

**Testimony of  
Levin Center at Wayne Law  
before  
Pennsylvania House State Government Committee  
Hearing on Emergency Contracts**

July 20, 2021

Thank you for this opportunity to testify on behalf of the Levin Center at Wayne Law.<sup>1</sup> The Levin Center was established to honor Senator Carl Levin who, after serving 36 years in the U.S. Senate representing the state of Michigan, has left a legacy demonstrating the value of fact-based legislative oversight conducted on a bipartisan basis. The Levin Center honors that legacy by promoting fact-based, bipartisan legislative oversight by Congress and the 50 state legislatures. We both work for the Levin Center, Elise Bean as director of our Washington office and Ben Eikey as manager of our state outreach effort.

We would first like to commend the Committee for holding this hearing to examine how the Pennsylvania legislature can better oversee state contracts issued on an emergency basis and help safeguard taxpayer dollars and ensure contractors perform as promised. States spend billions of taxpayer dollars each year through contracts, enlisting companies and others to address critical public needs, including health care, education, housing, and transportation.

The pandemic heightened the importance of contract oversight as states spent billions of federal and state dollars through contracts to combat COVID-related problems. Because of the rapid spread of the virus and its devastating impact on businesses, communities, and families, much of the pandemic contract spending was distributed on an emergency basis.

Oversight of those emergency contracts – to ensure the price was reasonable, the contractor had the needed resources, and the work actually got done – is critical to protecting not only taxpayer dollars but also supporting communities, businesses, and families. Good stewardship of government contracts also helps uphold the public’s faith in their elected leaders and, ultimately, the democratic process.

That is why the Levin Center decided to take an in-depth look at how state legislatures were overseeing state contracts issued to address the pandemic. The Levin Center undertook this work not only because of contract problems emerging across the country, but also because an earlier study of oversight efforts in the 50 states had found that most legislatures conducted minimal contract oversight.<sup>2</sup>

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<sup>1</sup> While the Levin Center is affiliated with Wayne State University Law School, the views expressed in this report do not present the institutional views, if any, of Wayne State University or the Law School.

<sup>2</sup> *Checks and Balances in Action: Legislative Oversight across the States* (2019), Prof. Lyke Thompson and Prof. Marjorie Sarbaugh-Thompson, Wayne State University Center for Urban Studies, commissioned by the Levin Center (hereinafter “2019 Report”), <http://stateoversightmap.org/about-the-report/> (review of 50 state legislatures found 88 percent conducted only limited or minimal oversight of state procurement practices, even when state contracts involved substantial taxpayer dollars).

## **2020 Report: Examining Emergency Contracts Related to COVID-19**

As a first step, the Levin Center initiated an investigation into state-issued contracts issued on an emergency basis to combat COVID-19. In October 2020, the Levin Center released a report summarizing what it had found after developing three case studies.<sup>3</sup> Those case studies involved state contracts to test for the virus, provide protective masks to health care workers and first responders, and improve state unemployment benefit claim systems. The contracts were issued by ten states: California, Florida, Illinois, Iowa, Missouri, Nebraska, Ohio, Utah, Washington, and West Virginia. The report documented how all ten states experienced multiple contract problems including unreliable contractors, excessive prices, delayed or failed deliveries, substandard goods or services, or confidentiality breaches.

The report also found that state legislative efforts to confront those problems and improve contract performance were haphazard and uneven. While some state legislatures responded to the evidence and demanded reforms, others took little or no action. But the encouraging news was that the case studies demonstrated the potential for state legislatures and individual legislators to exercise effective oversight to improve state contracting. As a result, the report made three broad recommendations, that state legislatures: (1) elevate contract oversight as a legislative objective; (2) establish mechanisms to enable effective contract oversight by lawmakers; and (3) enable year-long contract oversight.

## **2021 Report: Improving Legislative Contract Oversight**

To dig more deeply, the Levin Center also commissioned a report led by a Wayne State University professor to examine steps taken by six state legislatures which, in 2019, indicated an intention to improve their contract oversight.<sup>4</sup> The states were Alabama, Hawaii, Idaho, Louisiana, Maryland, and Tennessee. The report found that over the following three years, some of those states made dramatic improvements to their contracting practices.

