



WAYNE STATE
UNIVERSITY

Center for Urban Studies

Legislative Oversight in New Mexico

Capacity and Usage Assessment

Oversight through Analytic Bureaucracies:	Moderate
Oversight through the Appropriations Process:	Moderate
Oversight through Committees:	Moderate
Oversight through Administrative Rule Review:	Minimal
Oversight through Advice and Consent:	Limited
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

New Mexico's legislature has strengths and weaknesses with respect to oversight. Analytic bureaucracies play an active role in monitoring government performance in New Mexico. For a state the size of New Mexico, the Office of the State Auditor (OSA) has a large staff and is well-funded. The Program Evaluation Unit (PEU) with its close working relationship with the legislature is highly effective. PEU staff is small and funding is limited compared to the OSA, but Legislative Finance Committee (LFC) involvement leverages the power of PEU's evidence to influence agency performance. New Mexico's interim committees appear to be exceptionally active in conducting oversight, both with respect to the state's budget and agency program performance. On the other hand, there seems to be little or no concern about overseeing agency rules, which can easily subvert legislative intent. And gubernatorial powers are not checked through legislative advice and consent. The legislature has no power to monitor state contracts, and the executive branch has exempted many state contracts for internal oversight.

Major Strengths

The Legislative Finance Committee (LFC) is a crucial agent of legislative oversight in New Mexico. This committee vigorously pursues its oversight responsibilities, working with the PEU, in concert with the LFC, to produce detailed evaluations of agency programs. Based on this evidence the LFC recommends changes to agency budgets and programs. The LFC then works through the legislature to enact these changes. All program evaluations are presented to the LFC, and the LFC makes recommendations directly to the agency. The LFC makes excellent use of the uninterrupted time available to an interim committee by holding meetings that last for two to four consecutive days and often feature site visits. The LFC acts as a budget clearinghouse,

proposing a budget to the legislature independent of the executive budget. Performance-based budgeting, which guides agency budget requests, facilitates LFC's role in oversight.

Challenges

The LFC is active and effective, but it is a small subset of the entire legislature. Its role in the budget is to advise the legislature to take action based on its recommendations, so this is a two-step process in which the standing committees could choose to ignore input from the LFC. The legislature plays no role in administrative rule review, fails to use its powers to scrutinize gubernatorial appointees, and has no role in the oversight of state contracts. A lot of the state's money is spent through contracts, but most of these contracts are exempt even from review even by the executive branch. The absence of any centralized administrative rule review process means that legislative intent can be undermining through agency implementation.

Relevant Institutional Characteristics

New Mexico has a citizen or "Part-time Lite" legislature¹ that Squire (2017) ranks as 43rd in legislative professionalism nationally. An extremely short session, low pay, and limited staff all contribute to its low ranking for professionalism. Legislators do not technically earn a salary. Instead, they are given \$164/day while they are in session (Simonich, 2018). In odd numbered years, the legislature is in session for a maximum of 60 days. In even numbered years, the legislature is in session for a maximum of 30 days. Therefore, legislators make less than \$15,000 over their two-year term in office unless a special session is called or the legislator serves on an interim committee that meets frequently. Section 6 of article IV² allows the governor to call special sessions of the legislatures. Section 6 also allows the legislature to meet in a special session if three-fifths of each house petitions the governor with a request for a special session. Special sessions are not to exceed 30 days.

The New Mexico State Legislature has a permanent staff of 168 people. However, while the legislature is in session, an additional 506 supporting staff members are available to assist the legislators (Council of State Governments, 2016). In even numbered years (the 30-day session), the legislature can only address budgetary matters, bills that deal with issues raised by special messages of the governor, and bills vetoed in the previous session.

Based on the Governor's Institutional Power Index (GIPI) New Mexico's governor is the 12th most power in the nation (Ferguson, 2015). A large salary, higher than average tenure potential, and veto power all contribute to this level of power. The governor of New Mexico earns \$110,000 annually, as of 2018, which is a substantial salary given the minimal pay accorded to legislators. Although no one may hold the governorship for more than two consecutive terms, the time out of office is only one full term after which a former governor may run for office again. New Mexico's governor is likely to be able to sustain his or her vetoes because it takes a supermajority of 2/3^{rds} of the legislators present to override a veto. Vetoes can be overridden in a special session or when the next regular session convenes, even if an election

¹ <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>, accessed 11/2/18.

