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# State Legislative Oversight: **Louisiana**



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

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# Legislative Oversight in Louisiana

## Capacity and Usage Assessment

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## Summary Assessment

Louisiana has good analytic bureaucracies and ample institutional structures to produce outstanding legislative oversight. Legislative appropriation committees are generally active in probing the impact of budget cuts. Although the legislature has more opportunities to monitor contracts than we have found in most other states, the review process does not appear to be used effectively. Administrative rule review powers are exceptionally robust, but it does not appear that the legislature makes effective or consistent use of these powers. There seem to be many commissions and committees that perform oversight that a legislative committee might perform in other states. These entities combine members from the executive branch, the legislature, and sometimes the judicial branch or the private sector. This approach to oversight may reflect the historical reliance on the informal power of the governor in the state (Haider-Markel, 2008)

## Major Strengths

Many members of the Joint Legislative Budget Committee demonstrate extensive knowledge of the state agency programs, and they ask focused, precise questions about the impact of various budget scenarios. The Legislative Audit and Advisory Council (LAAC) meets at regular intervals with the Louisiana Legislative Auditor (LLA) to hear presentations on performance audits. LAAC members query both the auditors and the auditees about the findings.

## Challenges

LLA is seeing an erosion of capacity after years of budget cuts. Interestingly, we found instances in which the LAAC appeared more skeptical of the auditors and their findings than of the auditees. The LAAC seemed hesitant about challenging the auditees too strongly. An audit report described use of public resources for personal gain by the superintendent of the State Police, and there appear to be serious problems with Medicaid contracts that can be attributed to

lack of oversight. Information from audits of these problems seems to be used by the attorney general and other law enforcement entities to impose consequences rather than by the legislature.

## Relevant Institutional Characteristics

The Louisiana legislature consists of 39 senators and 105 representatives.<sup>964</sup> The National Conference of State Legislatures (2017) classifies Louisiana's legislatures as a hybrid—the job takes more than two-thirds the time of a full time job but the pay typically requires a second job. Members of both chambers run for reelection every four years. Starting in 2007, members of the Louisiana house and senate were subject to term limits of three consecutive four-year terms, allowing them to serve continuously only for twelve years in each chamber, provided they are reelected (NCSL, 2015). Compensation consists of a yearly salary of \$16,800 plus a yearly \$6,000 expense allowance, for a total of \$22,800, plus a per diem of \$164, and mileage tied to the federal rate. In odd years, the regular legislative session consists of 45 session days to be conducted within a 60 calendar-day period. In even years, there are 60 legislative days within an 85 calendar-day period (NCSL, 2010). Therefore, with the per diem payments, expense stipend, and salary, legislators can expect to make approximately \$30,000 in odd-numbered years and \$32,600 in even-numbered years. The legislature has 922 staff members, 743 of which of permanent (NCSL, 2015). Based on these and other characteristics of the chambers, Squire (2017) ranks Louisiana's legislature as the 29<sup>th</sup> most professional in the country.

There are six types of legislative sessions: organizational, emergency, special, regular general, regular fiscal, and a veto session. Regular general sessions last no more than 60 legislature days, occur on even-numbered years, and during these sessions no “new taxes, tax increases, exemptions, exclusions, deductions, credits, rebates, incentives, or abatements may be introduced or enacted.”<sup>965</sup> Regular fiscal sessions last no more than 45 legislative days, convene in odd-numbered years, and only fiscal issues may be addressed. During 2017 and 2018, the legislature was in regular fiscal session from April 10, 2017, through June 8, 2017, and in regular general session from March 12, 2018, through May 18, 2018. Special sessions may be called by either the governor or the legislature for a specific reason, (e.g., to address taxation). In 2017, there were two special sessions, both called by the governor.<sup>966</sup> The legislature has the power to call for a special session with the support of a simple majority in each chamber.<sup>967</sup> Organizational sessions are for the election of officers and organization of both houses. Emergency sessions are convened to address emergencies, such as a natural disaster. A veto session is for overriding a gubernatorial veto, although these sessions are extremely rare with the last one occurring in 1979.<sup>968</sup>

Louisiana grants a lower-than-average amount of institutional power to its governorship. Ferguson (2015) ranks its governor as only the 37<sup>th</sup> most powerful in the country. The

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<sup>964</sup> [https://ballotpedia.org/Louisiana\\_State\\_Legislature](https://ballotpedia.org/Louisiana_State_Legislature), accessed 8/29/18.

<sup>965</sup> <https://laddc.org/initiatives/community-living-and-self-determination/quality-assurance/current-initiatives/advocacy-101/government-the-legislative-process/the-legislative-process/>, accessed 8/31/18.

<sup>966</sup> [https://www.theadvocate.com/baton\\_rouge/news/politics/legislature/article\\_9e1fd270-70ea-11e8-8413-b3f0ff118c26.html](https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_9e1fd270-70ea-11e8-8413-b3f0ff118c26.html), accessed 8/29/18.

<sup>967</sup> <http://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx>, accessed 8/29/18.

<sup>968</sup> <https://laddc.org/initiatives/community-living-and-self-determination/quality-assurance/current-initiatives/advocacy-101/government-the-legislative-process/the-legislative-process/>, accessed 8/31/18.

governor's powers are limited due to a larger than average number of separately elected executive branch officials (e.g., the treasurer, the agriculture commissioners, and the insurance commissioner). The governor may not serve more than two consecutive terms. Haider-Markel (2009) notes that historically, the governor's informal powers surpassed what one might expect from looking at only the institutional powers. He attributes this to Louisiana's weak political parties, oil and natural gas wealth, and to public perception of political titans like Huey Long. But he notes that in recent years all three of these sources of gubernatorial power have eroded.

Louisiana's state and local government employees make up 14.6% of the total employment in the state. This high proportion of state and local workers is exceeded only by Alaska, Wyoming, and Mississippi. Louisiana has a higher-than-average proportion of workers in four major sectors of state and local government activity: education, safety, welfare and services, but its proportion of workers in education (7.5%) is much higher (nearly 1.5%) than the national average of 6.1%. The state has 2.2% of its citizens employed in public safety compared to national rates of 1.7%, 2.4% in welfare compared to 1.5% nationally, and 1.6% in general services compared to 1.3% nationally (Edwards, 2006).

## Political Context

Over the last 50 years, Louisiana had a Democratically controlled legislature until 2012, when Republicans won majorities in both chambers (NCSL, 2017). Although Democrats often controlled the executive branch as well, starting in the mid-1990s the party affiliation of the state's governor alternated regularly between the two major political parties.<sup>969</sup> Louisiana was a Republican trifecta (control of both houses and governorship by the same party) from 2012 to 2015, when the state elected a Democratic governor.<sup>970</sup> In 2018, the house was comprised of 39 Democrats, 60 Republicans, three Independents, and three vacancies<sup>971</sup> while the senate consisted of 14 Democrats and 25 Republicans.<sup>972</sup> According to Shor and McCarty (2015), Louisiana's legislative chambers are not highly polarized. They rate Louisiana's house as the 45<sup>th</sup> most polarized in the country, while its senate is the 48<sup>th</sup> most polarized. This reflects not only Democratic caucuses in both chambers that are barely liberal,<sup>973</sup> but also Republican caucuses that are only moderately conservative.<sup>974</sup>

Overall, political parties are considered weak compared to those found in other states, in part due to the fact that state house and state senate primaries are non-partisan (Haider-Markel, 2009). This weakness combined with the informal power of the governor resulted in the unusual situation in which legislature voluntarily deferred to the governor in their selection of chamber leadership. In 2008, despite Democratic majorities in both chambers, both chambers allowed Republican chamber leaders to preside over Democratic majorities (Haider-Markel, 2009). However, the power is shifting toward the legislature with the decline in the informal power of

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<sup>969</sup> [https://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_Louisiana](https://en.wikipedia.org/wiki/List_of_Governors_of_Louisiana), accessed 11/30/18.

<sup>970</sup> [https://ballotpedia.org/Party\\_control\\_of\\_Louisiana\\_state\\_government](https://ballotpedia.org/Party_control_of_Louisiana_state_government), accessed 8/29/18.

<sup>971</sup> [https://ballotpedia.org/Louisiana\\_House\\_of\\_Representatives](https://ballotpedia.org/Louisiana_House_of_Representatives) accessed, 8/29/18.

<sup>972</sup> [https://ballotpedia.org/Louisiana\\_State\\_Senate](https://ballotpedia.org/Louisiana_State_Senate), accessed 8/29/18.

<sup>973</sup> Only two states, Arkansas and Oklahoma have Democratic caucuses that are less liberal. This applied to both chambers.

