division of the Office of Legislative Budget Assistant (OLBA), under the control of the Joint Legislative Fiscal Committee and the Joint Legislative Capital Budget Overview Committee, is responsible for the “overall post-audit and review of the budgetary process on behalf of the legislature. This responsibility involves conducting selected departmental audits and program result audits including, but not limited to, examinations as to whether the results contemplated by the authorizing body are being achieved by the department and whether such results could be obtained more effectively through other means” (State of New Hampshire Information Statement, 2016). RSA 14:31 requires “all state departments, boards, institutions, commissions and agencies” to provide any data, including confidential information, to the OLBA upon request. Transcripts of Joint Legislative Fiscal Committee meetings indicate that members of the committee regularly take testimony from agency heads, commissioners, and, at times, the governor. These hearings are fairly extensive and seem to result in action by the Joint Legislative Fiscal Committee, largely to approve the use of funding from federal sources or the creation of new personnel positions.

A performance audit of the Health and Human Services, Bureau of Developmental Services, was presented to the Joint Legislative Fiscal Committee by OLBA staff on February 12, 2016 (Office of the Legislative Budget Assistant, 2016). It found that a substantial portion of funds, approximately \$40 million, were unspent despite waiting lists for bureau services. HB 1394 would allow these funds to remain with the bureau for an additional year for the purpose of service provision and prevent them from reverting back to the general fund. The bill was heard in the Health, Human Services, and Elderly Affairs Committee in the house, passed out of the house, referred to the Senate Health and Human Services Committee, and would be passed after a floor debate. The chair during the floor debate stated he was “furious” over the unspent funds and waitlist, a sentiment that was repeatedly shared by legislators during debate along with “shock.”<sup>2</sup> Officials testified during the floor debate.

Agencies must make a request to the Joint Legislative Fiscal Committee for authorization to accept and expend funds that are not in the agency’s initial budget. An example of this is a request made February 12, 2016, by the Department of Safety for funds and a consultant position to be authorized by the Joint Legislative Fiscal Committee. The request was coded 16-023. An exchange between the chair of the committee and the agency head demonstrates oversight questioning (Joint Fiscal Committee, 2016):

Chairman Kurk: It’s a very simple question. This is an ongoing program. Why wasn’t it in the budget?

Mr. Lavoie: The—this aspect of the program is not in the budget. . . . Crash record management system interface is a new component (of the J-One program). . . . We needed to go external to gain the expertise to connect those two systems.

Chairman Kurk: But the whole J-One system, as well as the interface, has long been part of the budget. So if you folks determined that consultants were necessary. . . . I don’t understand why it wasn’t in the budget.

Ms. Leonard: . . . this piece wasn’t foreseen at the time.

Chairman Kurk: When did you apply for funds?

Ms. Leonard: I would have to find that information out.

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<sup>2</sup> Audio recording regarding HB1394 accessed 4/26/16.

Chairman Kurk: The point is, if you're applying for something or you know you're going to apply for something during the budget process, it should be in the budget. And you can very readily say as we do in many cases, if we don't get the funds for this, then we don't have the authority to expend. But that gives the legislature a more complete picture of what's happening and allows us to make better decisions.<sup>3</sup>

16-023 was approved by the Joint Legislative Fiscal Committee.

## Oversight Through Committees<sup>4</sup>

Both the New Hampshire House and Senate have a standing committee on Executive Departments and Administration (EDA) that "consider[s] matters pertaining to the general administration of state laws and changes therein; matters of policy pertaining to the executive departments; matters relating to the New Hampshire Retirement System; matters pertaining to the administration of professional licensing; review of performance audits, and such other matters as may be referred to it" (2017-2018 House Rules). However, a review of the bills before these committees indicate and sources confirm that little of their activity is devoted to matters of oversight. We are told all standing committees share this in common with the EDA committee. Standing committees exist to produce and hold hearings on pending legislation within their substance matter jurisdiction and some of which deals with executive agencies with shared policy domains. Committees receive audit reports from the Joint Legislative Fiscal Committee, a statutory committee which receives OLBA reports, but there is no formal process other than the regular process of making law that engages the substantive standing committees in oversight of those agencies.