² https://ballotpedia.org/Article_IV,_New_Mexico_Constitution, accessed 11/2/18.

has occurred.³ On the other hand, the appointment powers of New Mexico's governor are limited due to the election of many high-level executive branch officials, such as the secretary of state, attorney general, treasurer, and state auditor. The election administrator is also a constitutionally established office elected by the public.

The state and local government employees comprise 14.5% of the state workforce while the national average is 11.3% (CATO, 2006). Of these employees, 8% work in K-12 Education, 2% work in Public Safety and Welfare. 1.5% of the state and local government employees work in services such as highways and transit, parks and natural resources, sewage and solid waste.

Political Context

Currently, there are 26 Democrats and 16 Republicans in the senate and 38 Democrats and 32 Republicans in the house. Because the Governor of New Mexico is Republican, control of the state is divided.⁴ Both chambers of the legislature have been solidly in Democratic Party hands since 1992. But the governorship alternates between Republicans and Democrats, with partisan control typically changing when there is no incumbent running. Recent data rank New Mexico's house as the 7th most polarized lower legislative chamber nationally and its senate as the 14th most polarized upper chamber (Shor & McCarty, 2015). This suggests that divided government in New Mexico has not moved either political party toward the center of the ideological spectrum.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

New Mexico has three analytic bureaucracies. These include an independently elected state auditor (OSA), the State Budget Division and the Legislative Finance Committee's Program Evaluation Unit. The Office of the State Auditor (OSA) is a constitutionally established executive office with the auditor eligible to serve up to two four-year terms. According to the Audit Act, 12-6-1 to 12-6-14 NSMA 1978,⁵ the OSA must audit every agency and ensure that the financial correctness every agency is thoroughly examined each year.

The State Budget Division is a part of the New Mexico Department of Finance and Administration, an executive branch agency. The State Budget Division is responsible for providing high quality, timely and easy to understand analyses and recommendations for agency budgets, legislation and performance issues. Moreover, the division prepares and presents the governor's annual budget recommendation to the New Mexico Legislature as well as monitors expenditures by state agencies during the fiscal year.⁶

³ https://ballotpedia.org/Veto_overrides_in_state_legislatures, accessed 11/2/18.

⁴ https://www.nmlegis.gov/Publications/Handbook/political_control_17.pdf, accessed 11/2/18.

⁵ https://www.saonm.org/about_nmosa, accessed 11/2/18.

⁶ http://nmdfa.state.nm.us/Budget_Division.aspx, accessed 11/2/18.

The Program Evaluation Unit (PEU), under the Legislative Finance Committee, aims to provide the legislature with objective fiscal and public policy analyses, recommendations, and oversight of state agencies to improve performance and ensure accountability through the effective allocation of resources. The Legislative Finance Committee is responsible for providing the legislature with objective fiscal and public policy analyses, recommendations and oversight of state agencies to improve performance and ensure accountability through the effective allocation of resources. PEU assists the committee with this by reviewing the costs, efficiency and effectiveness of activities of the state agencies and political subdivision and recommending changes to the legislature.⁷

In 1911 when New Mexico's leaders drafted its first constitution, they created a strong, independent Office of the State Auditor to oversee how government officials spend the taxpayers' money. The New Mexico State Auditor is a separately elected official in the executive branch independent from both the governor and the legislature. It received a state appropriation of approximately \$2.9 million in 2015 (NASACT, 2015). It is the only agency with audit responsibilities spanning state, county and municipal law enforcement agencies, the City of Albuquerque and the Department of Public Safety labs.⁸ It does not conduct performance audits, concentrating instead on financial audits. The OSA also conducts special investigations into cases of corruption, fraud, or suspected waste, including conflicts of interest and favored treatment; fraud and theft of time by an employee; procurement and contracting violations; improper loans to executives or governing body members; excesses in benefits; travel and/or meal allowances; and financial and cost reporting irregularities.⁹ The OSA consists of 35 employees divided between subunits: the Financial Audit Division, Special Investigation Division, Government Accountability Office, Compliance and Regulation Division, and the Administrative Division. The first three of these divisions are involved in auditing state government entities, as described below.

