



State Legislative Oversight: **Nevada**



Capacity and Usage Assessment

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

To read the full 50 state study or to discuss the Nevada state report, please contact Benjamin.Eikey@wayne.edu.

Legislative Oversight in Nevada

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Summary Assessment

Although Nevada’s legislature meets only biennially, it uses several mechanisms to ensure continuity in legislative oversight. First, it uses interim committees to pursue oversight when the legislature is not in session. The stipends provided to members on these committees mean that a handful of legislators are literally paid to perform clearly defined oversight activities (e.g., audit hearings and sunset reviews). Second, the Legislative Counsel Bureau (LCB), which produces legislative audits, is an exceptionally powerful bureaucratic support agency. It can cut funds to state agencies based on audit findings, although it appears to use this power very rarely. This provides a mechanism for prompt response to serious problems that might arise between the infrequent legislative sessions. The legislature itself uses its oversight prerogatives (such as sunset reviews) more vigorously than many other state legislatures.

Major Strengths

The state balances partisan representation on oversight committees, which increases the potential for bipartisan oversight. The LCB works closely with the interim oversight committees to ensure that agencies comply with audit recommendations. Interim committee members are paid a daily salary plus expenses, thus, when the legislature is not in session, members of the interim oversight committees are paid to perform oversight activities, which could contribute to legislators’ commitment to oversight. The LCB produces compliance reports and the legislature uses these reports in appropriations hearings to impose budget consequences on agencies that resist audit recommendations. The LCB also recommends legislative action based on audit findings and produces reports on whether the legislature acted. These reports (agency compliance and legislative action) are available publicly, which increases transparency and information about government performance. Nevada has sunset review requirements, and its legislature uses this power to terminate, consolidate, or revise boards and commissions. In its most recent review it made changes to two-thirds of the entities it reviewed.

Challenges

Nevada's legislature has almost no power to oversee gubernatorial appointments; only one gubernatorial appointment requires legislative confirmation. As is typical for most states, the legislature lacks the power to oversee state contracts directly. It can only interject itself into contracting problems through an audit report of the agencies involved in the contract. These lacunas are important because the gaming industry is a major actor in the business and political environment in Nevada. Giving the executive branch a free hand in appointments and contracts may leave the state vulnerable to conflicts of interest and improper conduct in industries that involve huge sums of money.

Relevant Institutional Characteristics

Nevada has a citizen legislature, ranked 30th in professionalism according to Squire (2017). Nevada is one of only four states that meet biennially. The legislative session is constitutionally restricted to a maximum of 120 consecutive days, and legislators are paid for only the first 60 days at a rate of \$146.29/day for midterm members and \$150.71 /day for those elected in 2016, plus both receive expenses (NCSL, 2017a). This equates to about \$9,000 for the legislative session for the base pay, with an estimated maximum compensation of \$17,000 (Gray et al., 2017). Thus, many legislators are likely to hold professions outside of their legislative responsibility (NCSL, 2017b). During the session, there is one full-time secretary for the legislature. In 2015, there were 284 permanent staff and 301 session-only staff, for a total of 585 permanent and session-only staff serving the legislature.¹⁴⁸⁹ Between legislative sessions, the members have no district or personal staff. In 1999, Nevada created a non-partisan support unit, the Legislative Constituent Services Unit, to assist legislators. The unit has 14 staff members during the legislative session.

Nevada has a relatively small legislative body with a total of 63 members, 42 in the assembly and 21 in the senate. The term limits for the state legislature in Nevada are among the weakest, along with Wyoming and Louisiana. The state constitution allows for a maximum combined total of 24 years of service, 12 years in each chamber. The leniency of the term limits allows legislators to gain substantial experience in their roles.

Nevada's governor possesses only slightly more than the average U.S. governor's power. Ferguson (2015) ranks the state's governor as the 21st most powerful in the country. Several factors limit this power. First, Nevada has a biennial budget process, and the governor lacks line-item veto power. The governor holds only package veto power, which means that the entire bill must be rejected. The executive branch budget department's forecast limits everyone's budgetary discretion, although in theory the governor might be better positioned to influence the agency's estimates. Second, in 2012, the governor lost sole power to call a special session of the legislature. The legislature now shares the power to call a special session, if necessary. Third, the governor lacks the power to reorganize government. Historically, reorganizations have occurred

¹⁴⁸⁹ <http://www.ncsl.org/research/about-state-legislatures/staff-change-chart-1979-1988-1996-2003-2009.aspx>, accessed 6/29/18.

through legislative action.¹⁴⁹⁰ Fourth, several other executive branch officials are elected separately, including most notably the lieutenant governor, the treasurer, and the controller, in addition to the more commonly elected attorney general and secretary of state (Haider-Markel, 2008). On the plus side, the governor appoints other department heads, so Ferguson rates this as moderate appointment power (Ferguson, 2015). Also, there is no legislative review of executive orders.

Nevada has the lowest average share of local and state government employees as a percentage of its workforce of all of the states. The national average is 11.3%, while Nevada has only 8.6%, according to the Cato Institute (Edwards, 2006). Of these employees, a lower than average share work in K-12 education (4.1% for Nevada compared to 6.1% nationally). In the areas of safety, welfare, and services, there is no significant difference in comparison with the other states (Edwards, 2006).