Instead, when the New Hampshire Legislature wishes to evaluate a program, a special committee is created. There are two types of special committees in New Hampshire: statutory committees and study committees. The former is codified in state law, is intended to exist for more than two years, and may include members of state agencies and other stakeholders, in addition to legislators. The Joint Legislative Fiscal Committee and the Performance Audit and Oversight Committee are both statutory committees. Study committees, meanwhile, are more temporary, are not codified in law, and typically only include legislators (Statutory and Study Committee). There were 37 special committees formed in 2017 to address issues such as helmet and seatbelt laws, healthcare balance billing, the legalization and regulation of marijuana, procedures relevant to the involuntary commitment of mental health patients, and vacation rentals.

The two primary statutory committees engaged in oversight are the Joint Legislative Performance Audit Committee and the Joint Legislative Fiscal Committee. The Joint Legislative

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<sup>3</sup> Transcripts of the Joint Fiscal Committee meeting.

<sup>4</sup> Standing committees in NH typically only hold hearings on pending legislation. We are told in interviews that most oversight activity occurs in the statutory committees of which there are two kinds, commissions and study committees. These committees or commissions can be purely legislative entities consisting of only legislators or they can be a mixture of legislators, executive appointees, and legislative appointees. Some of these statutory committees only exist for a year or two while others in perpetuity. Most statutory committees include language requiring the creation of a report.

Performance Audit and Oversight Committee is a statutory committee consisting of six representatives and five senators.<sup>5</sup> The committee was established by the NH RSA 17-N:1 and despite there being listed 11 total members on the website, that statute indicates that the committee shall consist of 10 members,<sup>6</sup> five from the house, three appointed by the speaker and two by the minority leader, and five from the senate, three appointed by the president and two by the senate minority leader. The committee is charged with review of agencies and “shall make recommendations to the fiscal committee for such reviews as provided in RSA 14:30-a, II.” RSA 14:30-a, II is the enabling statute for the Joint Legislative Fiscal Committee, allowing it to supervise and work with OLBA and “may at its discretion investigate and consider any matter relative to the appropriations, expenditures, finances, or any of the fiscal matters of the state.”<sup>7</sup> Their website lists minutes and transcripts of meetings.<sup>8</sup> Minutes and transcripts demonstrate that the committee does call in officials for questioning. The Joint Legislative Fiscal Committee’s 10 members are chosen in the following manner:

Five shall be members of the house as follows: the Chairperson of the Finance Committee and two other members of the committee, appointed by the chairperson; and two other house members appointed by the speaker of the house. Five members shall be members of the senate as follows: the Chairperson of the Finance Committee and two other members of that committee, appointed by the chairperson; and two other senators appointed by the senate president. The Chairperson of the House Finance Committee shall be the Chairperson of the Fiscal Committee (RSA 14:30a).<sup>9</sup>

The Joint Legislative Fiscal Committee considers recommendations for audits from the Legislative Performance Audit and Oversight Committee must adopt all recommendations unless the Joint Legislative Fiscal Committee by unanimous vote declines the recommendation (RSA 17-N:1, III).<sup>10</sup>

An example of the work of the Joint Legislative Fiscal Committee and the Joint Legislative Performance Audit and Oversight Committee is their approach to an audit produced on the Community College System New Hampshire (CCSN). The August 2017 audit found questionable spending by CCSN, including “\$32,500 on a car for a president who was already provided with a car by CCSNH and \$34,000 on a college presidents inauguration” and a lack of clear policies (Duffort, 2017a). A Republican and Chair of the Performance Audit and Oversight Committee requested the audit because he had heard “a lot of management missteps or problems that had resulted in a lot of distress among the faculty and students” (Duffort, 2017a). In response, an agency official indicated they would adopt the recommendations and create a task force to monitor their implementation (Duffort, 2017a). State Sen. Chuck Morse, who chairs the Joint Legislative Fiscal Committee that reviews audit reports and routes their recommendations to the relevant standing committee for follow-up, was quoted saying that the audit was “concerning,” but was supportive of the agency since they were willing to “make the necessary

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<sup>5</sup> <https://www.gencourt.state.nh.us/statstudcomm/details.aspx?id=67&rbl=1&txtkeyword=oversight>, accessed 11/5/18.

<sup>6</sup> <https://law.justia.com/codes/new-hampshire/2015/title-i/chapter-17-n/section-17-n-1/>, accessed 11/5/18.

<sup>7</sup> <https://law.justia.com/codes/new-hampshire/2015/title-i/chapter-14/section-14-30-a/>, accessed 11/5/18.

<sup>8</sup> [http://www.gencourt.state.nh.us/LBA/audit/LPAOC\\_AgendasMinutes/LPAOC\\_2018.aspx](http://www.gencourt.state.nh.us/LBA/audit/LPAOC_AgendasMinutes/LPAOC_2018.aspx), accessed 11/5/18.