The OSA's Financial Audit Division (FAD) consists of 14 employees who oversee financial reporting requirements of over 1,000 government entities. While the staff of the FAD may perform audits, a majority of the financial audits are conducted by independent public accounting firms (IPAs) who partner with the OSA. The FAD ensures that the work conducted by IPAs is completed in accordance with the audit rules and professional standards through a report process and annual work-paper reviews.

The OSA's Special Investigation Division consists of seven employees who conduct special audits and investigations of state and local government agencies. The SID has the ability to conduct or direct a variety of audits including agreed upon procedures, performance audits, or any other special audits the state auditor deems necessary. This division also oversees a hotline that allows the public to report allegations of financial fraud, waste or abuse. This tool allows individuals to report 24 hours a day, seven days a week either on the record or anonymously.

The OSA's Government Accountability Office (GAO) reports to the public on statewide issues relating to the issue of public funds. These reports are statewide studies that aggregate and analyze trends revealed by audit information—showing how public dollars are managed and spent. The GAO is integral in fulfilling the OSA's constitutional mandate to bring transparency and accountability to the use of public funds. Annual financial audits of state and local governments are intended to provide insight into New Mexico's finances. The GAO makes this

⁷ <https://www.nmlegis.gov/Entity/LFC/Overview>, accessed 11/2/18.

⁸ https://www.saonm.org/media/uploads/SAEK_Audit_12-5-16.pdf, accessed 11/2/18.

⁹ https://www.saonm.org/issues_we_handle, accessed 11/2/18.

information accessible to the public to show how the government spends the citizens of New Mexico's tax dollars. Risk advisories within the GAO give notice of concerns that the OSA has discovered regarding transparency, accountability or compliance. The purpose of risk advisories is to bring attention to issues of financial reporting or compliance, to notify independent public accountants of possible areas of risk in their audits and to tell the public about trends in audit findings.¹⁰ Risk reviews are used to communicate issues of concern to those charged with governance of state and local governmental agencies and other decision-makers.¹¹

Recently, the OSA conducted a special audit in Silver City, NM, regarding allegations of embezzlement and fraud by a former city employee. State Auditor Wayne Johnson discovered more than \$12,000 in potential fraudulent use of the of the former employee's town credit card. Silver City municipal officials noticed irregularities on credit card purchases and the state auditor worked with an independent accountant and a special Silver City forensic unit to determine the source of the problems (Udero, 2018). As a result of this investigation, the former head of New Mexico's Taxation and Revenue Department was charged with embezzling more than \$20,000 and with five counts of violating ethical principles of public service. The New Mexico Office of the Attorney General alleges that the employee advocated as tax secretary for abatement of a tax penalty against a trucking company. The investigation stems from complaints in 2015 to a fraud hotline at the OSA and letters from unidentified department employees initially sent to the governor's chief of staff, Keith Gardner, and then to state auditors (Lee, 2018).

In another example of oversight conducted by the OSA, in 2017, an annual audit conducted by former State Auditor Tim Killer revealed \$850,000 was stolen from the Otis Mutual Domestic Water Consumers and Sewage Works Association. In an April 27 letter to fifth district judge Dianna Luce, Keller explain how an independent audit revealed possible larceny, fraud, and embezzlement by the water association's office manager (Onsurez, 2017).

Although the OSA does not work closely with the legislature, generally legislators review OSA audits in an effort to determine if better, more efficient laws need to be written. For example, by requesting audits on procurement a legislator may be able to determine if the current procurement laws are not stringent enough or need to be amended or re-written. Cases of fraud, corruption and waste are not passed directly to any committee or single member of the legislature automatically. Through the Inspection of Public Records Act, members of the legislature may request case files. Legislators or committees may request information on the nature of the case or the entire case file. Requests are submitted in writing—there are approximately 50 requests annually. Legislators frequently request information on cases involving waste, but the OSA may not release any information about an ongoing investigation.

The State Budget Division (SBD) facilitates the budget process for the executive branch. The director of the SBD is appointed by the secretary of the Department of Finance and Administration with the governor's consent. Although this is another executive branch agency, it too collaborates with the legislature." Chapter 6, article 3, section 4 of New Mexico's State Acts¹² states that "The state budget division shall cooperate fully with the legislature and legislative committees and shall supply them with information relating to the budget requirements of all state departments and institutions." Various other laws empower the SBD to inspect all state agency books and records, aid state agencies in formulating their budget

¹⁰ https://www.saonm.org/risk_advisories, accessed 11/2/18.