Political Context

Nevada was historically a solidly Democratic state until the 1980s, when an influx of conservative voters led to Republican takeover (Haider-Markel, 2008). More recently, (1993 onward), Nevada became a battleground state, split between both parties.¹⁴⁹¹ Currently, a young urban population in southern Nevada and an older, more rural population in northern Nevada shape the political context. In 2016, this dynamic produced a shift from a Republican trifecta to divided government with Democrats controlling the legislature and Republicans retaining the executive branch. Reflecting the history of Republican influence, state government emphasizes limited government, low state services, and low tax burden. In 2018 Nevada became a Democratic trifecta. A change in voter demographics, in particular, the growing proportion of minorities who disproportionately vote for the Democratic Party, could also be a factor in this shift (Posner & Ocampo, 2015).

Although two-party competition in the state persists (Hinchliffe & Lee, 2016), the distance ideologically between the two parties in both legislative chambers is not as wide as one might guess. Shor and McCarty (2015) place Nevada's lower chamber and upper chambers at about the middle of the pack nationally, 24th and 29th most polarized respectively. Much of this can be attributed to a relatively moderate caucus for both political parties in both these legislative chambers. Approximately 30 other states have a more liberal Democratic caucus than the ones in Nevada's lower and upper chambers and between 25 and 30 state Republican caucuses are more conservative than are Nevada's Republican caucuses. Party competition appears to pull both political parties toward the center in Nevada.

The gaming industry has an overwhelming presence in Nevada. During the 2016 election cycle, the industry donated to the campaigns of every member of the legislature. These donations amounted to almost a fifth of the aggregate total of campaign financing reported (Messerly, 2017). As will be evident, the activities of this powerful interest group appear to motivate efforts to monitor government entities. This encourages use of checks and balances more generally throughout state government.

¹⁴⁹⁰ The 2011 SB427 and several assembly bills in 2015 authorized the movement and reorganization of several state agencies. In 2017, AB469 passed into law and authorized the reorganization of the Clark County School District.

¹⁴⁹¹ https://ballotpedia.org/Party_control_of_Nevada_state_government, accessed 6/29/18.

Dimensions of Oversight

Oversight Through Analytic Bureaucracies

The legislature in Nevada is closely linked to its analytic support bureaucracies through a committee of legislators called the Legislative Commission (LC), which works in tandem with the Legislative Counsel Bureau. The Legislative Counsel Bureau (LCB), created by statute in 1945, is a staff agency supervised by the Legislative Commission, (LC) which consists of 12 legislators, six from each chamber. The LC is empowered to function between sessions, during which legislators receive a daily salary, per diem, and a travel allowance. The membership of this commission is established anew by a joint rule adopted at the start of each regular session of the legislature. Most of the LC members hold leadership positions within their chamber party caucuses. The 2018 LC members include six Democrats, five Republicans, and one Independent, which is much more balanced than the partisan composition of the two chambers (the senate: 11 Democrats, nine Republicans, and one Independent, and the assembly: 27 Democrats and 15 Republicans). This is another example of a state in which committees with oversight responsibility provide an opportunity for participation by the minority party. Three subcommittees within the LC are tasked with specific oversight responsibilities: The Audit Subcommittee, the Subcommittee to Review Regulation, and the Sunset Subcommittee.

The LC oversees the LCB, which has five staff divisions, two of which are relevant to legislative oversight: The Audit Division and the Fiscal Division. The commission appoints the Director of the LCB, who, in turn, appoints the directors for the LCB divisions, including the Chief of the Audit Division who serves as the legislative auditor. The legislative auditor is responsible for oversight over all state agencies, general audits, financial audits,¹⁴⁹² and single audits,¹⁴⁹³ as well as auditing federal programs at the state level, school district reviews, child welfare case file reviews, and special license plate reviews. It works closely with an LC subcommittee, the Audit Subcommittee, which consists of five legislators. The LC has the authority to request special audits or investigations, thus, legislators can influence the legislative audit agenda. During the 2015-2016 biennium, the legislators, through the commission, requested two special audits, an audit of the Nevada State Board of Dental Examiners and an audit of Horse Power, a 501c3. These audits focused on the expenditures and performance of these agencies.

The LCB is empowered to conduct investigations, hold hearings, and may subpoena witnesses and compel the production of any documents necessary to its investigations (NRS, 218). Audits may vary in scope based on the agency and the purpose of the audit. Agency audits include fiscal affairs and performance of the agency. The audit division receives a state appropriation of \$3 million and employs 27 professional staff to support its work. Almost all of its staff (23 of 27) work on performance audits and two staff perform IT audits. Some financial audits are completed by contracted CPAs.

After the Audit Division generates an audit report, the agency has 10 days to respond in writing to the findings and recommendations, either accepting or disputing them. Once an audit is complete and accepted by the Audit Subcommittee, the agency has 60 working days to produce a corrective action plan and submit it to the Audit Division (interview notes, 2018).

¹⁴⁹² https://ballotpedia.org/Nevada_Legislative_Counsel_Bureau, accessed 1/3/19.

¹⁴⁹³ <https://www.leg.state.nv.us/Division/Audit/>, accessed 1/3/19.