<sup>974</sup> Louisiana's house Republican caucus is only the 32<sup>nd</sup> most conservative in the country. Its senate Republican caucus is the 34<sup>th</sup> most conservative.

the governor and the rise of a disciplined Republican caucus and an African American caucus in the legislature (Haider-Markel, 2009). Interest groups are relatively strong compared to the weak parties. In the economic sphere, the strongest interest group is the Louisiana Association of Business and Industry (LABI) and their power is somewhat offset by the Louisiana Association of Trial Lawyers, while on social issues Christian conservative groups are considered a force in the legislature (Haider-Markel, 2009).

## Dimensions of Oversight

### Oversight Through Analytic Bureaucracies

Created by the legislature in 1962 by a constitutional amendment, the Louisiana Legislative Auditor (LLA) is the legislature's primary analytic bureaucracy serving as its fiscal advisor and providing "audit services and other useful information."<sup>975</sup> The LLA is appointed by a majority vote of each legislative chamber and may be removed only by a two-thirds vote in each chamber (NASACT, 2015). The legislature has constitutional authority over the work of the LLA (Art. III, Section 11) and relies upon the Legislative Audit Advisory Council (LAAC) to supervise the work of the LLA. LAAC is a joint committee of the Louisiana Legislature that consists of five representatives and five senators. In 2018 six of these legislators were Republicans, and three were Democrats with one vacancy.

The LLA provides the following services: audits of financial statements, the single audit, attestation engagements, compliance only audits, economy and efficiency audits, program audits, sunset review, performance measures, IT audits, and accounting and review services (NASACT 2015). The LLA has 268 staff including 41 support staff. The state appropriation that funds it was \$10 million in 2015 (NASACT, 2015). There are several analytic divisions within the LLA, including Actuarial Services, Advisory Services, Financial Audit Services, Investigative Audit Services, Legal Services, Local Government Services, Performance Audit Services, and Recovery Assistance Services.

The Performance Audit Services (PAS) is an LLA subunit with the primary responsibility for performance audits and program evaluations. While PAS has been described as independent, it does operate at the direction of the LAAC just as the full LLA does. PAS has 41 staff (NASACT, 2015) and produced 20 performance audits in 2017.<sup>976</sup> PAS describes the work it does as follows:

Performance auditors evaluate the economy, efficiency, and effectiveness of state agency programs, functions, and activities and provide that information to legislators and public officials. Under the provisions of the Louisiana Performance Audit Program, performance auditors must conduct at least one performance audit of each of the 20 executive branch departments over a seven-year period. In addition, legislators may request an audit of a particular agency or an audit may be conducted in response to a specific issue or problem. Performance auditors are

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<sup>975</sup> <https://lla.la.gov/about/history/>, accessed 12/1/18.

<sup>976</sup> <https://www.lla.la.gov/reports-data/audit/audit-type/index.shtml?key=Performance>, accessed 8/15/18.

based in Baton Rouge and have advanced degrees in a variety of backgrounds, including public administration, law, business administration, and other social science fields (PAS).

Although some audits are mandated by law or rule, audits can also be initiated by the legislative auditor (NASACT, 2015). Indeed, most performance audits are initiated at the discretion of the legislative auditor based on what audit staff thinks legislators will be interested in (interview notes, 2018). The LAAC, as part of its supervision of LLA, is responsible for resolving audit findings identified in audit documents.<sup>977</sup> In the event that the LAAC encounters noncompliant auditees, it forwards this information to the Joint Legislative Committee on the Budget and the appropriate oversight committees in each chamber.<sup>978</sup> Despite the importance of the LAAC's duties, the minutes indicate that the committee met only four times in 2017 and averaged four meetings each year over the past decade, having as few as two (2016 and 2012) and as many as seven (2010).<sup>979</sup> Although practitioners report that the LAAC rarely routes audits to specific subject matter committees. Although the LAA sends copies of all audits to all legislators and committees, it is up to the committees whether to hold a hearing (interview notes). It is rare for LLA staff to present an audit to a committee other than the LAAC. Typically, media reports or public outcry motivate committees to hold hearing on an audit (interview notes).

A review of the four 2017 LAAC meeting minutes showed that the average meeting lasted approximately three hours. Committee members engaged in serious discussions on issues of good government, with most of the time spent on performance audit findings. Our sampling and survey of the minutes did not reveal instances of an audit issue being forwarded to the Joint Legislative Committee on the Budget or any other committee. Knowledgeable sources, however, report that this does occasionally occur. Examples of audits that were presented to other committees were an audit of incarceration rates and a sexual harassment audit (interview notes). The LAAC will be discussed further in the section titled *Oversight Through Committees*. Practitioners report that they perceive that the relationship between the auditors and their assigned legislative committee interact more closely in a lot of other states, noting that the LAAC does not “hear all of our reports” (interview notes).

Despite the somewhat limited number of LAAC meetings and LLA budget cuts, LLA audits have gotten traction on a range of issues. Two examples were covered closely by the state media, one audit on corrections and another on public health. In the Corrections Department, an LLA audit determined that the state does not know where 11% of its inmates are housed. This means that the state may be paying sheriffs multiple times for the same inmate at the cost of \$24.39 per day per inmate (O'Donoghue, 2017). Moreover, the prisoner tracking system, CAJUN, was not secure with former employees constituting more than one-third (38%) of people with access to the system.<sup>980</sup> This access could have permitted unauthorized individuals to alter the time served by inmates or to make other changes to prisoner data. The Corrections Department Secretary agreed to implement the suggested changes in tracking procedures and immediately purged the system of former employees with access.

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<sup>977</sup> <https://lla.la.gov/laac/>, accessed 8/15/18.

<sup>978</sup> <http://jlc.la.gov/Docs/JLCB%20Oversight%20&%20Responsibilities.pdf>, accessed 8/15/18.

<sup>979</sup> <https://lla.la.gov/laac/laac-minutes/index.shtml>, accessed 8/15/18.

<sup>980</sup> [https://www.nola.com/politics/index.ssf/2017/11/louisiana\\_prisoner\\_data.html](https://www.nola.com/politics/index.ssf/2017/11/louisiana_prisoner_data.html), accessed 12/3/18.

Another LLA audit identified improprieties in recent Medicaid contracts initiated by former Gov. Bobby Jindal’s office. Among the many problems identified, “auditors found 41 million paid claims totaling \$2.4 billion from October 2015 through December 2017 that didn’t have valid provider identification numbers.”<sup>981</sup> These claims were paid out to private managed care facilities. The senate chair of the health committee publicly pressed for action by the state health department.<sup>982</sup> The LLA’s reports resulted in a legislative task force to determine further action, and legislators introduced a bill, HB 88, to criminalize government benefits fraud to facilitate prosecution by the attorney general of people who “fraudulently received Medicaid.”<sup>983</sup> The LAA also presented this audit to the Joint Legislative Committee on the Budget (JLCB). Although this is a rare occurrence, the JLCB does occasionally hold a hearing on LAA audits if the audit has financial implications.

The Legislative Fiscal Office (LFO) is the other analytic bureaucracy in Louisiana. The legislative fiscal officer, who is selected by the appropriations committee in the house and the finance committee in the senate and then elected by a majority vote in both legislative chambers, heads the LFO. The LFO provides fiscal information to both the house and senate, including assistance to individual legislators and presentations to the house appropriations and senate finance committees and also to the entire legislature, and to assist other legislative staff and state agency staff.<sup>984</sup> Services include fiscal notes on bills,<sup>985</sup> economic and fiscal impact assessments of proposed administrative rules (discussed more in the section on administrative rules),<sup>986</sup> reports on the current state of the economy, revenue estimates, and Act 704 impact analysis reports for projects that commit \$10 million or more of state funds,<sup>987</sup> like the package given to Monster Moto to relocate from Texas to Louisiana.<sup>988</sup> The LFO analyzes the proposed executive budget within seven days of its submission to the legislature, providing both the legislature and governor with a report on the proposed budget comparing it to the previous budget.<sup>989</sup> The LFO also produces an annual report summarizing performance standard adjustments and their own recommendation, which will be discussed further in the section on performance-based budgeting.<sup>990</sup> The LFO also produces four annual publications: *Focus on the Fisc* published in the interim to keep legislators informed about fiscal issues; the *Adult Correctional System Survey* provides trends in the prison population and compares them with other states; the *Comparative Data Report on Medicaid*; and the *Fiscal Highlights*, which summarizes actions taken during session and provides a computation of historic fiscal data.<sup>991</sup> The LFO is comprised of 15 professional staff.<sup>992</sup>

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<sup>981</sup> [https://www.theadvocate.com/baton\\_rouge/news/article\\_07685364-796b-11e8-b831-232ef0cc7d82.html](https://www.theadvocate.com/baton_rouge/news/article_07685364-796b-11e8-b831-232ef0cc7d82.html), accessed 12/1/18.

<sup>982</sup> <https://www.usnews.com/news/best-states/louisiana/articles/2018-06-28/louisiana-senator-wants-action-after-critical-medicare-audit>, accessed 12/1/18.

