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# State Legislative Oversight: **Wyoming**



## Capacity and Usage Assessment

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

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## Summary Assessment

The Wyoming legislature appears to have relatively few effective tools for oversight and little support from an analytic staff agency. There are no sunset provisions, administrative rule review is advisory only, and an extremely short legislative session means that part-time legislators on standing committees are unlikely to be able to monitor the work of the much more powerful executive branch. The LSO produces high quality reports, but only a few of them given its resource constraints. The Joint Appropriations Committee is diligent about overseeing the budget and the interim oversight committees. These committees, the Management Council and the Management Audit Committee hold hearings that demonstrate the policy knowledge held by their members. Therefore, Wyoming does manage to exercise more legislative oversight than its resources warrant.

## Major Strengths

Wyoming's analytic bureaucracy, the LSO, uses its scarce resources well, and is therefore especially important in the oversight process. The audits and program evaluations conducted by the LSO appear to be of good quality, although relatively small in number. The Joint Appropriations Committee also has significant discretion to alter the governor's budget, which does serve as a brake on the executive. Interim committees hold hearings that demonstrate a commitment to overseeing the performance of government agencies.

## Challenges

Legislative oversight prerogatives are somewhat limited, and they rely heavily on the power of the purse. But the governor is very strong relative to the legislature. The job of legislator is poorly paid and clearly part-time. The legislature has brief sessions. The LSO has a small staff that is not able to provide analytic support needed for even the few prerogatives that the Wyoming legislature has. All of this in combination with the presence of a fairly powerful governorship contributes to an environment in which strong oversight would be difficult.

## Relevant Institutional Characteristics

The National Conference of State Legislatures (NCSL, 2017) classifies Wyoming's legislature as "part-time, low pay, small staff," one of the very lowest-paid and least professionalized legislatures in the country. According to Squire (2017), Wyoming's legislature ranks 49<sup>th</sup> out of 50 in terms of professionalization. Legislators are paid \$150 per day during the legislative session, plus a \$109 vouchered per diem for travel to the capital, Cheyenne, for those living outside the area. In 2015 the legislature had 109 total staff members, 36 of whom are permanent (NCSL, 2017). Even though this is double the 18 permanent staff in 1996, it is still the smallest staff for any legislature in the country—slightly smaller than South Dakota's. There are no term limits for Wyoming legislators (NCSL, 2017). Although in 1992, voters passed a statute restricting legislative tenure in office to 12 years in each chamber, it was declared unconstitutional in 2004 by the Wyoming Supreme Court. Per the Wyoming Constitution, the "general" legislative session's duration in even-numbered years is limited to 60 days, with up to 40-day "budget sessions" in odd-numbered years (Wyoming Constitution).

According to the Council of State Governments' (2015) Governors' Institutional Powers Index (GIPI), the office of the Wyoming governor has a relatively high level of institutional powers—tied for 13<sup>th</sup> among the 50 states. Ferguson (2015) ranks the Wyoming governor's powers similarly (14<sup>th</sup> of the 50 states). This is surprising given that Wyoming also has four other elected state officials "with their own independent authority in state affairs and . . . responsible only to the citizens of the state: the treasurer, the secretary of state, the auditor, and the superintendent of public instruction (Haider-Markel, 2009). Moreover, the governor shares budget-making powers with the legislature. But the Wyoming governor proposes the budget and may use a line-item veto on appropriations bills, with a two-thirds majority vote of legislators required to override such veto (Council of State Governments, 2017; Table 4-4). However, Wyoming's legislature often overrides gubernatorial vetoes (interview notes, 2018). Although a weak legislature tends to strengthen gubernatorial power, part of Wyoming's gubernatorial strength arises from extensive appointment powers and strong control over the dominant party in a one-party state (Ferguson, 2015).

## Political Context

State government in Wyoming is dominated by the Republican Party. Republicans currently hold a 51-9 advantage in the state house, with a 27-3 advantage in the senate (Ballotpedia). The house has had a Republican majority since 1964; the senate has been Republican-controlled since 1936 (Walker, 2017). The current governor, Matt Mead, is a Republican who has held the office since 2011, though a conservative Democrat held the governorship for the eight years prior. Governors are limited to two four-year terms during any sixteen-year period (Ballotpedia).