Once a corrective action plan is agreed to, the agency has six months to implement it. At the end of the six months, the agency's operations are reviewed once more by the Audit Division. If the audit division is not satisfied, the division will make further recommendations and will take the information to the Legislative Commission and Audit Subcommittee. If an agency fails to complete a corrective action plan, the Director of the Office of Finance is notified (NRS, 218G.250, NRS, 218G.260). This can trigger a hearing to determine if appropriated funds will be withheld from the agency. Although this is an executive branch office, the process is triggered by request from the Audit Division, which as described above is supervised by a legislative entity, the LC. This hearing process has only been triggered once, and no funds were withheld because the agency complied (interview notes, 2018). This process for ensuring that corrective action plans are completed was highlighted in a 1991 Government Accountability Office document detailing best practices.¹⁴⁹⁴

During the 2015-2016 legislative session, the Audit Division completed 13 agency performance audits, two information security audits, and a review of governmental and private facilities for children, which state statute required. The audited agencies are required to respond to all recommendations. The individual audit reports detail the recommendations provided, which recommendations the agencies accepted, and information on subsequent corrective action plans as necessary. The legislative auditor can also recommend the amendment of existing laws or enacting new laws. During the 2015-2016 biennial legislative session, the LCB recommended bills requesting performance audits for improving state government. This resulted in one piece of legislation signed into law on audit requirements for the Department of Education (A.B. 278 2015).

The other division of the LCB that is involved in oversight is the Financial Analysis Division (FAD), which aids legislators with budget and fiscal analysis, as well as tax issues. It is led by the senate fiscal analyst and the assembly fiscal analyst who supervise a staff of two deputy fiscal analysts and 23 program analysts.¹⁴⁹⁵ The FAD works with the Interim Finance Committee. This committee consists of seven senators and 14 assembly members chosen from the Senate Standing Committee on Finance and the Assembly Standing Committee on Ways and Means.¹⁴⁹⁶ The Interim Finance Committee provides continuity on budget and financial transactions between regular legislative sessions. It is empowered to provide contingency funds to state agencies. Agencies request these funds through the State Board of Examiners, which passes requests along to the Interim Finance Committee if it deems them justified.

The FAD staff produces an annual fiscal report that analyzes the governor's executive budget, summarizes revenue, expenditure trends, and tax changes, as well as budget information for each state government function. The division also produces an appropriations report. It annually forecasts the state's general fund revenues.

Vignette: Community Based Living Arrangements

Reporting by the Reno Gazette Journal in 2016 exposed terrible living conditions in housing paid by the state to privately owned, residential homes to house mentally ill patients (KNPR, 2018). This initial reporting did not result in corrective action from the agencies or the executive branch, but the legislature investigated through its Audit Division. The resulting audit

¹⁴⁹⁴ <https://www.gao.gov/special.pubs/p0921.pdf>, accessed 6/29/18.

¹⁴⁹⁵ <https://www.leg.state.nv.us/Division/Research/Publications/Directory/Directory.pdf>, accessed 6/29/18.

¹⁴⁹⁶ <https://www.leg.state.nv.us/Division/Research/Publications/Misc/LCBOverview.pdf>, accessed 6/29/18.

and the subsequent vigorous oversight demonstrates that Nevada has the capacity to gather actionable information about its agencies, transmit that information to legislative leadership, and develop a plan specific to the agency to ensure accountability. We trace this process from initiation to the most recent steps taken by the legislature to hold the agency accountable to highlight the effective practices found in Nevada’s legislative oversight.

Media coverage and other risk-based factors led the Audit Division of the Legislative Counsel Bureau to put the government program, called, “community-based living arrangement homes,” on its yearly audit schedule for 2017 (interview notes, 2018). The scheduled audit was added to a slate of other scheduled audits for the coming year, which is required by law to be submitted to the Legislative Commission Audit Subcommittee for a majority vote.¹⁴⁹⁷ The goal was to ensure the public resources were being spent in the manner intended, that the proprietors of the homes were providing a safe, clean living environment, and that the routine inspections conducted by state agencies to ensure compliance were working (interview notes, 2018).

Once scheduled and approved, the audit was assigned to an audit team. Part of the audit process included field trips to the group homes. Thirty-seven such homes were visited during the audit process. Each patient in the home brings in \$1,450 a month for the proprietor and some homes have six to seven patients at once (Giwargis, 2018a). Once the investigation and audit report were completed, the document was given to legislators serving on the Legislative Commission Audit Subcommittee. The subcommittee members have eight days to review the report before their scheduled public hearing with Audit Division staff and the government agency responsible for implementing and monitoring group homes, in this instance, the Division of Public and Behavioral Health (Associated Press, 2018). By statute, the details of the audit remain confidential while it is being produced, and legislators are not permitted to see the audit report until eight days before the initial public hearing. At the hearing, the audit is presented, and then the Audit Subcommittee votes on whether or not to accept the audit—a formal procedure required by statute. Audits have always been accepted (interview notes, 2018).

Findings presented at the January 17, 2018 Audit Subcommittee public hearing exposed mismanagement and deplorable living conditions in 37 group homes. Photos in the audit report show animal infestations, mold, filth, piles of garbage, human waste, and broken glass. Some patients were expected to provide child care for the proprietors while they were at work, and medications were not securely stored. The audit noted failures on the part of inspectors, who did not flag these issues despite a mandatory monthly inspection of the homes. Annual reports that did identify problems did not trigger action—only an inspection again in another year (Giwargis, 2018f), allowing conditions in the homes to worsen (Giwargis, 2018f). A senator at the hearing called the program a “failure” and stated “taxpayers are basically paying slumlords to warehouse people with mental illness in unsafe and filthy conditions” (Giwargis, 2018a). An administrator for the program was grilled by legislators. She did not defend the conditions of the homes, but rather stated that the deputy administrator had been replaced, and they are working with the homes to make improvements. She would later resign after it came to light that the deputy administrator was replaced for other, unrelated reasons, and amid accusations that she lied to legislators during the hearing (Giwargis, 2018d). One of the difficulties identified in the

¹⁴⁹⁷ Practitioners stated that there are three audit sources: Legislative Commission, statute, and the Audit Division placing it on a schedule that must be approved by the Audit Subcommittee. The yearly schedule source of initiation was described as by far the most common source, with the other two being tied in frequency. We were also told that agency staff and the governor do not make requests of their office for audits, rather there is a parallel agency within the executive branch that performs the same function.

report and a possible explanation for some of the underreporting of unsafe or dirty living conditions is that there are not enough homes currently available to meet the needs of patients. This is an issue the agency is expected to address.