¹¹ https://www.saonm.org/risk_reviews, accessed 11/2/18.

¹² <http://nmdfa.state.nm.us/uploads/files/Budget%20Division/HomePage/Article3-StateBudgets.pdf>, accessed 11/2/18.

requests, conduct research into the efficiency and effectiveness of government entities, to investigate ways to improve the performance of government entities. The SBD is also responsible for overseeing the Accountability in Government Act. The purpose of this act is to provide for more cost-effective responsive government services by using the state budget process and defined outputs, outcomes, and performance measures to annually evaluate the performance of state government programs.¹³ The SBD is required to share reports on its findings and its recommendations with both the governor and the legislature.

In addition to its reports, there are two other ways that the SBD contributes to the legislature's capacity for oversight. Prior to June 15 of each year, every agency must submit to the SBD and the Legislative Finance Committee (LFC) their proposed changes to their current program structure. The SBD, in concert with the LFC and the agency, review any requested changes and make a recommendation to the LFC about whether to approve the change. This provides an opportunity for the legislature to involve itself in government reorganization.

The other way that the SBD facilitates legislative oversight is in the development of agency performance measures. Before agencies submit their budget requests, the SBD, with the LFC, must determine instructions for the development of performance measures for evaluating programs. Agencies must submit their performance-based budget requests no later than September 1. The SBD, with the LFC, may select agencies and specify performance measures for those agencies that must be reported on a quarterly basis. These quarterly reports will compare the actual performance for the report period with the performance targets. These reports are filed with the SBD and the LFC within thirty days of the end of a reporting period. The SBD has no authority to reduce budgets, but the LFC does have this power as we discuss below.

Of New Mexico's three analytic bureaucracies, the only one exclusively controlled by the legislature is the Program Evaluation Unit (PEU). The PEU, which is part of the Legislative Finance Committee (LFC), works in tandem with the legislature to evaluate program performance. Prior to 1991, the PEU was part of the OSA, but in 1991 the LFC assumed responsibility for performance and program audits. The PEU has a relatively small staff (15) and a limited budget (approximately \$1.3 million per year).¹⁴ Therefore, its capacity to review state agencies is limited. Programs to be evaluated are chosen by the LFC from a list prepared by the PEU. Programs that receive larger sums of taxpayer dollars are prioritized. Within 30 days of issuing its report, the PEU asks the agency to submit a plan to address the evaluation recommendation. Then the unit follows up with the agency at regular intervals to assess progress in addressing findings and implementing recommendations. Progress reports are also generated at this time to inform the Legislature as well as the public on how the agencies are performing six months to a year after the initial program evaluation. In addition to these responsibilities, the PEU collaborated with the Pew-MacArthur Results First Initiative to improve the use of cost-benefit analysis by state governments. More than \$100 million in cost savings has been attributed to New Mexico's use of evidence-based program evaluation.¹⁵

The PEU produces five types of reports: 1) program evaluations, which are described as "large projects assessing the results of agency spending and activities,"¹⁶ 2) progress reports that check on agencies' progress six months after an evaluation, 3) Results First Reports, which

¹³ <http://nmdfa.state.nm.us/uploads/files/Budget%20Division/HomePage/Article3A-AccountabilityInGovernment.pdf>, accessed 11/2/18.

¹⁴ <http://www.ncsl.org/Portals/1/Documents/nlps/NLPESEExcelAwardNar2015NM.pdf>, accessed 9/9/18.

¹⁵ <http://www.ncsl.org/Portals/1/Documents/nlps/NLPESEExcelAwardNar2015NM.pdf>, accessed 9/9/18.

¹⁶ https://www.nmlegis.gov/Entity/LFC/Evaluation_Unit_Reports, accessed 9/9/18.

address specific cost-benefits questions about programs, 4) information technology reviews to determine the value of technology investments, and 5) health notes about the state's healthcare finance, policy and performance. The PEU completed five program evaluations during the first half of 2018. In 2017, PEU completed nine program evaluations. Between 2010 and 2017, it completed an average of nearly 11 evaluations per year. PEU reviews one or two IT projects annually. It completed one Results First Report in 2017, three in 2014, and one in 2013. It completes one or two health notes per year on a wide range of topics such as procurement, Medicaid expansion mental health service, and the state's healthcare workforce. The PEU presents each of its reports to the LFC in hearings that are open to the public and also responds to requests to present this information to other legislative committees and to other interested groups outside the legislature. The reports are widely disseminated through nearly 100 public presentations by PEU staff and on Twitter. Given its small staff and limited funding, this is an impressive set of achievements. An in-depth example of how the PEU conducts a program evaluation will be provided in the *Legislative Oversight through Standing Committees* section.