<sup>983</sup> [https://www.watchdog.org/louisiana/audit-reveals-louisiana-s-medicare-system-mismanaged-open-to-fraud/article\\_e6525c0e-8385-11e8-bd98-0789753c1419.html](https://www.watchdog.org/louisiana/audit-reveals-louisiana-s-medicare-system-mismanaged-open-to-fraud/article_e6525c0e-8385-11e8-bd98-0789753c1419.html), accessed 12/1/18.

<sup>984</sup> <http://lfo.louisiana.gov/>, accessed 8/15/18.

<sup>985</sup> <http://lfo.louisiana.gov/files/forms/FiscalNoteWorksheet.pdf>, accessed 8/15/18.

<sup>986</sup> <http://lfo.louisiana.gov/files/forms/impactform.pdf>, accessed 8/15/18.

<sup>987</sup> <http://lfo.louisiana.gov/rev>, accessed 8/15/18.

<sup>988</sup> <https://businessfacilities.com/2017/03/monster-moto-celebrates-new-ruston-louisiana-headquarters/>, accessed 8/15/18.

<sup>989</sup> <http://lfo.louisiana.gov/files/reldata/LFOPurpose.pdf>, accessed 12/2/18.

<sup>990</sup> <http://lfo.louisiana.gov/perform>, accessed 8/15/18.

<sup>991</sup> <http://lfo.louisiana.gov/publications>, accessed 8/15/18.

<sup>992</sup> <http://lfo.louisiana.gov/staff>, accessed 8/15/18.

In addition to the LFO, both chambers have a fiscal office with committee staff. The fourteen House Fiscal Office staff includes two legislative analysts who serve as appropriations committee staff, six budget analysts who staff standing committees, two ways and means committee staff, two central staff plus a director and an administrator. This staff drafts bills, conducts fiscal research and budget analyses, responds to requests for information from house members and makes budget presentations. The Senate Fiscal Services Office's staff of nine professionals and two secretaries is responsible for staffing the Senate Finance Committee, the Joint Legislative Committee on the Budget, the state's revenue estimating conference, the Interim Emergency Board, the Louisiana Bond Commission, and any standing or ad hoc committees producing policy with fiscal implications. Additionally, this staff is responsible for computer programs and data tracking of general appropriations and capital outlays, drafting legislation, and answering senators' requests for fiscal information. The Senate Fiscal Office reports working closely with the LLA, the House Fiscal Office, the LFO, and the Office of Planning and Budget in the executive branch.

### Oversight Through the Appropriations Process

Louisiana operates on an annual budget. The process is as follows: agencies receive budget instruction guidelines in September, agencies submit budget requests in November, agency hearings are held in January and February, the executive budget presentation is made by the Division of Administration to the Joint Legislative Committee on the Budget in February,<sup>993</sup> either 45 days prior to the regular session or 30 days prior if the governor was newly elected in the previous year, and the new budget is typically adopted in June.<sup>994</sup> In practice, there have been multiple budget battles in the last couple of years that have resulted in compromises between the Democratic governor and Republican legislature.

A microcosm of the budget battle occurred over mental health spending for 2017. The Louisiana house passed a budget that would cut \$235 million from the Department of Health, resulting in the elimination of mental health services for "people with schizoaffective disorder, bipolar disorder and other serious illnesses" (NOLA, 2017). The cuts were slated to go into effect March 2017, but budget battles over issues including mental health resulted in a special session. The cuts at first triggered promulgation of an emergency rule by the Department of Health to close a \$2 million program providing psychosocial rehabilitation services to people under the age of 21 to avoid a deficit. As part of the administrative rule review process, the Senate Health and Welfare Committee held a hearing on the emergency rule and rejected it.<sup>995</sup> The Department of Health Chief said the alternative to the mental health cuts would be to cut hospice, dialysis, and prescription medications (NOLA, 2017). The senate supported a budget that restored funding, and the governor threatened to veto of any budget that cut the Department of Health by \$235 million.<sup>996</sup> Ultimately, the budget passed on June 16, eight days after the regular session deadline. A reserve fund that the house wanted as a buffer against possible

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<sup>993</sup> <https://ladc.org/initiatives/community-living-and-self-determination/quality-assurance/current-initiatives/advocacy-101/government-the-legislative-process/the-legislative-process/>, accessed 8/15/18.

<sup>994</sup> [https://ballotpedia.org/Louisiana\\_state\\_budget\\_and\\_finances](https://ballotpedia.org/Louisiana_state_budget_and_finances), accessed 8/15/18.

<sup>995</sup> [https://www.nola.com/politics/index.ssf/2017/03/plan\\_to\\_end\\_childrens\\_mental\\_h.html](https://www.nola.com/politics/index.ssf/2017/03/plan_to_end_childrens_mental_h.html), accessed 8/15/18.

<sup>996</sup> [https://www.nola.com/politics/index.ssf/2017/05/mental\\_health\\_louisiana.html](https://www.nola.com/politics/index.ssf/2017/05/mental_health_louisiana.html), accessed 8/13/18.



revenue shortfalls was used to reduce, although not eliminate, cuts to mental health services.<sup>997</sup> But this one-time fix merely kicked the problem down the road, delaying rather than resolving what the governor calls the state’s fiscal cliff. This set of actions demonstrates the efforts of substantive standing committees as well as “money” committees with respect to oversight of state agency programs—in this case defending services that the agency and the senate committee considered vital for the welfare of Louisiana citizens.

The Joint Legislative Committee on the Budget (JLCB) is an important participant in legislative oversight.<sup>998</sup> The JLCB consists of 29 representatives (the members of the House Appropriations Committee and the chair of the Ways and Means Committee) and 19 senators (the members of the Senate Fiscal Committee and the chair of the Senate Revenue and Fiscal Affairs Committee).<sup>999</sup> The House Fiscal Division and Senate Fiscal Services rotate the responsibility for staffing the JLCB on a yearly basis.<sup>1000</sup> The JLCB can meet monthly even when the legislature is out of session. Some of their meetings are four and six hours long. The committee is important to oversight beyond the appropriations process because when the LAAC encounters agency resistance to audit recommendations it relies on the JLCB to encourage compliance.

Additionally, the JLCB reviews the Casino Support Services Contract and the budgets of various public authorities, such as the Lottery Corporation, the Louisiana Public Facilities Authority budget and the Greater New Orleans Expressway Commission. Recent issues that have involved the JLCB include \$8 million for criminal justice reinvestment,<sup>1001</sup> a \$14 million I-10 highway widening project,<sup>1002</sup> and \$15.4 billion in Medicaid contracts.<sup>1003</sup> In each of these issues the committee held hearings, questioned government officials, and exercised oversight. The JLCB is also important to the monitoring of state contracts by reviewing what are known as Act 87 reports, which will be discussed on the section “Monitoring of Louisiana State Contracts.”

The lengthy (nearly six hour) JLCB meeting of January 22, 2018,<sup>1004</sup> indicates that the legislature takes its responsibility for oversight through the appropriations process quite seriously. This hearing featured the governor himself presenting an overview of the executive budget following by agency officials. Partisan tensions were also apparent and might have motivated some of the scrutiny from legislators.

At this JLCB meeting the governor stressed that he did not like the budget he was presenting, but he had no choice because the state was facing a “fiscal cliff” in which revenue sources were expiring and had not been replaced by the legislature. He argued that the previous gubernatorial administration had left the state with a \$2 billion shortfall and that cuts could only be made to a small number of discretionary budget items. He outlined the limited number of programs that were discretionary portions of the budget—health care, college scholarships among them. He chastised the legislature for its failure to advance any tax reform proposals out of the ways and means committee in the prior session. He urged legislators to propose solutions

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<sup>997</sup> [https://www.nola.com/politics/index.ssf/2017/06/louisiana\\_legislature\\_budget.html](https://www.nola.com/politics/index.ssf/2017/06/louisiana_legislature_budget.html), accessed 8/15/18.

<sup>998</sup> <http://jlcbl.legis.la.gov/Docs/JLCB%20Oversight%20&%20Responsibilities.pdf>, accessed 8/15/18.

<sup>999</sup> [http://jlcbl.legis.la.gov/default\\_Members.aspx](http://jlcbl.legis.la.gov/default_Members.aspx), 8/15/18.

<sup>1000</sup> <http://jlcbl.legis.la.gov/Docs/JLCB%20Oversight%20&%20Responsibilities.pdf>, accessed 8/15/18.

<sup>1001</sup> [https://www.nola.com/politics/index.ssf/2018/07/louisiana\\_prison\\_population\\_sa.html](https://www.nola.com/politics/index.ssf/2018/07/louisiana_prison_population_sa.html), accessed 8/15/18.