The hearing itself triggered efforts to correct the problems. Practitioners close to the issue said, following the hearing, oversight in this area was “vigorous” and corrective action from the agency was relatively swift. The Director of the Nevada Department of Health and Human Services, Richard Whitley, replaced the administrator. He made public his commitment to addressing the issues identified in the audit. A part of the plan is to inspect all homes in the community-based living arrangement program (Dornan, 2018), and he transferred responsibility for the inspections from case workers and clinicians to Health Care Quality and Compliance, a licensing and regulatory agency that oversees health care businesses (Giwargis, 2018f). Based on a home’s condition, it would be put on a 10 or 30-day corrective action program (Giwargis, 2018e). Failure to make the required improvements in time could result in the home being ineligible for the program. 84 homes in Southern Nevada and 38 homes in Northern Nevada were put on a corrective action program in February 2018. One home was closed by the state, yet the University of Nevada Las Vegas mental health clinic continued to place patients in the home despite its closure. Once state officials learned that patients were still being sent to the home, the home was closed once again and the UNLV clinic that was sending patients to the closed home lost state support for the program (Giwargis, 2018c). Additional investigations into contracts associated with the community-based living arrangements program are ongoing and expected to be completed this summer.

In addition to agency corrective action, an interviewee stated three different legislative health committees held hearings during the interim at which the Audit Division staff presented information on this issue. Further legislative action is not expected; rather the governor and the executive branch are being given time to make corrections. In addition to the actions taken by the agency and the change in leadership, interviewees stated that the governor has made changes to oversight of the program, taking it out of the mental health agency. While it is possible for legislation to result from an audit—it happens two to three times every session—it is not expected (interview notes, 2018).

By tracing the audit from its initiation to implementation of corrective action plans, this case of community-based living arrangements demonstrates legislative capacity and utilization of legislative oversight through the analytic bureaucracy.

Oversight Through the Appropriations Process

The Fiscal Analysis Division (FAD) of the LCB conducts most of the analysis during the appropriations process. The Nevada Revised Statutes (NRS) outlines the composition and responsibilities of the division. As noted earlier, the division consists of the senate fiscal analyst, the assembly fiscal analyst, and 25 other staff as needed to provide the legislature with independent review and analysis of budgetary, tax, and fiscal matters. The FAD has the authority to request information from any elected official, agency, board, or other institution that receives state or federal funding for state programs for performing the duties of the division (NRS, 218). Prior to the beginning of each legislative session, the FAD is responsible for providing information and support to the appropriations committees from both legislative chambers in

advance of the committee budget hearings. The FAD coordinates all actions and information between legislative subcommittees, money committees,¹⁴⁹⁸ and the agencies.

The legislature is responsible for review of the biennial budget proposed by the governor, as well as agency funding requests. The legislature approves final budget appropriations. Reports completed by the FAD compare the budgets requested by the governor and state agencies with what the legislature actually approved. Reports from the legislative auditor can also impact the appropriations process (interview notes, 2018). An interviewee recalled budgets being “adjusted downward when the Audit Division has identified cost savings or revenue enhancements as part of . . . audit recommendations” (interview notes, 2018). As noted earlier in this summary, the money committees can also put pressure on agencies to implement audit recommendations during the budget process.

The following example illustrates oversight through the appropriations process. In February 2017, the Assembly Ways and Means and Senate Finance Committees held hearings with State Treasurer Dan Schwartz.¹⁴⁹⁹ The hearing was regarding the treasurer allegedly failing to follow the direction of the committees in situations regarding hiring and other projects. The Chair of the Assembly Ways and Means Committee, Maggie Carlton, asked a staffer a series of questions and other legislators followed up with both statements and questions to confirm the agency’s failure to comply with legislative intent expressed several years prior. The following exchange exemplifies the legislature engaging in oversight in the hearing (approximately one hour and 40-minute mark):

Legislator: This is the beginning of what in my notes seems to be a theme of the legislature having been asked for something, the legislature having said no, then your office doing it anyway and then coming back two years later to ask the legislature to pay for something they already said no to.....it seems to be a theme and I’m wanting to make sure I understand how that happened because the answer [the legislature] gave was no. . . .

Dan Schwartz: We need that position. you certainly have the right to give us a budget, no one is disputing that, okay, but we need that position. And again, we are members of respective branches of government and we believe since we stayed within the budgetary guidelines we had the right to [make that hire].

The agency then explained that because they had enough money at the time to make the hire, and they got permission from the executive branch, they went ahead and did it. To that, a legislator responded, “It feels like my son went to mom and mom said ‘no,’ then my son went to dad and dad said, ‘you don’t have to go back to mom.’” What followed was an argument about process with the chair making the final point that the legislature, not the executive, decides on these kinds of budgetary issues. The projects in question include the Educational Savings Account program and the expansion of the state’s College Kick Start program (Margiott, 2017). There is no evidence of any punitive action against the treasurer as a result of the hearing. This is likely because the treasurer is an independently elected official, but the legislature, using its power of the purse, eliminated funding for the program.

¹⁴⁹⁸ In Nevada the common terminology for appropriation committees in money committees.