<sup>9</sup> <https://law.justia.com/codes/new-hampshire/2015/title-i/chapter-14/section-14-30-a/>, accessed 12/7/18.

<sup>10</sup> <http://www.gencourt.state.nh.us/LBA/budget/fiscalcommittee.aspx>, accessed 11/6/18.



changes” (Duffort, 2017b). However, the legislator who sought the audit continued to be skeptical, citing their lack of cooperation with the Public Higher Education Study Committee (Duffort, 2017a). A September 2017 Public Higher Education Study Committee reviewed the audit findings, questioned the chancellor, and took note of the fact that no legislative actions were suggested by the audit. An example of the questioning included a request for an explanation for how such mismanagement could occur despite the existence of two oversight bodies, to which the official answered that there are difficulties in getting it right: the sums involved (\$130 million per year) are large, the pace of change in the education sector is rapid, and their focus is on student success. He also noted in his answer that many of the audit issues have already been addressed, all institutions are in good standing, their other audits with no findings, and their report to the Joint Legislative Fiscal Committee on how they would address the recommendations was accepted (Public Higher Education Study Committee, 2017).

Special committees in New Hampshire offer an important oversight mechanism to evaluate the performance of the executive bureaucracy, provide policy alternatives, and potentially pass them via statute. Half of the special committees formed were statutory. Some special committee reports address how an agency implements the law. For example, the Oversight Commission on Children’s Services (RSA 170-G:19)<sup>11</sup> monitors the implementation of a memorandum of understanding between two agencies to ensure the investigation and prosecution of abuse and neglect cases. More frequently, they examine a narrowly identified policy problem. Some examples include the provisioning of special education in charter schools, or probation and or parole reporting requirements. Special committee reports are often the basis of legislative action, more so than OLBA audit reports (interview notes, 2018).

## Oversight Through the Administrative Rules Process

New Hampshire’s Administrative Procedure Act (Section 541-A:2) establishes a Joint Legislative Committee on Administrative Rules (JLCAR), which is charged with reviewing proposed and adopted rules. Once a rule making proposal is filed, the JLCAR can approve it, file a conditional approval, or object to it. If a rule is conditionally approved, the committee submits an amendment to the rule at the same time. The agency may then adopt the amended rule. If the committee objects, then the agency may respond within 45 days by withdrawing the proposed rule, amending it, or taking no action. If no action is taken, then the rule is considered invalid, though agencies are not prevented from initiating the review process again. If an agency revises the rule, it can be considered once again by the JLCAR, at which point it can be adopted or declared invalid. If the rule is not declared invalid, it is submitted to the full legislature for a vote. Existing rules expire every 10 years and must be re-authorized by the JLCAR (DiStaso, 2017).

In addition to weighing in on smaller regulations, JLCAR exercises influence over more visible and contentious policy questions, such as whether Medicaid money can be spent on sex change operations (Solomon, 2018) and increasing access to opioid treatments in New Hampshire (DeWitt & Brooks, 2018).

Since most rules in New Hampshire are governed by statute, the legislature wields substantial power over the rules-promulgation process, which has led to friction with the

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<sup>11</sup> <https://law.justia.com/codes/new-hampshire/2017/title-xii/chapter-170-g/section-170-g-19/>, accessed 12/7/18.

executive. Upon coming to office in January 2017, New Hampshire's new governor attempted to impose a moratorium on the adoption of new rules and instructed agencies to prepare justifications for regulations or to repeal them (Rogers, 2017). The legislature, however, resisted the governor's attempt to interfere in the rulemaking process, arguing that he "lack[ed] the authority to put a freeze on rulemaking." According to one member of the JLCAR, "The committee respects the governor's interest in the rulemaking process; however, this is a role that the Joint Legislative Committee on Administrative Rules already serves . . . We heavily scrutinize the rules coming forward from the administrative agencies, and the committee will continue business as usual" (Sutherland, 2017). The committee even went as far as to unanimously endorse the release of a letter to the governor explaining the rulemaking process and defending it against potential encroachment by the executive (Reagan, 2017).

### Oversight Through Advice and Consent

As described in the first section of this discussion on the state's political institutions, the state legislature in New Hampshire does not have the authority to exercise advice and consent powers over gubernatorial appointments. Instead, New Hampshire has a separately elected Executive Council of constitutional officers. The council has five members, each elected for two-year terms in the district they represent. Among the council's responsibilities is to approve the appointments of judges, notaries public, commissioners, and other gubernatorial appointments, and no appointment can occur without majority approval by the council (Constitution of New Hampshire, Article 46). One of the stated criteria for approval is that appointees "are all responsible to the citizens of New Hampshire and not to special interests" (Executive Council).