According to Shor and McCarthy's (2015) criteria, Wyoming has the 12<sup>th</sup> least politically polarized state senate in the country, and the 15<sup>th</sup>-least polarized state house. Wyoming senate and house republicans are less conservative than about two thirds of the other Republican caucuses in the country, while its Democrats are moderate. Senate and house Democrats are fairly moderate, ranking as the 21<sup>st</sup> and 23<sup>rd</sup> most "liberal," respectively (Shor and McCarthy, 2015). However, due to its dominance, factionalism in the Republican Party is magnified,

sometimes leading to disagreements between social conservative, libertarian, and moderate wings of the party (Rosenfeld, 2018).

## Dimensions of Oversight

### Oversight Through Analytic Bureaucracies

Wyoming's analytic bureaucracies are especially important in the oversight process because the Wyoming legislature is only in session for a brief period. This means that "it tends to rely heavily on executive branch agencies (which operate year-round) for information" (Management Audit Committee Handbook, 2017). Moreover, Wyoming legislators do not have individual staff. Instead, the Legislative Service Office (LSO) is a permanent, non-partisan central staff office that supports the legislature. This office reports to the Management Council, which consists of 13 legislators who collectively employ and supervise the LSA director. These legislators consist primarily of the leadership of the majority party and a small contingent of legislators from the minority caucus.<sup>2625</sup> According to the website of the Wyoming legislature, the roughly 40 LSO staff members "prepare administrative rules reviews and reports, conduct oversight evaluations of executive agency programs, conduct fiscal studies and budget analyses, coordinate legislative activities related to school finance, and provide general research and information services to the legislature."<sup>2626</sup> The LSO is composed of several divisions, including a Budget and Fiscal Section, a Program Evaluation Section, and a Legal Services Division, among others. The organization chart for the LSO lists one administrator, two analysts, and two vacancies in the Program Evaluation and Research Division. The Budget and Fiscal Division is larger, with a total of nine staff members, which includes seven analysts. The entire LSO budget for 2018 was just slightly more than \$16 million.<sup>2627</sup>

The LSO conducts program evaluations at the direction of the Management Audit Committee, a joint interim committee, created by statute. This eleven-member committee, which includes at least one minority party member from each chamber, determines which evaluations the LSO conducts. From 2015 through 2018, however, the LSO has only produced six "Final Reports" and ten "Scoping Papers." Scoping is a relatively brief process, lasting only one to two months, and scoping papers are not an auditing standards-based research product." Instead, they are intended to "to provide the Management Audit Committee with a summary of a potential evaluation topic."<sup>2628</sup> A full audit takes six to nine months. The reports and papers produced by the LSO are substantive and thorough, and are occasionally enhanced with follow-up evaluations.<sup>2629</sup> Reports also include updates on legislative actions and agency responses that were prompted by the results of the evaluation.

After concluding an evaluation, the Management Audit Committee may "choose to stay in touch with the [evaluated] program informally, request a follow-up, or sponsor legislation related to the report's findings and recommendations." After approximately two years, the

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<sup>2625</sup> <http://wyoleg.gov/docs/AnnualReport2017.pdf>, accessed 8/5/18.

<sup>2626</sup> <https://legisweb.state.wy.us/LSOWEB/LegislativeServiceOffice.aspx>, accessed 07/20/18.

<sup>2627</sup> <http://wyoleg.gov/WYGovTransparency/2018CH0024.pdf>, accessed 8/5/18.

<sup>2628</sup> <https://legisweb.state.wy.us/LSOWEB/ProgramEval/ProgramEval.aspx>, accessed 07/20/18.

<sup>2629</sup> <http://www.wyoleg.gov/progeval/REPORTS/2018/EIEPP2-2-9-2018.pdf>, accessed 07/09/18.

committee may also request a follow-up in order to determine the extent to which its recommendations were acted upon (Management Audit Committee Website, 2017).<sup>2630</sup> Based on the results of this follow-up, members of the committee may then take a number of remedial actions, including requesting draft legislation, continual evaluation, or further audits. It is unclear whether the Program Evaluation Section of the LSO will continue to be funded. Faced with state budget cuts, the director of the LSO proposed taking a break in the audit function so that the LSO can help the legislature review “the audit process, audit products and schedule . . .”<sup>2631</sup>

In 1983, Wyoming created the Consensus Revenue Estimating Group (CREG) “by a mutual informal agreement between the executive and legislative branches.” The leadership of CREG consists of the head of the Economic Analysis Division and the Budget & Fiscal Manager from the Legislative Service Office, with other members drawn from different state agencies (Consensus Revenue Estimating Group Website). CREG produces yearly reports containing projections regarding various aspects of state finances. These reports are reviewed by the Joint Appropriations Interim Committee between legislative sessions.