¹⁴⁹⁹ http://nvleg.granicus.com/MediaPlayer.php?view_id=29&clip_id=6693, accessed 10/5/18.

Oversight Through Committees

The volume of bills and resolutions introduced in a legislative session is unwieldy for a citizen legislature that meets, typically, for 120 days every two years. Because it is difficult for standing committees to handle the workload during the legislative session, Nevada relies heavily on interim committees, which meet when the legislature is not in session. In the 2017-18 interim there were 24 statutory committees and 9 legislative interim studies. Because the Nevada legislature meets biannually, the interim is long—20 months. Yet interim committees do not appear to meet very often. Some interim committees, according to the citizen’s guide to Interim Committees of the Nevada Legislature,¹⁵⁰⁰ meet outside the state capital. For example Committee on High-Level Radioactive Waste the toured the Nevada National Security Site during one of its meetings during the 2017-18 interim. This committee made no recommendations in its report, nor did it propose legislation. The Legislative Committee on Education suggested nine bills, reporting that these bill draft requests would be available during the 2019 session.¹⁵⁰¹

The Legislative Commission’s Audit Subcommittee, for instance, met three times, all in 2018. The Legislative Commission’s Subcommittee to Review Regulations met twice, once in 2018 and once in 2017. On the other hand, the Legislative Committee on Health Care met seven times during the 2017-18 interim. The April 24th, 2018 meeting of this committee lasted approximately six hours and addressed numerous agenda items. Public agency officials were called to testify; interest group advocates and citizens gave public testimony. Legislators appeared to ask insightful questions, and meeting minutes indicate a lively debate among committee members and witnesses at several points during the hearing.

Interim and standing committee publish reports through the Research Division of the Legislative Counsel Bureau. These reports summarize their work, list recommendations and suggested legislation, assuming the committee has recommendations to make.

Despite the heavy workload, there is evidence that both standing and interim committees find time to exercise oversight and that they make use of their power to subpoena witnesses and documents for future legislative action (NRS, 218E).

Vignette: Gaming Control Board

The Nevada Legislature held hearings in March of 2016 to examine charges of improper conduct by the attorney general after the then Chair of the Nevada Gaming Control Board (GCB), A. G. Burnett, leaked surreptitious voice recording of a conversation between himself and Attorney General Adam Laxalt. The incident occurred after Attorney General Laxalt invited GCB Chair Burnett to an urgent, one-on-one meeting (ATDLEFT, 2017). From testimony and memos written by Burnett, he felt Laxalt’s request might have to do with using the GCB to assist a campaign contributor of Laxalt, Sheldon Adelson, in an upcoming lawsuit. The lawsuit involved a former employee of a casino founded by Adelson, the Sands. The former employee had filed a wrongful termination lawsuit and was seeking documents held by the GCB in the

¹⁵⁰⁰ <https://www.leg.state.nv.us/Division/Research/Library/Interim/InterimCommitteeBrochure.pdf>, accessed 1/12/19.

¹⁵⁰¹ <https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2019/Bulletin19-13.pdf>, accessed 1/12/19

discovery phase of the lawsuit. Burnett was worried that Adelson, through Laxalt, would request the GCB provide an amicus brief to the court agreeing with the Sands interpretation and supporting the confidentiality of the GCB documents—thus keeping them out of the wrongful termination suit. Burnett’s concern of impropriety caused him to secretly record the conversation, write extensive internal memos documenting the matter, and report it to the FBI. While no wrongdoing was found by the FBI, the recording and memos were leaked to the press by a party unknown. The suggestion of impropriety set off serious efforts at oversight.

This incident was covered closely by area media, sparking legislative oversight initiated by the Assembly Ways and Means Committee (Noon, 2017). The legislative oversight included a hearing, draft legislation seeking to fundamentally change the relationship between the GCB and the Office of the Attorney General (OAG), a statute addressing the confidentiality of GCB documents, and a funding line for an internal lawyer at the GCB. This oversight occurred against the backdrop of political conflicts, tension between the attorney general and the legislature, and the beginning of Laxalt’s gubernatorial campaign. Ultimately, despite both sides using the issue for partisan advantage, the incident demonstrates Nevada has both the capacity and can exercise meaningful legislative oversight to produce policy outcomes despite political distractions.

AB 513— a bill that would create an independent general counsel for the GCB—was drafted to address structurally the possible impropriety between the attorney general and the Chair of the GCB implied by the leaks (MyNews4, 2017). A hearing on the bill occurred on May 17, 2017, in the Assembly Ways and Means Committee at which Attorney General Laxalt and Chair Burnett gave testimony. The minutes and an video recording of the hearing are available online.¹⁵⁰² The hearing included the subpoenaed tape recording and memos. At the hearing, legislators grilled them for nearly an hour each. Neither Burnett nor Laxalt felt a need to change to their methods of operations, and neither considered the proposed legislation appropriate. Burnett seemed annoyed by legislators’ questions. Both insisted neither they nor the GCB acted improperly, and they both behaved as if nothing abnormal had occurred whatsoever, leading both parties to declare their version of a partisan victory (May 17, 2017 Hearing; Richardson, 2017a).¹⁵⁰³ The bill was heard without any further action. On May 23, 2017, Republican Governor Sandoval publicly expressed support for Attorney General Laxalt and opposed AB 513 (Joecks, 2017a). Even though AB 513 ultimately did not become law, it made the issue and the actors’ accounts a matter of public record, providing a foundation for future structural changes.