Oversight Through the Appropriations Process

In New Mexico, both the legislature (through the LFC) and the executive branch (through the governor) propose a state budget.¹⁷ The Legislative Finance Committee (LFC), established in 1957, operates as a budget clearinghouse for both legislative chambers. It is a large (16 members) joint interim committee that meets year-round and is responsible for submitting budget recommendations to the entire legislature annually. The committee employs 13 fiscal analysts and two economists. The LFC holds budget hearings beginning in September. The LFC submits its budget recommendations to the legislature in December after the general fund revenue estimate is finalized. The committee's 16 members must include the chair of the House Appropriations and Finance Committee, the chair of the House Taxation and Revenue Committee, and the chair of the Senate Finance Committee, as well as six other representatives and seven other senators. Party affiliation of its members is in proportion to the party's share of the seats in each legislative chamber.

State law requires the governor to submit a budget to the LFC and each member of the legislature no later than January 5 in even-numbered years and no later than January 10 in odd-numbered years. This is later than the LFC budget recommendations, which are finalized in December. Thus, in the New Mexico's budget process the legislature makes the first moves.¹⁸

The PEU and the LAC work closely to formulate budget recommendations to the entire legislature. The location of the PEU, in the legislative committee (LFC) responsible for making budget recommendations to the entire legislature, means that its reports are used extensively during New Mexico's budget process. For example, according to its 2015 application for NCLS' National Legislative Program Evaluation Society (NLPES) award, a PEU report that quantified the value of prekindergarten education and also the benefits of an extended school year for the state's poorest students led the legislature to increase funding for these programs by 265 percent from FY 2012 to 2014.¹⁹

¹⁷ <https://www.nmlegis.gov/Entity/LFC/Documents/brochure.pdf>, accessed 9/9/18.

¹⁸ <https://www.nmlegis.gov/Entity/LFC/Documents/brochure.pdf>, accessed 9/9/18.

¹⁹ <http://www.ncsl.org/Portals/1/Documents/nlpes/NLPESExcelAwardNar2015NM.pdf>, accessed 9/9/18.

Despite LFC's crucial role in the budget process, other committees, hold budget hearings and participate actively in the budget process. On the first day of the session the House Appropriations and Finance Committee (HAFC), a standing committee, conducts a side-by-side comparison of the legislative proposal and the executive proposal.²⁰ Some sections of the recommendation are duplicated in separate legislation and considered by other standing house committees. Those bills are rolled into the House Appropriations and Finance Committee Substitute for the General Appropriation Act for Consideration by the full house.

The House Appropriations and Finance Committee (HAFC) holds hearings on every agency budget. As a standing committee, the HAFC does not have the luxury of meeting year-round, which affords the LFC an opportunity to spend much more time examining various state programs and budgets. Consequently, HAFC hearings are fairly short, approximately 25 minutes long and often not all committee members are present for the entire hearing. The HAFC hearings begin with an explanation of the differences between the executive budget recommendation and the LFC budget recommendations. The budget is not read line for line—specific areas of interest are presented to the HAFC. The HAFC then asks questions about proposed programs, their costs and about progress on current programs. Often there is a discussion of how specific funds for proposed program will be spent.

We did not find evidence of the HAFC cutting budgets due to audit issues or probing for explanations of problems revealed by audits. Questions requested information rather than probed for alternative practices or reasons for any problems—asking what rather than why. For example, in a hearing with the House Transportation and Public Works Committee, the HAFC engaged in a discussion concerning how much money will be spent to fix roads in specific HAFC members' districts in the proposed FY19 budget.

Once the HAFC members finished asking questions, they voted on whether to accept the budget request. Sometimes the HAFC will ask for certain line items to be stricken before voting to support the request.

Oversight Through Committees

Compared to its interim committees, standing committees in New Mexico's legislature have limited opportunities to hold hearings and engage in oversight. As we discovered in the discussion of New Mexico's appropriations process, standing committees enter the discussion after the interim committees have devoted several months of hearings to budget requests. They appear to do so after the LFC has paved the way through its hearing on PEU reports.