Wyoming also has a state auditor, an elected executive position that conducts a variety of auditing functions (Wyoming State Auditor’s Office Wyoming Annual Report, 2015). The Auditor’s Office has five branches, including the Comprehensive Annual Financial Report (CAFR) Division, the Quality Assurance Division, and the Technology Division. In addition to serving as Wyoming’s primary comptroller and maintaining the state’s online accounting system, the auditor is tasked with producing the state’s Comprehensive Annual Financial Report, which is Wyoming’s main way for reporting the state’s financial activities and which is required by law. The CAFR is produced under the supervision of a private contracted CPA firm, McGee, Hearne, & Paiz, LLP. The same private firm conducts the annual statewide federal single audit (WY State Auditor’s Office Website).<sup>2632</sup>

There is also a separate Department of Audit (DOA), with a director appointed by a majority vote by the governor, the secretary of state, and the state treasurer, with the advice and consent of the senate. The Department of Audit, which was created in 1989, and is “authorized to conduct audits for the collection of federal and state mineral royalties and for collection of taxes imposed under Title 39, Wyoming Statutes” (WY Stat § 9-2-2003). These duties were previously under the purview of the state auditor and the Department of Revenue and Taxation. Additionally, the DOA has the authority to audit any state agency or local government in Wyoming. To support its work, the DOA employs 20 staff members, three of whom conduct performance audits and six of whom audit local governments. In 2015 the DOA received a state appropriation of \$2.8 million (NASACT, 2015). The director of the DOA is required to issue an annual report to the joint revenue interim committee and the joint minerals, business and economic development interim committee on the details of any investigations it has carried out. According to a representative from the DOA, contact with legislators is quite limited. Because the department has a small staff, its activities are focused on areas of particular concern. The results of audits, moreover, are “rarely used for legislative action” (interview notes, 2018).

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<sup>2630</sup> <http://www.wyoleg.gov/Committees/2018/SMA>, accessed 07/20/18.

<sup>2631</sup> <https://www.wyoleg.gov/InterimCommittee/2018/SMA-20180123SMA-0123APPENDIXC.pdf>, accessed 8-5-18.

<sup>2632</sup> <http://sao.wyo.gov/>, accessed 07/20/18.

## Oversight Through the Appropriations Process

A biennial budget is prepared by the governor, and is subject to legislative approval by a simple majority. Supplementary budget items may be added in non-budget years. W.S. 9-2-1005(b) of the Wyoming Constitution authorizes the governor to “authorize revisions, changes, redistributions or increases to amounts authorized for expenditure by legislative appropriation acts from non-general fund sources” after notifying the legislature. A balanced budget is required by law (WY SAO-2015 Comprehensive Annual Financial Report).

The Wyoming legislature has “unlimited power to make revisions” to the governor’s budget. Interim committees allow legislators from both chambers to address issues that arise between legislative sessions. The Joint Appropriations Committee (JAC) “is charged with carefully reviewing the governor’s budget request, the various state agency requests and reports, and budget proposals from various legislators. It typically reviews the annual report by CREG for the purposes of identifying budget surpluses or shortfalls and assisting in the preparation of legislation. Indeed, it is difficult to overstate the influence of the JAC on state fiscal matters and, thus, on the trajectory of state policy” (Haider-Markel, 2009).

Despite the overwhelming dominance of the Republican Party in Wyoming, factionalism within the party sometimes complicates the budget process (Rosenfeld, 2018). For example, the 2018 legislative session has seen major disagreement on education budget, even among Republican legislators. The speaker of the Wyoming house, for example, has suggested that the state’s seeming budget woes are the results of an “appearance of scarcity” driven by an unwillingness to use mineral revenues to fund schools. At the same time, one member of the Legislature’s Revenue Committee has likened diverting those revenues away from savings accounts into education to “robbing future generations”<sup>2633,2634</sup> (Martin, 2018; Klamann, 2018). After 10 months of investigations and a review by an external consultant, the Select Committee on School Finance Recalibration rejected new funding model that would have cost the state an extra \$71 million for education (Mohr, 2018). A senate proposal to instead make cuts in education spending later failed to pass in the house (Watson, 2018). Meanwhile, the Republican-dominated Senate Education Committee “stripped” proposals to use a sales tax on online purchases to address the shortfall from another bill. This was a move that “frustrated” the House Speaker and the House Education Chairman, both of whom are Republicans (Beck, 2018). Ultimately, the governor signed a bill that cut education spending by \$27 million for the state’s two-year budget.<sup>2635</sup>