<sup>1002</sup> [https://www.theadvocate.com/baton\\_rouge/news/politics/article\\_ccf48a64-172b-11e8-892e-8b09b6761304.html](https://www.theadvocate.com/baton_rouge/news/politics/article_ccf48a64-172b-11e8-892e-8b09b6761304.html), accessed 8/15/18.

<sup>1003</sup> [https://www.nola.com/politics/index.ssf/2017/12/louisiana\\_medicaid\\_contracts\\_a.html](https://www.nola.com/politics/index.ssf/2017/12/louisiana_medicaid_contracts_a.html), accessed 8/15/18.

<sup>1004</sup> [http://house.louisiana.gov/H\\_Video/VideoArchivePlayer.aspx?v=house/2018/jan/0122\\_18\\_JLCB](http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2018/jan/0122_18_JLCB), accessed 12/4/18.

and argued that he cannot negotiate with himself—he needed partners. Legislators proceeded to ask the governor questions about the budget. Questions were quite specific and demonstrated knowledge of budget items and programs, but the questions also included political cover with support for veterans and college students. For example, one committee member wanted to know how the reduced college scholarship money would be distributed—would low-income students receive priority or would students with high test scores receive more money? The governor demonstrated extensive command of the budget and discussed the impact of increases in non-discretionary funding on the money available to fund discretionary programs. Another committee member pressed the governor on the increased revenue the state would receive as a result of the federal tax law changes. Despite several substantive questions, some committee members used the opportunity to ask questions as a forum to vent their frustrations with the governor and others used their questions to lobby for their preferred programs. The governor for his part blamed the legislature for its unwillingness to raise taxes last year to resolve the revenue shortfall.

The following examples from the same JLBC meeting illustrate various levels of knowledge exhibited by committee members, as well as their differing orientations toward problem solving versus political posturing. Despite several knowledgeable legislators, the committee also included legislators whose questions required the governor to explain how the line-item veto works and other basic information about the legislative process. For example, one committee member asked the governor what he planned to include in the likely special session to fix the fiscal cliff, to which the governor pointed out that the legislature also has the power to call a special session.

One legislator inquired about what had been done to implement the recommendations of the Streamlining Commission. The governor explained that many of those reforms had been implemented, but that some of those reforms did not save money. The governor reported cutting over \$600 million in the executive branch. The same legislator inquired about why the general fund budget was increasing. The governor explained that the legislature had passed service requirements, mandatory services for agency to provide, and the cost of those service requirements increased year to year. Therefore, the general fund costs go up. The legislator continued, saying that she did not believe that the \$600 million in cuts were real and asked for a list of those cuts, which the governor had repeatedly offered to provide. This same legislator alleged that the state of Louisiana was paying more for services than other states. She urged the governor to “honestly” look at cuts, commenting that she did not believe the executive had done so.

Another legislator pointed out that the debate about whether general fund spending was increasing or decreasing involved the year used as a baseline with 2008 being a “Katrina bubble.” Therefore, using ten-year trends made it appear that executive branch expenditures had declined when using another baseline year (2014) made it appear that executive branch expenditures had increased. The governor in response to questions from another legislator pointed out that the legislature had not passed legislation to implement even one of the recommendations that the legislature’s own tax reform commission recommended.

Another legislator asked about 500 newly authorized positions. He was told that the state took over a private prison, and those employees became state employees, and also a federal lawsuit that required that Louisiana move some people who were criminally insane to hospital facilities rather than jails. Another legislator asked about the costs of the state taking over the facility. The cost for the state prison is higher per prisoner than the private contract paid. The Commissioner of Administration, who was sitting next to the governor, explained that a private

company had walked away from its state contract because the rate the state was paying them was too low. Therefore, the state had to hire people to run the prison. The legislator seemed to have difficulty understanding this shift from a contract employee to a state employee. The committee chair asked about whether the legislative fiscal notes were available on each of the bills in the budget proposals. The governor replied that LFO was producing fiscal notes currently and that some were completed already. The committee chair continued to press the governor to produce the fiscal notes until the governor finally said, “The fiscal office works for you” (at 2 hrs. and 18 minutes).

After approximately two and a half hours the Commissioner of Administration, Jay Dardenne, began the formal presentation of the budget to the JLBC. At the conclusion of his presentation various agency heads were called upon to answer questions from committee members about specific agency budgets. These questions demonstrated more knowledge about the budget and various agency programs than did the questions legislators asked the governor. For example, one legislator asked about the specific impacts of the cuts on waivers received by people with disabilities and senior citizens. The deputy director of that agency provided details about the number of recipients that would be affected. One legislator asked the commissioner whether the revenue estimating conference forecasts met the constitutional trigger to permit the legislature to invoke a one-time tactic to permit cuts to non-discretionary budget items. The commissioner agreed that it did, but pointed out that this would again be a one-year fix that simply delayed the need to resolve the state’s structural deficit. Another legislator asked about a chart that showed positions added to the department of corrections. Corrections department executives explained the items in the chart line by line. The committee members’ questions triggered regular cycles of musical chairs at the witness table as staff from the agency and budget staff, all of whom were sitting in the audience, chimed in to answer questions. One senator asked about whether the administration would be open to some major structural changes to save administrative costs, such as a single university board of education instead of multiple boards, inventory tax reform, nursing home reimbursement rates, long-term managed care, and Medicaid eligibility. The commissioner indicated executive branch willingness to work on any of these suggestions to streamline government. Committee members asked various agency staff whether specific programs would be cut within the agency, for example autism services. The hearing continued for several more hours with similarly specific questions about the impact of budget cuts on various agencies.

We found substantial evidence in this joint committee hearing of knowledgeable legislative oversight through the appropriations process despite the occasional naïve question from some novice legislator (primarily in the lower chamber and more often asked during the governor’s presentation). Several committee members asked very specific questions about the effect of federal changes, such as changes to health care programs, on the state budget. These questions led to exchanges with agency heads that demonstrated these legislators’ extensive knowledge of specific agency budgets. The committee chair permitted legislators to engage in a dialog with the agency officials without having to request permission to ask follow up questions. Agency witnesses conversed directly with the legislators rather than answer through the chair of the committee. This provided an opportunity to a substantive discussion between agency officials and legislators exploring some “what if” scenarios. The time allotted for the meeting, nearly six hours, facilitated extensive information gathering and exploration of the impacts of budget proposals on agency programs. We believe that this hearing demonstrates that the JLBC exercises robust oversight through the appropriations process.

## Oversight Through Committees

Given that Louisiana has a relatively short legislative session, its legislature relies on committees that can operate during the session interim to address pressing matters that arise between legislative sessions. Therefore, there are standing, select, and statutory committees. These include select committees and interim committees that are charged with studying the effects of specific programs or investigating specific problems. Looking at the calendar of these committee meetings during the 2018 interim indicates that there are relatively few interim oversight committees tasked with monitoring specific public entities. One of these is the Louisiana Transportation Authority. The entity is a hybrid legislative and executive commission that includes legislators (two senators and two representatives) and agency officials (the secretaries of transportation and economic development) and the governor's director of administration. It is charged with overseeing the use of bond funds for transportation infrastructure and toll revenue from transportation tolls. It met on December 13, 2018.<sup>1005</sup> Its first task was to approve the minute of the last meeting—May 12, 2016. This suggests that this group is not meeting even annually. The meeting lasted for approximately 35 minutes. There were two new business items on the agenda: fiscal and audit update and future tolling opportunities. The authority received a “clean” audit report, which the Undersecretary for the Department of Transportation and Development summarized for the authority. This was reportedly the fifth consecutive clean annual audit report. The members of the authority quizzed the secretary of transportation during the meeting even though he is technically a member of the oversight entity. There was some evidence of oversight and some discussion that adjustments might better be made within the authority rather than through the legislature (minute 17 of the hearing). This unusual approach to oversight suggests that Louisiana relies on a more informal approach to monitoring the work of state agencies. However, the clean audit reports indicate that this is, at least in this case, effective.

The Legislative Audit Advisory Council (LAAC) is the primary oversight committee of the Louisiana Legislature. The LAAC meets during regular sessions and during the interim to carry out its work with the LLA, receiving audit reports throughout the calendar year. The LAAC consists of five representatives and five senators, is charged with supervising the work of the LLA, and responsible for resolving audit findings identified in audit documents.<sup>1006</sup> The partisan division of the LAAC members<sup>1007</sup> is currently six Republicans and four Democrats. This means that 60% of the committee is controlled by Republicans, compared to Republican control in the chambers of 57%<sup>1008</sup> in the House and 64%<sup>1009</sup> in the senate.<sup>1010</sup> Agency failure to comply with audit recommendations is determined by the LAAC. To encourage compliance, the LAAC routes these issues to the JLCB and the relevant standing committee with subject matter jurisdiction.<sup>1011</sup> In addition to the LLA reports, The LAAC has a wide variety of tools available to determine compliance:

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<sup>1005</sup> [http://senate.la.gov/video/videoarchive.asp?v=senate/2018/12/121318LATRANSAUTH\\_0](http://senate.la.gov/video/videoarchive.asp?v=senate/2018/12/121318LATRANSAUTH_0), accessed 1/9/18.