Among its varied responsibilities, described earlier, the LFC conducts oversight of state programs and agencies on behalf of the legislature. It relies on the PEU to evaluate program performance, but unlike many states, the PEU does not make recommendations to the evaluated agency. Nor does the PEU negotiate and persuade the agency to comply with its recommendations. Rather, as the following vignette illustrates, the LFC holds a hearing during which the agency defends itself against challenges from the LFC that are based on evidence provided by the PEU. Moreover, in the case described below the LFC takes initiative in

²⁰https://www.nmlegis.gov/Entity/LFC/Documents/Finance_Facts/finance%20facts%20appropriation%20process.pdf, accessed 11/2/18.

requesting an evaluation rather than waiting for a crisis to trigger an investigation, performing police patrol rather than fire alarm oversight.

Vignette: Juvenile Justice Reform

Since 2008, the Children, Youth and Families Department (CYFD) has transformed New Mexico's juvenile justice system from punishment to a system focused on rehabilitation, adopting a variety of community-based programs based on the Cambiar²¹ initiative. After these changes fewer youths entered Juvenile Justice Services (JSS) and the ones that did have been less likely to recidivate. Yet, from FY2008 to FY2015, spending increased 30%, while one-third of the juvenile justice beds were empty.

The LFC was concerned about this and a series of other resource allocation problems listed below. Therefore, it instructed PEU to evaluate CYFD ensure that CYFD was using its resources in a cost-effective way. The problems that triggered LFC's concern were:

- costs of probation and field services continue to rise with limited evidence of their effectiveness;*
- costs of programming through CYFD's own probation field offices, as well as state-funded but locally managed juvenile justice continuum sites, were distributed unevenly around the state;*
- CYFD lacked reliable data needed to gauge the impact of its programs on recidivism and youth outcomes; and*
- a proven treatment program for youth, Multisystem Therapy (MST), has been affected by provider instability and access issues.*

The PEU produced an extensive report (Report #16-06), Effectiveness of Juvenile Justice Facilities and Community-Based Services, analyzing costs, capacity and needs in the Juvenile Justice System (JJS) and identified opportunities to improve outcomes and efficiencies, including up to \$2.7 million in potential savings. The PEU presented this nearly 60-page report to the LFC on August 24, 2016, following a conference with the CYFD on August 15, 2016, to discuss the report. CYFD was required to submit a plan to the LFC (not the PEU) to address the recommendations in the report. Unlike many states in which an audit report would be sent directly to the agency with recommendations made by the auditor, the LFC itself made recommendations for corrective action and LFC itself received the CYFD compliance plan. Moreover, the recommendations for change were made not just to the agency, but also to the legislature as a whole. Some of these recommendations included cuts to the CYFD's budget. But to improve safety at the facilities, the LFC recommended that the legislature should establish "a mechanism for regular, independent inspections of CYFD facilities" to deal with an increase in violent incidents. The agency response to the report's findings was sent to the LFC rather than to the PEU, underscoring the central role the legislative committee in this process.

An example of one LFC recommendation from this report illustrates the process. The LFC recommended that the legislature should consider reducing the JJS facilities budget by \$1.2 million to reflect declining facility populations. The CYFD responded by explaining that although their average daily population decreased by 13.5% between FY09 and FY16, they effectively used the available resources. For example, the CFYD has assigned a behavioral health therapist to every residential unit, whereas Missouri, the state that pioneered the Cambiar

²¹ <https://cyfd.org/facilities>, accessed 11/2/18.

initiative, only has a traveling behavioral health provider.²² Despite the LFC's recommendation to the legislature that it cut CFYD's budget, there is no evidence of a budget cut in the 2017 budget overall²³ and in 2018 CFYD's budget increased.²⁴

In many states, this sort of debate over audit recommendations occurs between the agency and the auditors without involvement of the legislature. In those states it is less likely that agency performance will have financial consequences for the agency and even less likely that the legislature would have been involved in establishing a mechanism to measure the incidence of violent incidents.