In 2017, Wyoming’s Joint Interim Appropriations Committee consisted of 10 Republicans and two Democrats. In both 2016 and 2017, the committee met for a total of three days. Meetings included budget-related testimony by the governor, agency heads, and LSO officials (Joint Interim Appropriations Committee website). Media reports reveal public

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<sup>2633</sup> <https://kemmerergazette.com/article/solving-wyomings-education-budget-crisis-the-simple-way>, accessed 8/5/18.

<sup>2634</sup> [http://trib.com/news/state-and-regional/govt-and-politics/education/lawmakers-propose-three-different-constitutional-amendments-to-address-school-funding/article\\_2e715aef-0fdb-5956-ae6e-2c3f4a8df8c0.html](http://trib.com/news/state-and-regional/govt-and-politics/education/lawmakers-propose-three-different-constitutional-amendments-to-address-school-funding/article_2e715aef-0fdb-5956-ae6e-2c3f4a8df8c0.html), accessed 8/5/18.

<sup>2635</sup> [https://www.wyomingnews.com/news/local\\_news/wyoming-governor-to-sign-bill-to-cut-k--education/article\\_06e94966-3186-11e8-b241-7bdd81c74ffd.html](https://www.wyomingnews.com/news/local_news/wyoming-governor-to-sign-bill-to-cut-k--education/article_06e94966-3186-11e8-b241-7bdd81c74ffd.html), accessed 8/7/18.

controversy over budget cuts,<sup>2636</sup> but little effective legislative pushback against the governor’s budgetary preferences.

The Joint Appropriations Committee established five priorities for itself in 2017: (a) Wyoming Department of Corrections Facilities and Operations “[r]eceive and review the penal facility peer review study . . .”; 2) Enterprise Technology Services Consolidation, Hardware and Software “. . . review the status, benefits, and opportunities for re-structuring or continued consolidation . . .”; 3) State Employee Benefits review; 4) Department of Family Services Title IV-E Reimbursements find ways to increase federal reimbursement rates in order to conserve state resources; and 5) Water and State Lands Funding Trends.<sup>2637</sup> To pursue these priorities, the JAC met twice during the interim. Its first meeting, which lasted two days, featured testimony from a relevant state agency director and another relevant agency’s deputy director on the Title IV-E Fostercare reimbursement, a review of state benefits led by the LSO Budget and Fiscal Administrator included testimony from relevant state agency staff about open positions and benefits as well as testimony about the state’s retirement system from the executive director and other senior staff, a discussion of the Enterprise Technology Services restructuring or consolidation led by the LSO Budget and Fiscal Administrator with presentations from executives in the state’s Department of Enterprise Technology Services. Following a recess, the committee toured the Wyoming State Penitentiary. The remainder of the day and most of the next day were spent discussing structural and operational issues with the state’s prison system.<sup>2638</sup> A subsequent meeting held in October 2017 addressed the remaining committee priority—Water and State Lands Funding Trends.<sup>2639</sup> Minutes of these meeting suggest that these are policy focused, substantive meetings. Without access to archival recordings of the actual hearing, it is impossible to tell how insightful or probing the questions from legislators were. The presentations, however, appear to have been substantively rigorous.

## Oversight Through Committees

As noted earlier, Joint Interim Committees allow the legislative chambers to collaborate on legislative tasks between sessions. As in other domains, oversight through committees depends on the work of the Legislative Service Office. The Management Council, which is a joint interim committee, supervises and regulates the activities of the LSO, (Management Council & Legislative Service Office, 2016). In 2016, the Management Council implemented changes that resulted in committee chairs henceforth serving as “gatekeepers” between committee members and the LSO. This decision was ostensibly made in order to reduce the workload being placed on LSO staff by committees, but was criticized as marginalizing minority-party members as reducing their ability to independently request information from the LSO without approval by committee chairs (Chilton, 2016).