<sup>1006</sup> <https://lla.la.gov/laac/>, accessed 8/15/18.

<sup>1007</sup> <https://lla.la.gov/laac/laac-members/index.shtml>, accessed 8/15/18.

<sup>1008</sup> <http://www.legis.la.gov/legis/Bios.aspx?cid=H>, accessed 8/15/18.

<sup>1009</sup> <http://senate.legis.state.la.us/senators/>, accessed 8/15/18.

<sup>1010</sup> [https://ballotpedia.org/Louisiana\\_State\\_Legislature](https://ballotpedia.org/Louisiana_State_Legislature), accessed 8/15/18.

<sup>1011</sup> <http://jlcbl.la.gov/Docs/JLCB%20Oversight%20&%20Responsibilities.pdf>, accessed 8/15/18.

The Council may hold hearings; subpoena witnesses; administer oaths; compel the production of books, documents, records, and papers, public and private; order the compiling and furnishing of sworn statements; and petition, directly or through the courts, writs of mandamus. Failure to comply with any order of the Council shall constitute contempt of the Council, punishable in a manner prescribed by the Council.<sup>1012</sup>

Despite the importance of the duties and the tools the LAAC has at its disposal, the minutes indicate they met only four times in 2017 and averaged four meetings each year over the past decade, having as few as two (2016 and 2012) and as many as seven (2010).<sup>1013</sup> A review of the four 2017 meeting minutes showed that the average meeting lasted approximately three hours. During these meetings legislators spent most of the time on performance audit findings. Examining minutes of several meetings does not indicate that legislative action is taken on these meetings even when the auditors and the district attorney seem to think that legislation is needed.<sup>1014</sup> Our sampling and survey of the minutes did not reveal instances of an audit issue being forwarded to the Joint Legislative Committee on the Budget or any other committee. The non-compliance report on the LLA website lists local government entities only.

An example of the LAAC handling of an audit is one that exposed how the former Louisiana State Police (LSP) superintendent abused his privileges.<sup>1015</sup> During the December 2017 hearing on this audit,<sup>1016</sup> three staff from the LLA office presented findings of the audit report. The report described a long list of problems that involved the state police superintendent. These problems include: authorizing travel with recreational side trips for troopers traveling to conferences, misuse by the superintendent of hotel rooms paid for by the City of New Orleans for officers on duty for Mardi Gras to entertain their friends and family during the festival, the superintendent's use of state troopers to run errands for himself and his family and friends, and the superintendent's use of public property and state troopers' time to aid nonprofit organizations that the superintendent worked with, and living in a state residence without claiming it as a benefit (income) on his tax return. The audit report also raised questions about other perks the superintendent took advantage of,<sup>1017</sup> such as having his uniforms and his wife's clothing dry cleaned at the governor's mansion while claiming the \$8 per day stipend to cover his dry-cleaning costs. These small amounts add up over the days he served from 2008 through March 2017.

Some LAAC committee members questioned the audit staff about whether some of these audit findings were actually problems. Specifically, the auditor's finding that it was illegal for the superintendent to use of a residence without claiming it on his tax return as income. This led some committee members to ask about the use of residences by university presidents. The auditor pointed out that other states have encountered this, and the IRS requires that the benefit of housing be reported as taxable income. Committee members also challenged the audit staff about why a federal violation was included in their report. Audit staff pointed out that they

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<sup>1012</sup> <https://lla.la.gov/laac/>, accessed 8/15/18.

<sup>1013</sup> <https://lla.la.gov/laac/laac-minutes/index.shtml>, accessed 8/15/18.

<sup>1014</sup> [https://lla.la.gov/documents/laac-minutes/2018/LAACMinutes\\_October5\\_2018\\_Approved11-15-18.pdf](https://lla.la.gov/documents/laac-minutes/2018/LAACMinutes_October5_2018_Approved11-15-18.pdf), accessed 12/7/18.

<sup>1015</sup> <https://thehayride.com/2018/01/video-heres-wwl-tvs-update-mike-edmonson-audit-fiasco/>, accessed 8/15/18.

<sup>1016</sup> [http://senate.la.gov/video/videoarchive.asp?v=senate/2017/12/121417LAAC\\_0](http://senate.la.gov/video/videoarchive.asp?v=senate/2017/12/121417LAAC_0), accessed 12/5/18.

<sup>1017</sup> <https://www.wwltv.com/article/news/local/ex-state-police-commander-lived-life-of-luxury-on-taxpayers-dime-audit-claims/289-496146272>, accessed 12/5/18.

investigate illegal and unethical behavior in general not just violations of state laws. Some of the questions to the auditor displayed concern that the report was “nitpicky.” When pressed, committee members acknowledged that some of the behaviors were clearly out-of-bounds, but some of their queries seemed to defend the superintendent. Compared to other states’ hearings on audit reports, there were more questions challenging the judgment of the auditors and asking them to document their findings. This might reflect partisan defense of an appointee of the former Republican governor, an appointee that many Republican senators may have voted to confirm. It could also reflect monitoring of the LLA, one of the responsibilities of the LAAC.

The newly appointed LSP superintendent testified about changes made to comply with audit recommendations. He sought to assure legislators that procedures were in place to prevent future abuses.<sup>1018</sup> The committee chair challenged the new superintendent to tighten up the dry cleaning service procedures, suggesting that the need to report individual days of usage invited honest errors in remembering to list days when he or she had used the dry cleaners at the governor’s mansion. In contrast to committee members’ inclination to press audit staff, some of them seemed quite hesitant to challenge the new LSP superintendent. Moreover, there was some pushback from the new LSP superintendent about the need for troopers assigned to accompany the governor to be able to get uniforms dry cleaned during the day when they might need to change uniforms during their shift (e.g., heavy rain). An obvious solution—increasing troopers’ pay so that they are not reimbursed for dry cleaning but just pay for it themselves—was never mentioned. It was also puzzling to us as outside observers that no one discussed the need for improved record keeping at the governor’s mansion dry cleaners. The legislature ran out of time for the former superintendent to “defend” himself. The chair indicated that he would be given this opportunity at a later date. This is clearly an example of oversight through an analytic bureaucracy. A standing committee that is responsible for audit reports spent time ensuring that the audit findings were accurate and being addressed by the agency, the LSP. However, it does not appear that there was action taken to increase compliance or to impose sanctions. The legislature did not pursue consequences for the LSP or its former superintendent, instead the legislative auditor provided audit evidence to the attorney general and the FBI.<sup>1019</sup>

This reluctance to use audit findings to impose consequences on auditees was displayed in the August 30, 2018 LAAC meeting as well. Act 462 of the 2015 Regular Legislative Session empowers the LAAC to withhold funds from municipalities with three consecutive years of unresolved audit findings—the “Three-Strikes” law.<sup>1020</sup> The state of Louisiana relies heavily on revenue sharing by the state to fund local governments. Therefore, municipalities that repeatedly do not comply with audit findings could lose their primary source of revenue if the LAAC used its Act 462 power. Even though a report showed that three municipalities that met the criterion to lose state funds, the LLA did not recommend cutting off their funding immediately. Instead, these municipalities were “asked” to return in six months to update the committee on their compliance. This approach—asking repeat non-compliant municipalities to return again—was repeated in the October 5, 2018, meeting of the LAAC as well.<sup>1021</sup>

<sup>1018</sup> [https://lla.la.gov/documents/laac-minutes/2017/LAAC%20Minutes\\_December%202014\\_2017\\_Approved%204-3-18.pdf](https://lla.la.gov/documents/laac-minutes/2017/LAAC%20Minutes_December%202014_2017_Approved%204-3-18.pdf), accessed 8/15/18.

<sup>1019</sup> <https://talk1073.com/2018/01/25/legislative-auditor-on-former-state-police-commander-investigation/>, accessed 12/5/18.

<sup>1020</sup> [https://lla.la.gov/documents/laac-minutes/2018/LAAC%20Minutes\\_August%2030\\_2018\\_Approved%2010-5-18.pdf](https://lla.la.gov/documents/laac-minutes/2018/LAAC%20Minutes_August%2030_2018_Approved%2010-5-18.pdf), accessed 12/7/18.

<sup>1021</sup> [https://lla.la.gov/documents/laac-minutes/2018/LAACMinutes\\_October5\\_2018\\_Approved11-15-18.pdf](https://lla.la.gov/documents/laac-minutes/2018/LAACMinutes_October5_2018_Approved11-15-18.pdf), accessed 12/7/18.

We were not convinced by these examples of oversight in Louisiana that the LAAC enforcing penalties for malfeasance on the part of state agency officials. Additionally, it seems that the legislature is overseeing the work of its audit staff more vigorously than it oversees state agency and local government actors.