The LFC meets monthly, typically for three or four days in succession. Its meetings often include a site visit to a government entity related to a featured agenda item. For example, on September 25, 2018, the LFC considered, among other topics, the effectiveness of early childhood education. In conjunction with this, the committee scheduled two site visits in Silver City, NM: one to a prekindergarten program and the other to a child development center. The committee meeting for that day was scheduled to last for three hours. The committee also schedule hearings on the following three days—two full day meetings lasting from 8:30 or 9:00 a.m. to 5:00 or 5:30 p.m. and one half-day meeting from 8:30 a.m. until 11 a.m. The agenda included presentations on seven different topics from teams of academics, executive branch officials, expert practitioners, and other sources. The PEU delivered two presentations: one full program evaluation and one on health notes. The committee also reviewed the state's monthly financial reports and other routine business. This is a very full agenda that suggests that the LFC is actively following the work of state agencies and the performance of public programs. During the remaining months of the interim (October, November, and December), the LFC was tentatively scheduled to hold 10 more full-day meetings.

To see whether the standing committees followed up on the LFC recommendations to CYFD (a subunit of the Department of Health and Human Services), we listened to several hearings of the Health and Human Services Committee. This committee met for only six minutes during its first meeting of the 2018 legislative session, on January 17, to consider a compact between states to allow nurses to work in any of the compact states. It held an organizational meeting the following week. Subsequent meetings were longer, but only involved presentations about proposed legislation that did not seem to be connected to any program performance or oversight reports. It appears that the ongoing oversight of the juvenile justice program was transferred to the interim committee, The Courts, Corrections and Justice Committee, created on June 5, 2017, included juvenile justice reform on its agenda.²⁵ This reinforces our impression that legislative oversight in New Mexico is the purview of interim committees. Moreover, the agenda for this committee indicates that these interim committees pursue their oversight responsibilities with some vigor. As we noticed in other states, providing legislators with

²² https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Program%20Evaluation%20-%20Effectiveness%20of%20Juvenile%20Justice%20Facilities%20and%20Community-Based%20Services.pdf, accessed 11/2/18.

²³ <https://www.nmlegis.gov/Publications/Session/17/Highlights%202016S%202017%20and%202017S.pdf> p. 84, accessed 9/9/18.

²⁴ <https://www.nmlegis.gov/Publications/Session/17/Highlights%202016S%202017%20and%202017S.pdf>, p. 37, accessed 9/9/18.

²⁵ https://www.nmlegis.gov/Publications/interim_reports/ccj17.pdf, accessed 9/9/18.

uninterrupted blocks of time to pursue oversight and paying them for the days they spend on this task seems to focus attention on oversight. Interim committees provide both these conditions.

Oversight Through the Administrative Rules Process

Currently there is no legislative review of rules in New Mexico (The Council of State Governments' Survey, November 2014). Moreover, New Mexico has no uniform rulemaking procedure. When it enacted its Administrative Procedure Act it did not force agencies to comply with the act. Agencies had the option of "opting in", but by and large they did not. According to Schwartz (2010) the result is that 226 agencies in the state have established their own process for promulgating rules. Therefore, there is no legislative oversight of the promulgation of new administrative rules in New Mexico. Agencies have free rein in formulating their own rules.

The only role played by the legislature with respect to administrative rules involves review of existing rules. Here again it is an agency driven process. Agencies must review their existing rules every three years. A report describing this review must be filed with the LFC and with the Department of Finance and Administration (Schwartz, 2010). Thus, the legislature and the executive branch are both informed about agency activities to reconsider the need for existing rules. The extent of the review consists of the agency filing a report of its own design.

Oversight Through Advice and Consent

The Governor of New Mexico has extensive appointment powers that are not checked by the legislature. Although many executive branch officials are elected in New Mexico, the governor can appoint an adjutant general national guard, someone to oversee the state's budget, as well as leaders of state's insurance division and licensing and public utility regulation without any legislative confirmation (Wall, 2014).

There are also gubernatorial appointees whose nomination must be approved by the legislature. He/she needs legislative approval for his/her nominees to lead the departments of emergency management, environmental protection, finance, general services, health, information systems, labor, natural resources, revenue, tourism, transportation, and higher education with the approval of the senate (Wall, 2014)

Typically, the confirmation process is noncontroversial, though there was some conflict this year. According to a news media source, the senate regularly approves the governor's appointees without opposition. Most picks are for less integral positions, such as spots on the boards of state museums or for bodies such as the Hospital Equipment Loan Council. However, in 2017, there were 69 appointees to various boards awaiting confirmation and according to the governor's office, the senate was stalling, slowing the process and accumulating a pile of nominations awaiting a vote. Some Republicans believed that the Democratic-controlled senate was stalling on confirmations as the governor's term enters its final year in order to allow her successor to more easily fill those seats. The slow pace of the confirmation process incited a rift between the governor and the senate. This led to the governor accusing the senate of dodging its constitutional responsibility. The governor pulled 53 appointees from the confirmation process, leaving the senate to act on what she described as priorities—heads of government departments, university regents and members of boards with control over state investments (Oxford, 2017).