The state that made the most progress on contract oversight was Idaho. Responding to a high-profile contracting scandal, the Idaho legislature embarked upon a multi-year, multi-pronged effort to strengthen the state's procurement practices. It began by requesting a wide-ranging, in-depth audit of the state's contracting process. The resulting audit report found, for example, that while the state had adequate procedures for developing and awarding contracts, it did not have effective procedures for monitoring contract performance. Using that and other audit findings and recommendations, the legislature worked with the state procurement office and the state attorney general on an array of reforms. They included amending the state's procurement code, granting the legislative and executive branches more power to oversee contract performance, including performance measures and reporting requirements in the state's

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<sup>3</sup> *State Legislative Oversight of Emergency Contracts Related to COVID-19: Three Case Studies* (2020), Elise Bean and Tyler Langley (hereinafter "2020 Report"), [https://law.wayne.edu/levin-center/pdfs/three\\_covid\\_case\\_studies-levin\\_center-final\\_11-18-2020.pdf?utm\\_source=link&utm\\_medium=email-5fa968a8e1a47&utm\\_campaign=Report+Release%3A+%26quot%3BState+Legislative+Oversight++of++Emergenc&utm\\_content=Download+the+report](https://law.wayne.edu/levin-center/pdfs/three_covid_case_studies-levin_center-final_11-18-2020.pdf?utm_source=link&utm_medium=email-5fa968a8e1a47&utm_campaign=Report+Release%3A+%26quot%3BState+Legislative+Oversight++of++Emergenc&utm_content=Download+the+report).

<sup>4</sup> *Legislative Oversight of State Government Contracts* (April 2021), Prof. Marjorie Sarbaugh-Thompson, Wayne State University Center for Urban Studies, (hereinafter "2021 Report"), [https://law.wayne.edu/levin-center/pdfs/legislative\\_oversight\\_of\\_state\\_government\\_contracts\\_april\\_2021.pdf](https://law.wayne.edu/levin-center/pdfs/legislative_oversight_of_state_government_contracts_april_2021.pdf).

standard Request for Proposals (RFP), generating better contract monitoring guidance for agencies, focusing contract management on high value contracts, and funding two additional state procurement employees to not only monitor contract performance but also train and work with agency personnel to do the same.

Idaho was not alone in making progress. The 2021 report also documented significant improvements in contract oversight by Alabama, Louisiana, and Maryland, demonstrating that successful innovations can be made in states with large or small populations, full or part-time legislatures, Republican or Democratic legislative majorities, and Republican or Democratic governors.

## Best Practices

Together, the two reports showcase a number of best practices by state legislatures conducting oversight of state-issued contracts. Those best practices include the following.

**Legislative oversight.** The reports showed that one key to effective contract oversight was having legislative committees and individual lawmakers willing to ask tough questions about individual contracts and general contracting practices. Investigative tools to support those efforts and uncover the facts included information requests, contract data analysis, audit reports, meetings with state officials and contractors, hearings, public statements, and press conferences. Many of the case studies presented in the two reports demonstrated how active legislative oversight led to improved contract transparency, pricing, and performance. They showed, in short, that legislative oversight can produce better contracts.

**Committee jurisdiction.** The reports also found that a key problem with contract oversight was the failure of some state legislatures to assign the responsibility to a specific committee.<sup>5</sup> Assigning contract oversight to a specific committee encourages that committee and its members to dig into the issues.<sup>6</sup> Committees with bipartisan membership, preferably with equal numbers of members from both major political parties, can help ensure the oversight activities are designed to serve good government functions rather than ‘gotcha’ politics.<sup>7</sup> The selected committee may also want to develop criteria to focus its work on contracts that pose the biggest challenges, such as contracts that involve substantial taxpayer dollars, affect vulnerable populations, impose community or business risks, or have longstanding problems that resist resolution.<sup>8</sup>

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<sup>5</sup> In Nebraska, Missouri, and West Virginia, for example, the legislature does not appear to have assigned contract oversight to any legislative committee. 2020 Report at 22, 27, 29. In contrast, in Alabama, the legislature enacted a 2018 law reaffirming the authority of its Legislative Committee on Public Accounts to conduct contract oversight and also formed a Contract Review Permanent Legislative Oversight Committee. 2021 Report at 9-10, 77-78.

<sup>6</sup> State legislatures have assigned contract oversight to a variety of types of committees, including general oversight committees, appropriations or budget committees, or committees specially designed to review contracts. See, e.g., 2021 Report at 21 (Idaho), 39-40 (Louisiana), 51 (Hawaii), and 87-88 (Tennessee).