## Oversight Through the Administrative Rules Process

Louisiana possesses ample mechanisms to perform administrative rules review. There are four opportunities for the legislature to review rules: money committees, committees with subject matter jurisdiction, Legislative Fiscal Office (LFO) review of impact statements, and concurrent resolution. The legislature may suspend, amend, or repeal any rule by concurrent resolution (section 49:969 LA R.S.).<sup>1022</sup> A concurrent resolution does not require the governor's signature. This power appears to have its basis in the Louisiana Constitution, Article III Section 20. Only the last mechanism, concurrent resolution, can be applied to the review of existing rules, while the others apply only to proposed rules.

A public hearing on a rule can be requested within 20 days of the notice of intent and then must be held 35-40 days from the notice of intent. A summary report on public hearings about administrative rules, including responses to public comments, is given to oversight committees. These reports can trigger a subcommittee hearing to block a rule (interview notes, 2018).

We are told by practitioners that by and large departments work closely with the LFO when making any rule or rule change. We were also told that this working relationship ensures the legislature's involvement throughout the process, thereby making the exercise of other forms of legislative review less likely. Consistent with this Berry (2017) classifies Louisiana as a state with combined executive and legislative authority over administrative rule review.

In 2017, no existing administrative rules were repealed, amended or suspended by concurrent resolution. We are told by practitioners that this is to be expected (interview notes, 2018):

Normally, if there is a need for a rule amendment, the House and Senate committees will call the agency directly and discuss. A concurrent resolution should only be used as a last resort, as it eliminates public input.

Proposed rules that are sent to the Louisiana Register<sup>1023</sup> to be published are also simultaneously sent to the relevant legislative committees and officers of the legislature. Fiscal and economic impact statements must accompany all proposed rules. The Legislative Fiscal Office (LFO) reviews these documents and a proposed rule may not go forward without LFO approval (Schwartz, 2010). Therefore, the review of the impact statements by the LFO functions as the initial hurdle in legislative rule review. In practice, the statements are more perfunctory

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<sup>1022</sup> <https://www.doa.la.gov/Pages/osr/Agency/Agency%20Training/LAC%20Handbook.pdf>, accessed 8/13/18.

<sup>1023</sup> <https://www.doa.la.gov/Pages/osr/reg/regs2017.aspx>, accessed 8/13/18.

than detailed and rigorous study of indirect cost and benefits (Schwartz, 2010). However, practitioners repeatedly emphasized collaboration in Louisiana:

An approved Fiscal and Economic Impact Statement is mandatory in order for an agency to initiate rulemaking. Each fiscal note is the consolidation of a cooperative effort of revisions between the agency and the LFO fiscal analyst, ensuring that all data has been reviewed and that the Fiscal and Economic Summary provides accurate information to the public . . . The House, Senate, and Governor’s Office are very involved in rule-making in Louisiana . . . It’s because of this involvement that we don’t have many rules blocked by subcommittees and the governor. It’s amazing what communication will do. I have met with many representatives from other states, and I believe that we are the only state that has been so proactive (interview notes, 2018).

All administrative rules are subject to legislative review by both the money committees—Senate Finance and House Appropriations—and the relevant subject matter committee, (Section 968.D-N LA R.S.) (e.g. House Committee on Education reviews rules promulgated by the Department of Education).<sup>1024</sup> The committees in each chamber have the option of forming a subcommittee, which has 30 days to review the rule. No objection constitutes approval of the rules (The Council of State Governments). The subcommittee reviewing the rule has broad authority including an “acceptability” standard (LA R.S. 49:968 (D)(3)) and only requires a majority vote of those present to block a rule (52). A single subcommittee in either chamber can block a proposed rule. Within 10 days of a subcommittee’s objection, the governor can override this legislative veto and reinstate the rule. But if the governor fails to act within the time limit, then the rule is blocked and the agency is prevented from adopting a similar rule for four months.

While some states have had legal showdowns over the constitutionality of this kind of legislative review, Louisiana has not. It appears that the governor’s ability to overrule the legislative veto averts one of the more typical bases for constitutional challenges under the presentment clause, although the courts have not ruled directly on the issue (Schwartz 2010). The governor can also unilaterally block a rule. The governor can also block rules within 30 days of their promulgation even when the legislature takes no action. A blocked rule or a substantially similar rule may not go into effect for at least the next four months (LA R.S. 49:968 (G)).<sup>1025</sup> In 2017, neither the legislature nor the governor blocked any proposed administrative rules. Judicial review can take place on the basis of adoption without substantial Administrative Procedures Act (APA) compliance, constitutional provision, or exceeds statutory authority. Adoption without substantial APA compliance must be determined by the court within two years of a rule taking effect (interview notes, 2018).

Emergency rules (LA R.S. 49:953(B)(1)) and environmental rules (LA R.S. 953.(F)(3)(i)) are subject to a special review process that places a greater burden on the legislature (52). Environmental rules give the legislature only a 10-day window to give notice of their intent to

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<sup>1024</sup> <https://www.doa.la.gov/pages/osr/lac/books.aspx>, accessed 8/13/18.

<sup>1025</sup> <https://www.doa.la.gov/Pages/osr/reg/regs2017.aspx>, accessed 8/13/18.



exercise oversight by subcommittee. Emergency rules have a special template for submission of notice to the legislature and publication in the Louisiana Register.<sup>1026</sup> Emergency rules are adopted without review during the proposal stage, but once adopted both the legislature and executive may veto a rule within two to 61 days<sup>1027</sup> under the acceptability standard and report their finding to the agency within four days (The Council of State Governments).<sup>1028</sup>

The lone example of an Emergency Rule review in 2017 by the legislature is discussed in the section titled Oversight Through the Appropriations Process, where the Department of Health created an emergency rule in the face of budget cuts. The Department of Health warned that if the budget bill passed, they would have to cut the psychosocial rehab program which provides behavioral services to individuals under 20 years of age. In response, on March 22<sup>nd</sup>, 2017, the Senate Health and Welfare Committee held a hearing on the emergency rule and no one opposed the motion to reject the rule (1 hour 47 minute mark).<sup>1029</sup> Ultimately a subsequent session would provide stop-gap funding to keep the program. The two hour-long hearing<sup>1030</sup> itself demonstrated both a capacity and a willingness on the part of the legislature to engage in rules review. Typically, all parties recognized the value of the program, and it was in the breach of that understanding that the program's importance was made clearest (52-minute mark):

Senator: What are the services? . . . Are we counseling these kids that are suicide risks? Are we counseling kids that just don't like the kind of music their parents are playing? . . . I'd like to talk about what's going on and what we are doing...

Administrator: . . . Youth PSR is mainly a community based service . . . [it] helps individuals with daily living skills, help them recognize triggers that might cause them to be angry [or] to be anxious, that help them recognize their own symptoms, feelings, and thoughts and develop some skills at self-management so that they might help regulate their behavior . . . instead of blowing up . . . an example of the service might be say a ten year old boy with depression, anxiety, anger problems, maybe some school problems say fighting at school, that sort of thing, and the psycho-social rehab for youth would complement therapies . . . individual, family, or group counseling . . .

Senator: . . . Do we save children and young people's lives?

Administrator: I would say yes. That in some cases some of the skills they develop would help them improve their symptoms of depression not feel as depressed, not feel as anxious, function better in school.

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<sup>1026</sup> <https://www.doa.la.gov/Pages/osr/Agency/Agency%20Training/LAC%20Handbook.pdf> page 57-60, accessed 8/13/18.

<sup>1027</sup> <http://house.louisiana.gov/slg/PDF/Chapter%20%20Part%20L%20-%20Administrative%20Procedure.pdf>, accessed 8/13/18.

<sup>1028</sup> [http://knowledgecenter.csg.org/kc/system/files/Table\\_3.26.pdf](http://knowledgecenter.csg.org/kc/system/files/Table_3.26.pdf), accessed 8/13/18.

<sup>1029</sup> [https://www.nola.com/politics/index.ssf/2017/03/plan\\_to\\_end\\_childrens\\_mental\\_h.html](https://www.nola.com/politics/index.ssf/2017/03/plan_to_end_childrens_mental_h.html), accessed 8/15/18.

<sup>1030</sup> [http://senate.la.gov/video/videoarchive.asp?v=senate/2017/03/032217H~W\\_0](http://senate.la.gov/video/videoarchive.asp?v=senate/2017/03/032217H~W_0)

In contrast, the benefits of the program were most commonly cited: 44,000 youths served, program cost-efficiency compared to alternatives, harm mitigation, personal testimonials, demand for services in light of the state's "mental health" crisis, projected 10,000 additional youths to be serviced in the coming year, and expansion of provider supply creating jobs. Most in the hearing asserted the programs value with one stating "I can't do this to kids. We are hurting the least among us (11-minute mark)."