New Mexico's governor does not need legislative approval to issue executive orders. Most of the executive orders issued involve emergencies and disaster relief and are not controversial.

Government reorganization in New Mexico relies on a task force composed primarily of legislators—members of the Legislative Council, a joint interim committee—and a few representatives from the executive branch. The most recent reorganization effort, 2010, resulted in a lengthy (200+ page) report that called on the governor to implement a vast array of changes. The process in 2010 was driven by the legislature rather than the executive branch.

Oversight Through Monitoring of State Contracts

New Mexico has three separate agencies that monitor state contracts. All of them are executive branch agencies. The Contracts Review Bureau of the Department of Finance and Administration (DFA) along with the Department of Information Technology (DoIT) review and approve all professional services and contracts that result in expenditures greater than \$5,000, while the General Services Department (GSD) monitors contracts for non-professional services. There is no official role for the legislature in state contract monitoring, despite the fact that this sort of spending constitutes the majority of New Mexico's expenditures.

The LFC requested a PEU program evaluation of the state's procurement process, because it was concerned that only a small fraction of the funds spent through state contracts were being monitored by the executive branch agencies responsible for this. LFC estimated that only \$1.25 billion out of an estimated \$10 billion to \$13 billion spent on procurement in New Mexico was overseen by GSD, DFA or DoIT,

According to PEU's evaluation, *Obtaining Value in State Procurement and Issues with Non-Competitive Methods*, Report # 16-09,²⁶ there were numerous exemptions to the contract reporting requirements, the three agencies require different information about contracts, and long timelines for contract approve encourage state agencies to engage in non-competitive procurement practices. Based on this report, the LFC recommended that New Mexico's procurement process increase its transparency, openness, and accountability. For example, New Mexico does not currently require all sole source and non-competitive procurement to be posted on a single website. State statute does require the posting of sole source and emergency contracts, but agencies and public bodies have wide discretion on where the information is posted. Thus, the information might be posted on the various agency websites or through notices placed in local newspapers. This makes it difficult to find a posting. Additionally, The LFC also concludes that non-competitive procurement is overused resulting in the potential for higher costs to state agencies. The types of non-competitive procurement discussed include sole source contracts, emergency procurements, contract amendments, procurement code exceptions, small purchase abuse and receiving services without a valid contract in place.

Nowhere in its recommendations does the LFC recommend that the legislature undertake contract monitoring. The recommendations for legislative action involve increasing the requirements for the three executive branch agencies to provide fewer exemptions and to streamline and centralize their oversight processes. As we find in many other states, the

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https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Obtaining%20Value%20in%20State%20Procurement%20and%20Issues%20with%20Non-Competitive%20Methods.pdf, accessed 11/2/18.

legislature is not empowered to oversee state contracts, but legislators sometime manage to monitor this sort of spending through audits and, in this case, program evaluations.

Oversight Through Automatic Mechanisms

New Mexico is a state with selective sunset review laws (Baugus & Bose, 2015). According to table 3.27, Summary of Sunset Legislation (Council of State Governments),²⁷ the entities selected for review are regulations, such as occupational licensing, and administrative agencies, such as highway, health and education departments. The sunset process begins with a preliminary evaluation by the LFC. Then, a public hearing is held before termination. There is a phase out period of one year, and each agency has a lifespan of six years. There are no other provisions or reviews conducted by any other legislative body. Many of the laws that sunset rules are applied to are extended before being terminated.

Methods and Limitations

We contacted nine people in New Mexico and succeeded in interviewing three of them. Archival recordings of committee hearings are available and easy to access. Transcripts of the hearings are not routinely included with the archival recordings.

²⁷ http://knowledgecenter.csg.org/kc/system/files/Table_3.27.pdf, accessed 11/2/18.

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