Additional legislative oversight was conducted on this issue. As a result changes proposed in the earlier assembly bill passed. On June 5, 2017, the day before the end of the legislative session, SB 545 became law and included \$100,000 for an independent lawyer within the Gaming Control Board.¹⁵⁰⁴ SB 545 is a budget bill that included the allocation from the

¹⁵⁰² <https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Bill/5821/Overview>, accessed 6/29/18.

¹⁵⁰³ Efforts were made by the legislature to understand the relationship, in particular the informal relationship between the attorney general and the GCB Chair, in order to better maintain both legislative oversight and confidence in GCB actions. Questions focused primarily on the informal relationship that had developed between the two and the effect their relationship had on GCB decisions. Burnett insisted the conversation he secretly recorded was a one-time issue. Furthermore, Burnett cited the Deputy Attorneys General as the agents with whom the GCB most often interacts, implying a further buffer between the GCB Chair and the elected AG. AB 513 was proposed to create a separate General Counsel for gaming boards and commissions to prevent informal relationships between the GCB and attorney general like the one between Burnett and Laxalt.

¹⁵⁰⁴ <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=1174>, accessed 5/14/18.

earlier assembly policy bill. That policy bill was sponsored by the Chair of the Assembly Ways and Means Committee, Maggie Carlton (Snyder, Rindels, & Messerly, 2017). In addition to the funding line, on May 23, the legislature voted in favor of SB 376, which effectively clarified the law to ensure businesses licensed by the GCB could block government attempts at disclosing confidential information.¹⁵⁰⁵¹⁵⁰⁶ This bipartisan legislation came out of the Senate Judiciary Committee, which tackled the legal question of records disclosure at the heart of the controversy.¹⁵⁰⁷ This example illustrates the connection in Nevada appropriations committees and standing committees collaborating to make policy through legislative oversight (Associated Press, 2017).

A closer examination of the SB 376 reveals a shroud of secrecy.¹⁵⁰⁸ In March 2017, the SB 376 had to do with locating a deceased person's heirs. All hearings, public comments, and chamber votes deal with the issue of finding heirs. It was not until the bill came out of conference committee on June 5, 2017, that the substance of the bill dealt with confidentiality of GCB documents. There are no records of discussion and debate in conference committee, and this practice is viewed as "under the bar" and "below board" (interview notes, 2018). Although it can be useful to avoid public criticism on a thorny issue, a journalist pointed out the hypocrisy of Democrats' support for the bill, which aligned perfectly with the interests of Sheldon Adelson, while decrying Laxalt for allegedly doing the same during the GCB controversy (Joecks, 2017b). Another journalist mentions that despite the overwhelming bipartisan support for the passage of SB 376 on June 5, 2017, no legislator would immediately comment on the purpose of the bill, and there was no official statement about its relationship to the GCB controversy (Associated Press, 2017). The process used to pass SB 376 raises questions about the motivation of legislative oversight. Could the bill really have been about serving the interests of large casinos at public expense? On the other hand, gaming is a large part of the Nevada economy, and SB 376 can be interpreted as increasing the ability of regulators to do their job (interview notes, 2018).¹⁵⁰⁹ After the passage of SB 376 in conference committee, legislative leadership and the governor issued a joint statement citing "more certainty and predictability related to the protection of proprietary information" within the gaming regulatory environment (Chereb, 2017).

The political intrigue played out in a variety of ways before and during the legislative oversight. After the controversy became public but before the May hearing, the Democratically controlled legislature and Republican Attorney General Laxalt were publicly feuding (Richardson, 2017b). The legislature claimed the attorney general was failing to be accountable by not showing up to budget hearings that would determine the budget for the OAG for the coming year—instead, Laxalt sent a deputy (Whaley, 2017a; Whaley, 2017b). The attorney general claimed the legislature was failing to give the bills he sponsored a public hearing. Both sides claimed these offenses were just the latest examples of naked partisanship on behalf of the

¹⁵⁰⁵ <https://legiscan.com/NV/bill/SB376/2017>, accessed 5/14/18.

¹⁵⁰⁶ <https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Bill/5821/Overview>, accessed 5/14/18.

¹⁵⁰⁷ <https://legiscan.com/NV/bill/SB376/2017>, accessed 6/29/18.

¹⁵⁰⁸ <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=838>, accessed 5/14/18.

¹⁵⁰⁹ According to the source, what is good for gaming is good for the state. The gaming industry as a whole wants this level of confidentiality for the documents they disclose. Document confidentiality gives gaming confidence in handing over documents to the GCB and the greater the confidence gaming has in the GCB, the more the GCB can trust the documents provided by the gaming industry and the better they can hold gaming accountable, identify racketeering, fraud, and corruption. Therefore, ensuring document confidentiality increases the GCB's ability to police gaming.

other. Seizing on this opportunity, after the hearing, Attorney General Laxalt's Republican primary competitor, State Treasurer Dan Schwartz, called for Laxalt to resign and drop out of the governor's race, citing, among other things, the GCB controversy (Johns, 2017).

The GCB Controversy of 2017 demonstrates that oversight mechanisms and procedures do exist within standing committees. Clearly, the controversy led to vigorous oversight by standing committees, but at the same time it appears that this oversight had definite partisan dimensions.