The Management Council met three times during the first eight months of 2018. Its first meeting, on Feb. 10, was well attended. All thirteen council members were present as well as six other state legislators, the director of the LSO and six LSO staff. The meeting sign-in sheet lists 21 other non-legislative attendees. This is a handwritten sheet that is often hard to decipher and

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<sup>2636</sup> <http://www.wyomingpublicmedia.org/post/survey-gauges-public-opinion-state-budget>, accessed 8/5/18.

<sup>2637</sup> <http://wyoleg.gov/docs/AnnualReport2017.pdf>, p. 45, accessed 8/5/18.

<sup>2638</sup> <http://wyoleg.gov/InterimCommittee/2017/02MIN0717.pdf>, accessed 8/5/18.

<sup>2639</sup> <http://wyoleg.gov/InterimCommittee/2017/02MIN1027.pdf>, accessed 8/5/18.

lists the organization the attendees represented using acronyms.<sup>2640</sup> Therefore, it is hard to tally the categories of attendees precisely. The governor’s office and treasurer’s offices were represented, as was the League of Women Voters and Wyoming PBS. Corporations represented include Andarko and AT&T, as well as several attendees who identified themselves as consultants. Many of these outside actors are likely to have been interested in the topics of legislation considered at this meeting: “. . . Government Efficiency Commission, Public Purpose Investments, ENDOW and Statewide Lodging Tax for the 2018 Budget Session . . . livestreaming and archiving of legislative committee meetings and . . . changes to the legislature’s anti-discrimination and sexual harassment policy and trainings.”<sup>2641</sup> The meeting began at 7:32 a.m. and adjourned at 3:30 p.m. The minutes describe a busy eight hours with testimony from government actors such as LSO staff, executive branch officials, and other legislators, comments from non-governmental attendees, discussion and debate on some of the legislation, and a few votes taken. Comments and discussion reported in the meeting minutes indicate knowledge of the issues on the part of committee members.

The other two meetings of the Management Council were similarly well attended. One lasted five hours and the other lasted 12 hours. Both continued to address the topics introduced during the first meeting on the Management Council if the issue had not been resolved previously.

The other committee that works closely with the audit support staff in Wyoming is the Management Audit Committee. On January 23 and January 24, 2018 “[it] met for one and a half days in Cheyenne to discuss the Early Intervention and Education Program (EIEP), Phase 2 evaluation and supplement, the ongoing State Procurement and Leasing Programs evaluation, a scoping paper on the Aquatic Invasive Species Program, and a follow-up report on the 2016 Wyoming Water Development Commission program evaluation. The committee also discussed the reorganization of the section and current workloads. The committee voted to release the EIEP evaluation and Aquatic Invasive Species Program scoping paper on February 9, 2018.”<sup>2642</sup> The audit and scoping paper presentations did not seem to elicit any questions or involvement from the committee members. According to information provided in the minutes, these were simply presentations that informed the committee members about the problems. There are two other meetings listed for the first eight months for 2018, but one appears to have lasted less than an hour and just involved a decision about what topic to choose for the next LSO scoping paper. The other meeting appears to have been a telephone conference based on information on the agenda and the absence of any minutes.<sup>2643</sup>

Other standing committees appear to follow a similar scheduling pattern and similar mixture of presentations with only a limited amount of presentation and discussion. For example, the Joint Travel, Recreation, Wildlife and Cultural Resources Committee held a one and a half day meeting May 10 and May 11, 2018 that included a tour of the Fort Laramie National Historic Site and Camp Guernsey as well as a presentation from the Wyoming Game and Fish Department, the Office of Tourism, the Department of State Parks and Cultural Resources, and the Department of Transportation to discuss ways to increase non-resident fishing in order to raise more money from fees and to increase efficiencies through shared marketing. Public

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<sup>2640</sup> <https://www.wyoleg.gov/InterimCommittee/2018/SMC-20180210Sign-inSheet.PDF>, accessed 8/7/18.

<sup>2641</sup> <http://wyoleg.gov/InterimCommittee/2018/SMC-20180210MeetingMinutes.pdf>, accessed 8/7/18.

<sup>2642</sup> <http://wyoleg.gov/InterimCommittee/2018/SMA-20180123MeetingMinutes.pdf>, accessed 8/7/18.