The governor does not have the authority to reorganize the bureaucracy via executive order, though the governor does have the power to establish committees and commissions. Agency reorganization occurs through legislation, though executive officials are sometimes the drivers of such plans. For example, in 2017, the Commissioner of the Education Department proposed a reorganization of said department, a proposal that was "introduced unexpectedly" in the legislature by the Republican Chair of the Senate Education Committee as an "amendment to an unrelated education bill" (Moon, 2017). The changes would consolidate power over programs, funding, and personnel in the commissioner's hands, leading to allegations by Democratic legislators of a "power grab" by the commissioner (Solomon, 2017). Ultimately, a different measure, also supported by the Education Commissioner, received "unanimous, bipartisan support" from the Senate Education Committee (Moon, 2018). The new bill was more modest in its aims, renaming the Education Department's different divisions and "reshuffle[ing] some of the responsibilities between them" (Moon, 2018) rather than placing them under the direct control of the commissioner. The new bill also gave the commissioner less authority to make unilateral decisions about personnel, funds transfers, and program operations, vesting some of these powers in the deputy director (SB 358).

New Hampshire's governor has statutory power to issue executive orders in the following areas: all types of disasters and emergencies, creating committees and commissions, and responding to federal programs and requirements (Council of State Governments, 2014). In 2017, Gov. Chris Sununu issued nine executive orders.<sup>12</sup> Eight of these created a commission or

council to assist with the implementation or creation of policy. Only one executive order dealt with the immediate fallout of an emergency. The legislature lacks the power to suspend or challenge an executive order except by statute or concurrent resolution.

The governor cannot use executive orders to reorganize the executive branch or create new state agencies or to conduct state personnel administration (Council of State Governments 2014). Media reports on reorganization of the state education department to concentrate more power in the education commissioner's hands and limit the authority of the State Board of Education indicate that the legislature proposed this action as an amendment to legislation. This suggests that the legislature rather than the governor plays a central role in the reorganization of state government agencies.<sup>13</sup>

### Oversight Through Monitoring of State Contracts

The legislature does not appear to be involved in the monitoring of state contracts. Instead, New Hampshire's Executive Council, as opposed to the legislature, possesses this authority (Executive Council). For example, the governor must seek approval from the council for granting contracts in excess of \$10,000.<sup>14</sup> Minutes from meetings of the Executive Council indicate that the council approves most contracts, and frequently increases the amount of previously approved contracts retroactively. There have been cases, however, when contracts are canceled or rejected, sometimes for political reasons. A recent example was the reinstatement of a Planned Parenthood contract 10 months after it had been canceled, which was seized upon by the Clinton campaign and Democratic activists in the 2016 presidential campaign (Rogers, 2016). The deciding vote in both cases was Gov. Sununu, who was campaigning at the time.

### Oversight Through Automatic Mechanisms

New Hampshire has few automatic mechanisms for oversight. The state's sunset laws were repealed in 1986. At this time, the only other existing mechanism pertains to administrative regulations, which expire every 10 years and must be renewed by the JLCAR.

## Methods and Limitations

For New Hampshire, four people were interviewed out of the ten people that were reached out to. New Hampshire's senate does not provide online access to audio, video, minutes, agendas, or transcripts. Transcripts, minutes, and agendas may be requested of the senate clerk

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<sup>13</sup> <https://www.concordmonitor.com/Bill-amendment-would-let-Edelblut-completely-restructure-the-Department-of-Education-9270970>, accessed 1/2/19.

<sup>14</sup> <https://www.nh.gov/council/about-us/index.htm>, accessed 11/2/18.

(interview notes, 2018). For the house, audio, video, agendas, transcripts, and minutes are lacking online. They have a webpage for committee hearing audio, however, it reads, “There is no committee audio as of yet.”<sup>15</sup> However, joint committees provide online access to their agendas and most transcripts and minutes. Joint committees are starting to record their hearings (interview notes, 2018) but audio recordings are not posted online and must be requested.

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<sup>15</sup> [http://www.gencourt.state.nh.us/house/committees/committee\\_audio/default.aspx](http://www.gencourt.state.nh.us/house/committees/committee_audio/default.aspx), accessed 12/9/18.

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