<sup>7</sup> Idaho is one of about ten states whose legislatures have a bipartisan oversight committee with an equal number of members drawn from both major political parties. 2021 Report at 4; 2019 Report at 2-3, 65, <http://stateoversightmap.org/wp-content/uploads/state-reports/Idaho.pdf>.

<sup>8</sup> 2021 Report at 18-19.

**Joint committee.** The 2021 Report found that contract oversight seemed most efficient when oversight responsibilities were assigned to a committee that included members from both the House and Senate in the state.<sup>9</sup> Joint committees enable auditors and state agencies to present the same evidence to both chambers at the same time, saving time and resources and preventing inconsistent presentations. Joint committees also conserve the legislature’s limited time and resources. In addition, they enable lawmakers from both chambers to easily share views, join forces, and champion contract reforms in both bodies.

**Collaboration.** Contract oversight also seemed most effective when legislators, state procurement personnel, state attorneys general, comptrollers, inspectors general, and auditors worked together on a collaborative basis.<sup>10</sup> In Ohio, to foster collaboration, the legislature even created a joint committee that combined legislators and executive branch officials to oversee state spending.<sup>11</sup> Other state legislatures have authorized or required state auditors, comptrollers, and inspectors general to work with the legislature to initiate audits and share results.

**Contract review mechanisms.** Another key problem in many state legislatures was the lack of established legislative mechanisms to oversee contracts at various stages of the procurement process, including the development of contract terms and pricing, the bidding and award process, and actual contract performance. The two reports document a variety of measures used by state legislatures to enable lawmakers to review key contracts at all stages, even when the contracts are issued on an emergency basis or the legislature is out of session.<sup>12</sup> Knowing lawmakers are reviewing contract actions on an ongoing basis encourages careful work by state procurement personnel.

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<sup>9</sup> Examples include Tennessee’s Joint Fiscal Review Committee; Louisiana’s Contract Services Joint Legislative Task Force; and Alabama’s Legislative Committee on Public Accounts. 2021 Report at 8, 77, 87.

<sup>10</sup> Contract reforms in Idaho and Louisiana provide two examples. 2021 Report at 25-28, 36 (Idaho); 40-41, 47 (Louisiana).

<sup>11</sup> The Ohio law created a seven-member “Controlling Board” to review state expenditures, including through contracts. The board is housed within the state’s Office of Budget and Management, and its members are the Director of Budget and Management and six legislators from both houses and both political parties. This hybrid executive-legislative board, with its bipartisan, bicameral membership, is charged with providing “legislative oversight over certain capital and operating expenditures by state agencies and has approval authority over various other state fiscal activities.” 2020 Report at 35-36. See also Tennessee’s Advisory Council on State Procurement, which has both executive and legislative branch members, approves state procurement policies, and monitors the implementation of procurement practices. 2021 Report at 86.

<sup>12</sup> In Louisiana, for example, the legislature required the state procurement office to provide the legislature with a monthly report on state contracts and mandated legislative approval of contracts over \$40,000. 2021 Report at 8, 39-40. In Tennessee, the legislature’s Joint Fiscal Review Committee is authorized to review and approve any contract over \$250,000 and lasting more than one year and can also oversee any fee-for-service contract. 2021 Report at 10, 87. In Alabama, the Contract Review Permanent Legislative Oversight Committee receives monthly reports on certain proposed state contracts and can delay approval of a contract for up to 45 days. 2021 Report at 10, 78-79. In Ohio, a bipartisan, executive-legislative joint Controlling Board meets every two weeks to consider and vote on requests for action submitted by state agencies and can use those board meetings to exercise contract oversight. 2020 Report at 35-36. In Illinois, state law requires, at the end of each fiscal quarter, that the Auditor General “shall file with the Legislative Audit Commission and the Governor a complete listing of all emergency

**Emergency contract alerts.** Some legislatures improved oversight by requiring their governors to provide them with timely notice of large emergency contracts.<sup>13</sup> Others have enacted laws requiring the executive branch to submit state contracts for review and provide the legislature with a specified period of time to raise any concerns.<sup>14</sup>

**Contract database.** Virtually every state now has a contract database that can be used by legislators, auditors, and the public to track state-issued contracts,<sup>15</sup> but some provide better information than others.<sup>16</sup> Legislatures can set requirements for the state contract database to ensure information wanted by the legislature is provided on a timely and ongoing basis. Required information might include whether the contract was issued on a competitive basis, how many bids were received, the final contract date and price, the text of the contract itself, performance measures and deadlines, and performance reviews.