<sup>2643</sup> <http://www.wyoleg.gov/Committees/2018/SMA>, accessed 8/7/18.



comments were occasionally added. But there does not appear to be much oversight in this committee meeting.

The other multi-day meeting of this committee, which lasted for two full days, has archived audio coverage rather than written minutes. It begins with about one and a half hours of information provided by federal officials: the state's congressional delegation, the US Bureau of Land Management, and the US Forest Service. The remainder of the meeting consisted of presentations from various state agencies, such as the state's geologist from the Wyoming Geological Survey, the Livestock Board, the State Engineer, the Wyoming Water Development Commission, and the Wyoming Weather Modification Program, among others with public comments from groups like the Family Farm Alliance.<sup>2644</sup> Although there were not many questions asked, the questions that the committee members did ask demonstrated knowledge of the various water compacts and other technically complex issues.<sup>2645</sup> On the other hand, this is primarily a hearing designed to inform legislators of information about issues affecting the state rather than an opportunity to exercise oversight of the executive branch.

## Oversight Through the Administrative Rules Process

In 1977, Wyoming passed the Administrative Regulation Review Act, which Schwartz (2010, p. 412) describes as “the nation’s first joint executive-legislative rule review procedure.” Agencies notify the LSO of their intent to promulgate a new administrative rule, but the legislative review process only begins after the agency formally adopts the rule. So it is common for rules to take effect before legislative review (Schwartz, 2010). The LSO reviews all administrative rules for adherence to “statutory authority” and “legislative intent” (Management Council & Legislative Service Office, 2012; p. 18). The LSO transmits its judgment along with any comments it has received from other legislators to the Management Council, the governor, the attorney general, and the agency. There is no requirement for environmental or economic impact statements from the agencies to assess the benefits and costs of new rules. Agencies have five days after adopting a new rule to issue a report to the Management Council and the governor. If the LSO does not identify problems with the rules, the default position is that the rule is approved. But council members can always object to a rule. If the legislature is not in session, the council has a vote by mail option that its members can use to propose changes to the rule or to postpone action until the next council meeting. The council itself cannot suspend rules, as its authority in this domain is purely advisory. Both the governor and Supreme Court, however, may suspend rules (MC & LSO, 2012), but they must do so within 15 days of receiving notice of proposed changes. When the council objects to a rule, the governor has three options for action: (a) use his line item veto to delete the problematic parts before approving the rule; (b) direct the agency to make changes or rescind the rule; and (c) send written objections to the council.

If the governor does not act to produce the changes the council wants, then the legislature can pass a law to nullify the rule—but the governor would have to sign this legislation. Thus, the governor has the final word on administrative rules.

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<sup>2644</sup> <http://www.wyoleg.gov/Committees/2018/J05>, accessed 8/7/18.

<sup>2645</sup> <http://www.wyoleg.gov/InterimCommittee/2018/Agriculture-Select%20Water-June%2014,%202018-AM-1.mp3>, accessed 8/7/18.

There is no formal review process for existing rules, although the Management Council can choose to review any existing rules any time it wants to. But the limitation of LSO's small staff means that in practice legislative oversight of administrative rules is limited, and it is unlikely that existing rules would become a top priority for the use of these scarce staff resources.

The governor may veto proposed rules in whole or in line-item fashion. While a 45-day public commentary period is required for proposed rules, the decision of whether to hold actual public hearings is at the discretion of the promulgating agency<sup>2646</sup> (WY Secretary of State Website). According to the Council of State Governments (2016), an existing rule may be suspended by vote of both chambers of the legislature (Table 3.26). Although the legislature rarely uses of its power to suspend administrative rules, the potential for this outcome encourages agencies to work informally with the LSO, the governor, and the Management Council (Schwartz, 2010). On the other hand, the minor role played by the legislature means that administrative rule review is dominated by the governor and the executive branch.

## Oversight Through Advice and Consent

Various gubernatorial appointments, including the director of the Department of Audit, require approval by the senate (Council of State Governments, 2017; Table 4.10). This process does not appear to be particularly contentious. In 2013, two of the governor's nominees for the state's Public Service Commission were rejected by the senate. Prior to this, however, "[i]t [had] been many years since the senate rejected a governor's nominee" (Barron, 2013).