Oversight Through the Administrative Rules Process

Nevada's Constitution (art. 3, section 1.2) permits the legislature the power to review all new rules before they take effect. The legislature acquired this power through a constitutional amendment passed in 1996. An individual agency has no inherent authority to adopt administrative rules according to NRS 233B, which defines regulations and rulemaking procedures. Several legislative organizations are involved in oversight over the administrative rules process. Depending on the stage of the rules review process, the Legislative Counsel (LC), the LCB, or the LC Subcommittee to Review Regulations may be involved. If an agency is proposing a new rule, the agency must submit the rule to the LCB to ensure that the language is clear, concise, and suitable for Nevada Administrative Code. If the LCB approves the language, then the rule plus analysis of its economic effects on businesses and public is submitted to the LC or Subcommittee to Review Regulations, which must take affirmative action to approve or reject the regulation.

Agencies must review all existing regulations every 10 years, but a rule review is recommended at the end of each legislative session in case new laws affect existing regulations. After the review, the agency must submit a report to the LCB for distribution to next legislative session. The LCB maintains a register of all administrative regulations.

The Legislative Counsel has 30 days to review the rule before it is sent to the Legislative Commission. Typically the Counsel tries to resolve problems by working with the agency informally prior to the review by the Legislative Commission. This, according to Schwartz (2010) minimizes problems prior to what he describes as "quite substantive" (p. 295) legislative review. Yet, there is evidence that the LCB does reject regulations. In 2010, the LCB failed to approve regulations proposed by the Substance Abuse Prevention and Treatment Agency (SAPTA). The LCB recommended an addition to the regulation to include language regarding an appeal process. The LCB later adopted the regulation with the recommended language as Nevada Administrative Code (NAC) 458.

In 2016, a ballot initiative approved recreational marijuana use. This resulted in the need for temporary regulations by the Nevada Tax Commission to oversee the issuance, suspension, and revocation of licenses related to the regulation and taxation of marijuana (NRS, 453D). The legislature fast-tracked the regulations. The LCB reviewed and approved the temporary rules in July 2017. Permanent rules were adopted in January 2018 (Thomas, 2018).

These instances demonstrate that the LCB and commission does not approve regulations without some consideration of the consequences. The SAPTA instance indicates agencies review recommendations made by the LCB for changes to regulations and subsequently implement the recommendations prior to approval. The action taken on recreational marijuana rules indicates

that the legislative organizations can also work with agencies to ensure that the administrative rulemaking process does not inhibit timely enactment of new legislation. The oversight of the organizations ensured that the regulations went through the process as indicated by Nevada law in a timely manner to allow for temporary regulations and move forward with permanent regulations. Their role allowed for efficient governance.

Oversight Through Advice and Consent

There is minimal oversight through senate action over gubernatorial appointments. Moreover, the governor directly appoints only 16 top executive branch officials. Out of the 16 officials, only one position, Director of the Department of Personnel, requires approval by the senate (Wall, 2016). There is no evidence that the senate has blocked any gubernatorial appointments of this position in recent history.

Nevada's governor can use executive orders to reorganize government, to respond to disasters and a wide range of emergencies, and to create various entities tasked with investigations. Executive orders may not be used to respond to federal programs and requirements or to administer government including state personnel administration. Legislative approval is not required for any of these types of orders, but clearly the legislature can pass legislation to countermand executive orders, which would be vulnerable, of course, to gubernatorial veto.

Oversight Through Monitoring of State Contracts

The legislature does not have oversight over state contracts with vendors. The state's Purchasing Division is responsible for coordinating the purchasing process, including bids for contracts. The State Board of Examiners (BOE) is an executive agency responsible for approving contracts (NRS, 353.010). The BOE consists of the governor, the secretary of state, and the attorney general. The budget director in the executive Finance Office is the ex-officio clerk of the BOE. The BOE must approve all bids over \$50,000. However, agencies authorize no-bid contracts in certain situations, but the BOE must still approve the contract if it is over \$50,000.

Over a period of four years (2011-2015), the competitive bidding process was skipped over 2305 times by Nevada agencies (Roerink, 2015). Awards occurred for a total of \$1.7 billion in no-bid contracts. No-bid contracts can be awarded when no other company bids and when individuals or companies have an expertise or equipment not abundant in the marketplace; and agencies can award no-bids without limitations when they hire architects, accountants, engineers, expert witnesses, and attorneys (NRS, 332). Although the legislature does not have direct oversight over contracts, if there appears to be an issue with the exclusions to the competitive bid process, the exclusions can be taken away through legislative action (Roerink, 2015). The audit process is another tool the legislature can use to highlight concerns with contracted vendors in the state.

There are two examples of state contracts reviewed through the audit process that we discuss here: Horse Power and Industrial Relations Division. Both contracts attracted legislative attention through an audit. Their initiation was slightly different, the former required a special statute while the latter went through a normal process and will be detailed in a vignette below.

The Horse Power audit required a statute to permit an audit request. In 2015, legislation was passed to authorize the Commission on Special License Plates to request audits, which then must be approved by the Legislative Commission (LC). In 2016, the Audit Division performed an audit of Horse Power, a Special License Plate Organization. Horse Power is a 501-c(3) non-profit organization that receives license plate fees through the State. Horse Power uses these proceeds to “rescue abused and injured wild horses” and raised approximately \$90,000 on 4,700 special license plates in 2012 (Vogel, 2012). The audit produced 15 recommendations and Horse Power’s failure to implement all but one of these recommendations was detected by the Audit Division and communicated formally at a hearing to the commission. Audit recommendations¹⁵¹⁰ discussed at the Commission on Special License Plates hearing included, but not limited to, the documentation of competitively priced bulk feed purchases, documentation of reimbursable travel, the requirement to provide documentation in the form of sales receipts, a written (as opposed to verbal) grant application process that includes disclosure of whether applicants are known to Horse Power management and board members, the taking of minutes of board discussions relating to the awarding of grants, and documenting certain aspects of the grant process (45 minute mark).¹⁵¹¹ The Commission on Special License Plates voted unanimously to eliminate funding for Horse Power as a result of this hearing with legislators citing Horse Power’s failure to address recommendations despite extensions (one hour 40 minute mark). This vote shut Horse Power down because its main funding source was license plate fees (interview notes, 2018).