The basis for the emergency rule, the budget cuts in the recently passed budget bill, were the source of many questions focused on efficiency improvements. Several facts came to light as a result: cuts would drive up spending elsewhere in the form of other, more expensive behavioral treatments, hospitalizations and in patient care, the department had already cut in other places including a wrap around services for addicts in recovery (43-minute mark), per unit cost of behavioral treatments (42-minute mark), and that cost containment could conceivably occur over time through improved management. Improved management was the focus of several specific and direct questioning, covering issues like ensuring non-licensed practitioners are sanctioned and better detected (38-minute mark), department-provider teleconferences geared toward cost reductions (27- and 47-minute mark), and improved diagnoses and criteria to ensure more cost-effective application of treatment (31 minute mark).

Some legislators believed behavioral cuts could be realized in other programs and asked administrators questions to that effect, but neither the legislator nor the administrator could point to anything specifically worth cutting. The opposing argument was stated by a legislator "some people think you can always do more with less, but at some point you are going to do less with less," which became an often repeated rhetorical device throughout the hearing. One legislator told the administrator that he needed to do a better job engaging with service providers, indicating that he had spoken to the service providers and understood that the administrator did not have a firm enough handle on actual practitioner licensure (1 hour 42 minutes).

The hearing indicated some legislators were working long hours to understand the emergency rule, the program at stake, the process to exercise a legislative veto, and came prepared to the hearing to problem solve (37-minute mark):

I don't know the answers to these questions but I've gotten a lot of information in a short period of time because, you know, you announce on Friday afternoon that you're going to eliminate this program it puts me in bind because instead of enjoying one of the few weekends I had to enjoy before I had to come back to Baton Rouge to be in session, I got to be on the phone all weekend trying to learn about this process because we have this very important hearing.

Despite the Louisiana legislature's capacity to review rules, Schwartz (2010) and our examination of 2017 rules finds that there are few instances of actual oversight through the rules review process. The Louisiana Register provides monthly online documents that summarize new administrative rules and changes to existing rules. For 2018, the Louisiana Register indicates that of the 344 rules, 225 amended existing rules, 74 created new rules, eight repromulgated a rule,

and 37 repealed a rule.<sup>1031</sup> Repromulgation of a rule is correcting a grammatical error, misspelling, or incorrect citation in a rule. Given the rule activity and the insight from practitioners that the legislature is proactively engaged in the rulemaking process, there is potentially a fair amount of less visible, e.g. informal communication between legislative and executive entities, legislative oversight taking place.

## Oversight Through Advice and Consent

While several of Louisiana's state administrative officials are constitutionally elected (e.g., agriculture, insurance, treasury), the governor appoints, typically with senate confirmation, heads of many key executive branch agencies, including but not limited to commerce, corrections, economic development, environmental protection and state police. We found no evidence in state media outlets to suggest that sitting Governor John Bel Edwards, elected 2016, had difficulty in receiving confirmation from the senate for his appointments despite control of the senate by the opposite political party.

We identified two examples of appointees receiving scrutiny in connection to the senate's powers to advice and consent. One of these is an appointment in 2012 of Education Superintendent, John White, made by the Board of Elementary and Secondary Education (BESE) and approved by the senate (Gyan, 2017). BESE consists of 11 members, three appointed by the governor and eight elected to represent a geographic district and voted on by citizens of that district. Superintendent White has clashed with educators, some tea party politicians,<sup>1032</sup> Governor Edwards and his predecessor, Gov. Jindal, over White's implementation of Common Core standards (Gyan, 2017). Teachers union endorsed candidates, including Edwards<sup>1033</sup> and some Democratic senators who are in the senate minority, have promised ousting White during their 2016 campaigns.<sup>1034</sup> In 2016, White did not receive the eight BESE votes needed to reappoint him pending senate approval, but there were not enough BESE votes to dismiss him, either. As a result, White is serving on a month-to-month contract. The Senate Education Committee killed a 2018 bill that would have forbade a Superintendent of Education from serving more than two regular sessions after the board who appointed him left office, pending a confirmation reappointment vote from the senate.<sup>1035</sup> One of the opponents of the bill said it may result in leaving the seat open for as many as four years (Gyan). White has also survived two lawsuits, both were rejected by the courts on the grounds that only the governor, senate president, attorney general, and East Baton Rouge District Attorney had standing to challenge his seat. It would seem that none of the relevant actors wish to risk a senate appointment vote on either the current office holder or some other candidate. While the superintendent's hold on the

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<sup>1031</sup> <https://www.doa.la.gov/Pages/osr/reg/Regs2018.aspx>, accessed 12/8/18.

<sup>1032</sup> <https://www.the74million.org/article/john-whites-last-stand-inside-the-campaign-to-bring-down-louisianas-school-reform-champion/> accessed 12/12/18.

<sup>1033</sup> <https://medium.com/education-reform/the-madness-of-john-bel-eeeeaafa8f459>, accessed 12/12/18.

<sup>1034</sup> <https://www.the74million.org/article/john-whites-last-stand-inside-the-campaign-to-bring-down-louisianas-school-reform-champion/>, accessed 12/12/18.

<sup>1035</sup> <https://www.kalb.com/content/news/Bill-to-remove-La-Superintendent-of-Edu-John-White-denied-478935233.html>, accessed 12/12/18.

office is tenuous without actually receiving the senatorial confirmation, it is difficult to conceive of the situation as a lack of oversight capacity on the part of the senate. In its absence, the maneuvering and convoluted politics surrounding the superintendent position suggests that advice and consent powers are recognized by the actors as a powerful tool for achieving compliance.

Dr. Rebekah Gee's appointment to chief of the Department of Health, despite outcry from anti-abortion groups (Ballard, 2016), was confirmed by the senate. As chief of the Department of Health, she played an important role in the aforementioned promulgation of prescription drug benefits under Medicaid. Aside from these instances, of the 26 appointments that require senatorial approval, none of the other nominees encountered challenges that triggered media attention.

The governor created 33 executive orders in 2017 including but not limited to orders that create commissions,<sup>1036</sup> create task forces,<sup>1037</sup> disaster response to explosions on military bases,<sup>1038</sup> suspension<sup>1039</sup> of early voting,<sup>1040</sup> put flags at half-staff, a carry-forward bond allocation,<sup>1041</sup> and the authorization for the replacement of certain heater units with offender labor.<sup>1042</sup> The governor also has the power to reorganize state agencies using executive orders. The legislature does not have the power to review executive orders including those involving agency reorganization (Book of the States). The courts, however, rule from time to time on the constitutionality of executive orders. An April 2016 executive order that would have provided protections to LGBT employees of state contractors was deemed unconstitutional by an appeals court. The decision cited executive usurpation of legislative functions.<sup>1043</sup> The Louisiana State Supreme Court decided on a 4-3 basis to not consider an appeal. Thus the executive order was nullified to preserve separation of powers. The court rulings are considered a victory for the Republican attorney general and his allies in the legislature who have refused to take up legislation to protect LGBT employees.<sup>1044</sup>

## Oversight Through Monitoring of State Contracts

The Office of State Procurement (OSP) is a unit under the executive branch Division of Administration and is tasked with oversight of state procurement generally.<sup>1045</sup> The executive branch is the primary actor involved in monitoring state contracts, but the Louisiana legislature has built capacity to examine contracts in both the Louisiana Legislative Auditors (LLA) office

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<sup>1036</sup> <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-31.pdf>, accessed 8/16/18.

<sup>1037</sup> <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-30.pdf>, accessed 8/13/18.

<sup>1038</sup> <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-29.pdf>, accessed 8/13/18.

<sup>1039</sup> <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-27.pdf>, accessed 8/13/18.

<sup>1040</sup> <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE-17-28.pdf>, accessed 8/13/18.

<sup>1041</sup> <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE17-03.pdf>, accessed 8/13/18.

<sup>1042</sup> <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE17-08.pdf>, accessed 8/13/18.

<sup>1043</sup> <https://ogletree.com/shared-content/content/blog/2017/november/louisiana-court-finds-executive-order-extending-protections-to-lgbt-employees-of-state-contractors>, accessed 8/13/18.

<sup>1044</sup> [https://www.nola.com/politics/index.ssf/2018/03/louisiana\\_lgbt\\_supreme\\_court\\_r.html](https://www.nola.com/politics/index.ssf/2018/03/louisiana_lgbt_supreme_court_r.html), accessed 8/13/18.