**Performance metrics.** Another mechanism that helps legislatures monitor contracts are requirements that state contracts include metrics and deadlines to measure performance, direct contractors to provide performance information on an ongoing basis, and require the state to check actual performance over time.<sup>17</sup> In Hawaii, the legislature codified several recommended mechanisms to help state agencies monitor contract performance, including through worksheets, contract timelines, and other measures.<sup>18</sup>

**Contract monitoring costs.** Monitoring contract performance requires time and effort from state agencies and procurement personnel as well as auditors and legislative staff. To address that issue, the Idaho legislature requires state contracts to include in their pricing the funding needed for the state to monitor contract performance, including through site visits, interviews of affected persons, or other measures.<sup>19</sup>

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procurements reported during the fiscal quarter.” The LAC is then required to review those procurements and report to the General Assembly any procurements that “constitute an abuse.” 2020 Report at 34.

<sup>13</sup> In Utah, for example, a 2020 Emergency Management Act Procurement Process Amendment requires “the Governor, during an epidemic or pandemic disease emergency, to provide notice to the Legislature within 24 hours of an expenditure or procurement that: is greater than \$2 million; uses federal funds received by the state ... and is made using statutory emergency procurement processes.” 2020 Report at 17-18. In Illinois, the law requires that “notice of all emergency procurements shall be provided to the Procurement Policy Board,” and also “published in the online electronic bulletin,” which provides public notice of state contracts. 2020 Report at 34.

<sup>14</sup> In Alabama, for example, the state must submit certain proposed state contracts to the Contract Review Permanent Legislative Oversight Committee which can then delay approval of a contract for up to 45 days. 2021 Report at 10.

<sup>15</sup> See, e.g., <https://www.sioe.org/online-databases-contracts-us-state-governments> (providing a list of online contract databases administered by the states).

<sup>16</sup> The 2021 Report found that Hawaii, for example, provides an unusually accessible database with useful contract information. 2021 Report at 17-18, 49. In Louisiana, after the legislature discovered that its contract database had failed to track as many as 5,000 contracts, it funded a new eProcurement database and spent significant resources ensuring that all state contracts were entered into it. 2021 Report at 8, 40-41.

<sup>17</sup> In Idaho, for example, newly designed RFPs “require service providers to produce data needed to monitor contracts,” and state procurement personnel actively monitor contract performance. 2021 Report at 36.

<sup>18</sup> 2021 Report at 8-9, 55-56.

<sup>19</sup> One example illustrating how those requirements affect contract management is an Idaho Department of Corrections contract with a company providing out-of-state incarceration of Idaho prisoners. The contract price included funding for Idaho corrections personnel to travel to the out-of-state correctional facilities to evaluate the treatment of Idaho prisoners. Those on-site visits enabled Idaho to identify substandard practices that disadvantaged out-of-state Idaho prisoners and led to contract improvements. 2021 Report at 18, 31-36.

**Procurement Personnel.** Another best practice to improve contract oversight was for the legislature to provide adequate funding for state procurement personnel to perform needed tasks, including monitoring contract performance.<sup>20</sup> In Idaho, for example, the legislature funded two new state procurement employees who not only conducted their own oversight of contract performance, but also trained and worked with individual agencies to ensure that they, too, engaged in effective contract monitoring.<sup>21</sup>

**In-depth procurement review.** In several states, the key to effective contract reform was action taken by a state auditor or legislative analytical office to conduct a wide-ranging, in-depth review of the state's procurement practices, and issue one or more reports with recommendations. The 2021 Report describes how several legislatures used those audit reports to initiate wholesale changes to the state's contracting practices, including by overhauling the statutory procurement code, spurring new contract regulations, beefing up contract monitoring, and strengthening legislative oversight.<sup>22</sup>

**Audit reports.** Still another critical contract oversight mechanism was the ability of legislatures to request or require contract audit reports from the state auditor, inspector general, or comptroller, or the legislature's own audit office.<sup>23</sup> Legislatures have established a variety of procedures to request specific audits, including through resolutions, letters, or committee votes. In response, the audit agencies conducted reviews of specific contracts as well as general contracting practices and issued reports with their findings.<sup>24</sup> Those audit reports ensured a steady stream of facts and recommendations on how to improve contract practices. Legislative committees used those reports in hearings and other investigative efforts to expose contracting problems and develop reforms.<sup>25</sup>

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<sup>20</sup> 2021 Report at 18, 24-25.

<sup>21</sup> 2021 Report at 26-27.