Vignette: Industrial Relations Division Third-Party Inspections

The Industrial Relations Division (IRD) in the Nevada Department of Business and Industry is responsible for overseeing the compliance of elevators, boilers, and mines through its Mechanical Compliance Section.¹⁵¹² During a regularly scheduled audit of the division by the LCB, it was determined that as of June 2017, approximately 5,500 elevators and boilers were operating without the required certificates (LA 18-19).¹⁵¹³ These certificates are issued as proof that the equipment is operating safely and complies with state safety standards. The number of elevators without certificates (4,360) accounts for 35% of the elevators operating in Nevada (Giwargis, 2018b).

There are three reasons that certificates may not have been issued:

- 1) The inspections did not occur. This means that elevators and boilers may have been installed or allowed to continue to operate that did not meet safety compliance requirements.*
- 2) The system failed a safety inspection, and code violations were not monitored or cleared. In some of the cases, it was years before follow-up on violations were completed. Although elevator related deaths are rare, they are not unheard of. In 1999, an elevator repairman died after falling down an elevator shaft while doing a repair. An elevator repairman believes this victim’s death could have been prevented because flaws in wiring should have been discovered during a state inspection just before the accident (Baca, 2015).*

¹⁵¹⁰ <https://www.leg.state.nv.us/audit/Full/BE2018/LA18-08%20Horse%20Power%20Report.pdf>, accessed 10/17/18.

¹⁵¹¹ http://nvleg.granicus.com/MediaPlayer.php?view_id=34&clip_id=9716, accessed 10/17/18.

¹⁵¹² <http://dir.nv.gov/uploadedFiles/dirnv.gov/content/MCS/Forms/AIA%20List%20Rev%2002-06-18.pdf>, accessed 1/3/19.

¹⁵¹³ <https://www.leg.state.nv.us/Division/Audit/Full/BE2018/LA%2018-19%20Division%20of%20Industrial%20Relations.pdf>, accessed 6/29/18.

3) *Fines for safety violations were not paid. The audit determined that the division failed to collect over \$1.4 million in fees for code violations over a period of several years.*

The division depends on contracts with third-party agencies for inspections and other regulatory responsibility.¹⁵¹⁴ The contracting out occurred in 2015 as a result of an inspection backlog, after the adoption of new administrative rules (LCB R077-14).¹⁵¹⁵ The oversight activities called for in the regulations have not been implemented. The IRD does not have adequate resources to monitor that inspections are completed or whether violations are resolved. Assemblywoman Maggie Carlton expressed legislators' concerns; "I'm concerned that by outsourcing this we're not getting what we thought we were getting" (Giwargis, 2018b).

The IRD has accepted all of the recommendations from the LCB Audit Division and the IRD was required to develop a corrective action plan within 60 days of the audit.¹⁵¹⁶

Although the legislature does not have statutory or constitutional authority for contract oversight, the audit process is a tool that can be used to highlight issues with contractor performance. The legislature is sometimes able to use this tool effectively.

Oversight Through Automatic Mechanisms

Nevada is one of ten comprehensive review states that facilitate oversight through sunset legislation. All statutory agencies are required to undergo a sunset review on a regulatory review schedule. Sunset clauses may also be present in selected programs or legislation (Baugus & Bose, 2015). Moreover, as discussed in the section on administrative rules review, all agency rules are reviewed at least once every decade.

In 2011, the legislature established the Sunset Subcommittee of the LC (NRS 232B). The commission is responsible for evaluating all boards and commissions created by means other than executive order or constitutional mandate. The committee determines whether the agency will continue and in what form (Wall, 2016). In 2013, because of the review, the Nevada Commission on Sports was terminated (Baugus & Bose, 2015). The subcommittee does not simply rubber stamp renewals, it also terminates boards or commissions. In its 2017 report, the subcommittee reviewed 34 entities, deciding to continue 16, terminate four, consolidate two, transfer the functions of four to another entity and then terminate, and to continue 10 entities, but with statutory revisions.¹⁵¹⁷

¹⁵¹⁴ List of third-party agencies authorized to complete inspections:
<http://dir.nv.gov/uploadedFiles/dirnv.gov/content/MCS/Forms/AIA%20List%20Rev%2002-06-18.pdf>, accessed 6/29/18.

¹⁵¹⁵ <http://dir.nv.gov/uploadedFiles/dirnv.gov/content/About/LCB%20R077-14%20Adopted%201-16-15.pdf>, accessed 10/8/18.

¹⁵¹⁶ <https://www.leg.state.nv.us/Division/Audit/Full/BE2018/LA%2018-19%20Division%20of%20Industrial%20Relations.pdf>, accessed 10/8/18.

¹⁵¹⁷ <https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2017/Bulletin17-14.pdf>, accessed 6/29/18.

Methods and Limitations

Out of the 12 people that we have contacted, we interviewed 10 people for Nevada. For committee hearings in both chambers, there are agendas, minutes, and video recordings that are publicly accessible online. No transcripts exist for either of the chambers' committee hearings (interview notes, 2018). Overall, Nevada's readily available resources allowed us to better assess the legislature's levels of oversight.

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