Wyoming's governor has general authority to issue executive orders (Council of State Government, 2017, Table 4.5). In practice, the governor does occasionally enact executive orders,<sup>2647</sup> but according to one source familiar with the process, in the past eight years there have been "maybe a time or two . . . where the legislature considered legislation that would have affected executive orders." But none of that legislation was ultimately passed (interview notes 2018). No prior restrictions, however, exist to check executive orders.

Although Wyoming's governor has the power to reorganize state government, according to WY Statute § 9-2-1707 agency reorganization requires legislative approval. The governor must submit a reorganization plan on or before October 15 to specified interim committees and to the legislature not later than Dec. 1 of the year in which a state department will be created. This process is subject to public hearings conducted by at least two interim committees prior to the next legislative session. One person familiar with the process noted that the governor uses the power to reorganize executive agencies "sparingly." When reorganizations occur, departments must inform the legislature.

Demonstrating how rare reorganization is, in the past eight years, there have been only two major executive agency reorganizations. The first involved the Departments of Employment and Workforce Services and the other involved the Department of Enterprise Technology Services. In both cases, the legislature was involved only insofar as it was necessary to create budget lines for the new entities. In some cases, agencies will initiate internal reorganizations "to

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<sup>2646</sup> <http://soswy.state.wy.us>, accessed 07/20/18.

<sup>2647</sup> <http://governor.wyo.gov/documents/executive-orders.>, accessed 07/20/18.

create a new office within the current structure of the department that could allow personnel to be repurposed to the new office, but without seeking new money or personnel.”

In one recent case, the State Construction Department announced to legislators that it was planning an internal department reorganization. This announcement apparently “surprised” legislators, since the reorganization would not have affected the budget.<sup>2648,2649</sup> The move, moreover, was presented to legislators as a *fait accompli*. According to one legislator, “My understanding is that you've already done this. It's happened.” However, because state law only “provided two divisions for the department,” and since the department wished to create a third division that was not provided for in statute, legislative action was required.<sup>2650</sup> It appears that the legislature’s power of the purse is the primary method it can use to assert its oversight prerogatives with respect to government reorganization.

### Oversight Through Monitoring of State Contracts

The Fiscal Management Division of the executive branch State Auditor’s Office disburses payment to state contractors. W.S. 9-2-1016(k) states that each elected state official must submit an annual report to the joint appropriations interim committee consisting of a list of “all contracts entered into by the elected state official during the previous fiscal year for supplies or services” if competitive bidding was not used. Other than receiving a list of contracts, it is unclear what other forms of oversight of state contracts occur.

### Oversight Through Automatic Mechanisms

Wyoming repealed its sunset laws in 1988. Currently, the Council of State Governments (2016) classifies Wyoming’s sunset rules as discretionary, noting that “[t]he program evaluation process evolved out of the sunset process, but Wyoming currently does not have a scheduled sunset of programs” (Council of State Governments, 2016; Table 3.27, p. 133). There is evidence of periodic votes, on a case-by-case basis, to extend or repeal sunset clauses attached to particular pieces of legislation.<sup>2651</sup> Baugus and Bose (2015) concur with this assessment.

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<sup>2648</sup> [https://www.wyomingnews.com/news/local\\_news/wyoming-construction-department-explains-reorganization-to-legislators/article\\_4ff19f12-e232-11e7-802e-2b723a82fe9b.html](https://www.wyomingnews.com/news/local_news/wyoming-construction-department-explains-reorganization-to-legislators/article_4ff19f12-e232-11e7-802e-2b723a82fe9b.html), accessed 02/18/18

<sup>2649</sup> [https://www.wyomingnews.com/news/local\\_news/wyoming-construction-department-explains-reorganization-to-legislators/article\\_4ff19f12-e232-11e7-802e-2b723a82fe9b.html](https://www.wyomingnews.com/news/local_news/wyoming-construction-department-explains-reorganization-to-legislators/article_4ff19f12-e232-11e7-802e-2b723a82fe9b.html), accessed 2-18-2018.

<sup>2650</sup> <https://thelanderjournal.com/story.php?id=30763&headline=state-construction-department-plans-revamp-from-two-divisions-to-three>, accessed 07/18/18.

<sup>2651</sup> <http://legisweb.state.wy.us>, accessed on 07/20/18.

## Methods and Limitations

A total of four people were interviewed about oversight in Wyoming. The legislature's website does not provide regularly archival recordings of committee meetings, but there are often detailed minutes and agendas for committee meetings available online. We found one audio recording of a committee meeting which we listened to.

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