<sup>22</sup> Examples include Idaho, Hawaii, and Maryland. 2021 Report at 7-8, 25-28 (Idaho); 55-57 (Hawaii); 67- (Maryland).

<sup>23</sup> In Alabama, for example, the legislature enacted a 2018 law authorizing its auditing arm, the Department of Examiners of Public Accounts, to conduct contract audits and authorized its Legislative Committee on Public Accounts to make specific contract audit requests. 2021 Report at 9-10, 77-78. In Idaho, the legislature can request audits from two separate offices that support the legislative branch, the Office of Performance Evaluation and the Legislative Audits Division. 2021 Report at 21. In Maryland, the legislature created within its legislative analytical office an Office of Performance Evaluation and Government Accountability that may issue performance reports for state contracts. 2021 Report at 9, 68-69. In Louisiana, the legislature established the Louisiana Legislative Auditor with a staff of over 250 and the Legislative Audit Advisory Council, a joint chamber committee that can request audits. 2021 Report at 39. In Hawaii, the legislature funds its own Office of the Auditor which can conduct contract audits. 2021 Report at 50. In Tennessee, the legislature works with the Office of the Comptroller of the Treasury whose head is elected by the legislature and who responds to legislative audit and information requests. 2021 Report at 87, 97.

<sup>24</sup> As just one example among many in the 2020 and 2021 reports, a Maryland legislative audit office conducted an in-depth review of over 500 emergency procurements and offered multiple recommendations to improve the state's emergency contracting practices. 2021 Report at 71-72.

<sup>25</sup> In Idaho, for example, the Legislative Audits Division routinely issued brief audit reports on the activities of state entities receiving appropriations and routinely included in those reports information about contract management and any contract problems. During appropriations hearings, the Joint Finance-Appropriations Committee then quizzed agency officials about the contract issues to ensure they were addressed. 2021 Report at 22-23.

**Public participation.** Finally, some legislatures created mechanisms to enlist the public in the effort to identify, report, and address contract problems. Some legislatures created fraud and waste tip lines to enable public employees or residents to alert state officials to contract problems.<sup>26</sup> Others encouraged state procurement personnel to contact participants in contractor-run programs for information about contract performance and, if problems existed, to file complaints with the agency.<sup>27</sup> Still other legislative committees invited public comment on contract performance via website forms.<sup>28</sup> Perhaps the most innovative approach was taken by the Hawaiian legislature which included 32 members of the public representing various sectors of the Hawaiian economy in a new House committee examining issues related to COVID-19, including COVID-related contracts.<sup>29</sup> Securing public input is still another oversight technique that can lead to improved contract performance and reforms.

As these best practices indicate, state legislatures have a wealth of options to strengthen contract oversight, which means this Committee can choose from a menu of possible steps to take.

The Committee may also be interested to learn that when the Levin Center commissioned a 2019 report to examine general oversight efforts in each of the 50 states, Pennsylvania was described as “a fairly strong example of effective legislative oversight,” but also scored as performing “minimal” contract oversight.<sup>30</sup> The state’s major strengths were described as legislators who “appear well prepared to pose tough questions about state agency performance” and “outstanding staff resources.” One key challenge identified in the 2019 report was that the legislature did not have its own audit capability but was required to rely on the state auditor, leading to a recommendation that the legislature consider establishing its own audit agency. In addition, on the issue of state contracts, the report stated that, as of 2019, the Pennsylvania legislature did “little to no oversight of state contracts either by hearing or through audits.”<sup>31</sup>

It is good to see this Committee reviewing that oversight deficiency and considering ways in which the Pennsylvania legislature might join its fellow state legislatures in strengthening contract oversight, safeguarding taxpayer dollars, and ensuring better services for its residents. Thank you for allowing the Levin Center to be part of your review process.

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<sup>26</sup> Maryland is one example. 2021 Report at 9, 72.

<sup>27</sup> Idaho encouraged that approach in a contract involving transport of Medicaid recipients to non-emergency medical appointments. 2021 Report at 30.

<sup>28</sup> See, e.g., the South Carolina House Legislative Oversight Committee website which invites “public input” on matters under reviewed, <https://www.research.net/r/ProvideInputtotheSCHouseLegislaitveOversightCommittee>.

<sup>29</sup> 2021 Report at 60-62.

<sup>30</sup> Pennsylvania report at 1, <http://stateoversightmap.org/wp-content/uploads/state-reports/Pennsylvania.pdf>.

<sup>31</sup> Id. at 11.