<sup>1045</sup> <https://www.doa.la.gov/PAGES/OSP/INDEX.ASPX>, accessed 8/15/18.

and in the Joint Legislative Committee on the Budget (JLCB). In 2016, facing a budget crisis, the Louisiana house passed legislation that would require the governor's office and other statewide elected officials plus the commission of higher education to review and justify to the JLBC all of their contracts with outside vendors.<sup>1046</sup> As a result of pressure from both the legislature and Gov. John Bel Edwards, the number of state contracts decreased from 14,125 in July of 2016 to 10,551 in July of 2018. The number had grown precipitously under former Gov. Jindal as he tried to privatize state government. Gov. Edwards' office said that when he took over the executive branch no one really knew how many contracts agencies had, and they were not required to report all of them. A 2015 auditor's report estimated that there were 5,000 contracts that were not tracked by the Jindal administration. After an executive order issued by Gov. Edwards regulating contracts, an executive branch inventory of them, and instructions from the legislature to cut back on contracts, the situation has improved, but there is more work to be done.<sup>1047</sup>

The LLA deals with procurement issues so often<sup>1048</sup> that it has a variety of FAQs and memos to assist staff and the public in understanding the relevant issues.<sup>1049</sup> A perusal of the reports shows that they often address contracting issues. Legislative auditor recently found issues with Medicaid contracting and was critical of the way the program is being run by the Louisiana Department of Health.<sup>1050</sup> This report and other issues have sparked a task force to review the efforts that started under Gov. Jindal, a Republican, to privatize contracts that have so little monitoring that the sitting Department of Health Chief stated:<sup>1051</sup>

I frankly do not have the staff that I should have to manage the number of contracts I do... If I ran a private business, if I ran a Google, there is no way I would do it with so few people because it's wasteful.

In 2015 the legislature passed Act 87, which requires the OSP to provide the JLCB a monthly report of certain contracts.<sup>1052</sup> JLCB reviews Act 87 contracts monthly (interview notes 2018).<sup>1053</sup> The review is occurring during monthly JLCB hearings, including questioning by legislators, but archived recordings of hearings indicate that the review is limited.<sup>1054</sup> We could not find any instances of an Act 87 contract report that triggered an investigation or the rigorous

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<sup>1046</sup> [https://www.theadvocate.com/baton\\_rouge/news/politics/legislature/article\\_a93120ad-cc36-585b-9c47-7c12ccf8b5a4.html](https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_a93120ad-cc36-585b-9c47-7c12ccf8b5a4.html), accessed 12/2/18.

<sup>1047</sup> [https://www.theadvocate.com/baton\\_rouge/news/politics/article\\_1e3b2bb6-b9cb-11e8-8161-87a51886fa28.html](https://www.theadvocate.com/baton_rouge/news/politics/article_1e3b2bb6-b9cb-11e8-8161-87a51886fa28.html), accessed 12/2/18.

<sup>1048</sup>

[https://app.lla.state.la.us/llala.nsf/27670DBD4E563BE986257AC2004F9253/\\$FILE/Louisiana%20Procurement%20Code.pdf](https://app.lla.state.la.us/llala.nsf/27670DBD4E563BE986257AC2004F9253/$FILE/Louisiana%20Procurement%20Code.pdf), accessed 8/15/18.

<sup>1049</sup> <https://lla.la.gov/legal-faqs/public-purchasing/>, accessed 8/15/18.

<sup>1050</sup> [https://www.theadvocate.com/baton\\_rouge/opinion/article\\_4c2bd292-8144-11e8-a4e3-ebfb69ba6698.html](https://www.theadvocate.com/baton_rouge/opinion/article_4c2bd292-8144-11e8-a4e3-ebfb69ba6698.html), accessed 8/15/18.

<sup>1051</sup> <https://www.shreveporttimes.com/story/news/2017/10/29/analysis-louisianas-medicaid-contracts-get-new-scrutiny/811998001/>, accessed 8/15/18.

<sup>1052</sup> <http://digital.state.lib.la.us/digital/collection/p267101coll4/id/26969>, accessed 8/15/18.

<sup>1053</sup> [http://jlcb.legis.la.gov/default\\_Archives2018.aspx](http://jlcb.legis.la.gov/default_Archives2018.aspx), accessed 8/15/18.

<sup>1054</sup> <http://jlcb.legis.la.gov/>, accessed 8/15/18.

discussion and analysis of a particular contract by the JLCB. However, the Act is rather expansive and grants the legislature a relatively new tool to monitor contracts. According to an interviewee, legislator’s questions are often informed by legislative audits—both financial and performance audits—but more often these audits will be program audits. Aside from Act 87, RS 39§1615 requires contracts regarding “professional, personal, consulting, or social services entered into for a period not more than five years but” over three years to be approved by the JLCB (interview notes, 2018).

## Oversight Through Automatic Mechanisms

Louisiana has a comprehensive sunset review law—one of only 10 states in the country that uses an automatic sunset law so extensively. As a result of this law, the LLA annually reports to the legislature on “Boards, Commissions, and Like Entities” (Louisiana Revised Statute (R.S.) 24:513:2E). The version of this annual report produced on June 30, 2018<sup>1055</sup> reported that the number of these entities in the state had increased by 13 in the previous year, producing a total of 477. This reflects 20 newly created entities and seven entities abolished during the previous year. In this report it listed three entities that did not respond to the auditor’s request for information despite a legal requirement that all these entities do so (R.S. 24:513.2F). In this same report, the LLA makes the understated recommendation that “[t]he legislature may wish to consider taking some action against Boards that fail to comply with the reporting requirements in state law” (p. 4). It also identified 14 inactive entities with a recommendation that the legislature abolish all 14. Finally, it tabulated the costs of each of the 477 entities arises from salaries (total \$1.7 million), travel expenses (total \$2.1 million), and per diems (total \$1.3 million). The costs and activities for each entity are publicly available through a database provided by the Division of Administration<sup>1056</sup> in response to Act 12 of 2009. More than two thirds of the 477 entities had no per diem, travel or salary costs. Of the 134 that did report expenditure in these categories, a few, such as a Gaming Control Board and the Tax Commission, were quite expensive (more than \$300,000 annually), while others, such as the Polygraph Board, were quite inexpensive (less than \$1,000 annually). Finally, this report reveals that the legislature acts on LLA reports. During the Regular Legislative Session of 2018 it passed Act 661, which abolished seven entities that the LLA labeled as inactive in previous iterations of this annual report (p. 3).

In addition to its annual review of boards, commissions, and like entities, Louisiana’s state agencies are reviewed every six years to decide whether to terminate them. There is a one-year phase out period for terminated state agencies, which involved shutting down all offices within the agency. In December 2017 the House and Government Affairs reportedly started working on 12 sunset reviews of state agencies that the committee would need to complete by July 1, 2018. The first agency that the committee scrutinized was the Louisiana Department of State. Testifying before the committee, Secretary of State Tom Schedler explained that the only activities for which is department still received general fund dollars were

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<sup>1055</sup> [https://www.la.gov/PublicReports.nsf/6A1477D749483C5B8625832200691043/\\$FILE/0001A9B5.pdf](https://www.la.gov/PublicReports.nsf/6A1477D749483C5B8625832200691043/$FILE/0001A9B5.pdf), accessed 12/2/18.

<sup>1056</sup> <https://wwwcfprd.doa.louisiana.gov/boardsandcommissions/selectBoard.cfm>, accessed 12/2/18.

overseeing and running elections and running 18 museums, seven of which he had transferred to local entities. He planned to transfer four more museums out of the state department. But he reported that the state needed to buy new voting machines.

Preliminary examination is conducted by the standing committees of the two houses with subject matter jurisdiction. The scope is considered comprehensive, i.e. it requires all statutory agencies to be subject to a sunset review once per review cycle. Performance evaluation is another oversight mechanism in law. Agencies can have a life cycle of up to six years and the phase out period is one year. The act provides for termination of a department and all offices in a department. Finally, the Joint Legislative Committee on the Budget conducts a sunset review of programs that were not funded during the prior fiscal year for possible repeal (Book of the States).

## Oversight Through Performance-based Budgeting

The Office of Planning and Budget is an executive branch agency and has the primary responsibility for implementing performance-based budgeting. A variety of approaches are taken: long and short term financial analysis, operating budget development, monitoring and control, policy development, planning, accountability, and other management services including the maintenance of a statewide performance database and integration of performance data into the budget process (Louisiana Performance Accountability System).<sup>1057,1058</sup> The Legislative Fiscal Office produces an annual report summarizing performance standard adjustments and providing their own recommendation.<sup>1059</sup>

## Methods and Limitations

We were able to interview four people in Louisiana. Archived recordings of committee hearings are available. Minutes are posted separately from the recordings, but are available. Minutes are exceptionally detailed.

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<sup>1057</sup> <https://wwwcfprd.doa.louisiana.gov/lapas/view/viewframe.cfm>, accessed 8/29/18.

<sup>1058</sup> <https://www.ncsc.org/topics/financial/budget-management/state-links.aspx?cat=State%20Budget%20Offices#Louisiana>, accessed 8/29/18.

<sup>1059</sup> <http://lfo.louisiana.gov/perform>, accessed 8/15/18.

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