

WAYNE STATE
Law School



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UNIVERSITY
COLLEGE OF LIBERAL ARTS
AND SCIENCES

Legislative Oversight of State Contacts

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Contracting for Public Services

- State governments in the 1990 shifted many routine services to contracts with private vendors. These external service providers include for-profit and non-profit vendors, as well as contracts with other government entities.
 - Examples: Private prisons, software development and other information technology functions, transportation to Medicaid health services.
- These services cost states billions of dollars, but state legislatures typically lack the resources and authority to ensure that these vendors are providing good value for the dollars spent.
- So, although there are advantages and disadvantages to contracting, a major problem is that legislative oversight did not keep up with this change.

Detailed Examination of Contract Oversight in Six State

- In our 50-state study of legislative oversight (2019), we found that contract oversight was the weakest area of legislative oversight nationally.
- We found instances of terrible service delivery provided by private contractors. Sometimes things were so bad that children or others died.
 - Some state legislators complained about the lack of information about vendor performance.
 - Many audit agencies lack resources to conduct performance audits of contractors.
- Only six states' legislatures scored above a minimal level on contract oversight. (Michigan's score is minimal.)
- We revisited these six states (Alabama, Hawaii, Idaho, Louisiana, Maryland and Tennessee) to identify good practices in contract oversight.

General Best Practices

- Oversight Committees should have equal membership for both political parties.
 - Twelve states do this on their oversight committees.
 - Bipartisan oversight committees ensure that the minority and majority legislative parties lead to an emphasis on good government and public stewardship of taxpayers' money rather than “gotcha” politics.
- Joint chamber committees for oversight are much more efficient and effective.
 - Saves audit staff time if they can make a single presentation.
 - Increases expertise and helps ask insightful questions. Senators, especially in a term-limited legislature, have more experience and expertise. This leads them to ask more insightful questions.

Best Practices Specific to Contract Oversight

- **Collaboration between the branches of government:**
 - The legislature, state procurement office, attorney general, state auditors, comptrollers, and inspectors general all play a role in contract management and monitoring. Sometimes this requires constitutional or legal changes.
 - In Idaho, (the top state), the legislature changed laws and funded two new positions in the procurement office (in the executive branch) to create manuals and to train state agency staff in contract management and monitoring.
 - Idaho's legislature works with the procurement officers to hold state agency staff to the procurement office standards. The legislature and the procurement office collaborate to improve RFPs and the legislature's auditors assess the quality of the RFPs and conduct performance evaluations of contracts.

Best Practices Specific to Contract Oversight

- Contract monitoring requires good data.
 - RFPs need to include requirements for data from vendors on performance.
 - Audit agencies need authority to gather and investigate vendor data.
 - Legislators need access to these data to ask insightful questions.
- To the extent possible, information on contracts should be available to the public, and public attention should be encouraged.
 - Whistleblowers and fraud and waste tip lines available to citizens (including public employees) improve contract monitoring.
 - Legislators need input from their constituents about vendor performance.
- Contract oversight improves when it is the responsibility of a specific legislative committee.

The Costs of Contracting

- The costs of monitoring and managing contracts should be included in the cost of a contract.
 - Idaho includes the cost of travel for Department of Corrections staff to drop in unannounced to oversee the treatment of its prisoners housed in private prisons out-of-state.
 - Some state legislatures (Maryland and Alabama for example) appropriated funds for new legislature support staff to conduct performance audits of contracts.
 - Some state legislatures (Idaho) funded new positions in the procurement office to facility contract management and monitoring.



Costs of Not Overseeing Contracts

- Failure of monitor contracts can lead to lawsuits, scandals, and massive government failures.
- Idaho changed its laws and developed its current contract monitoring system after a massive public scandal and costly lawsuit.
- Louisiana was unable to pay any government bills after a contract failure brought the state's financial system to a halt.
- Many states cannot identify all the contracts in the state.
- Media scandals over deaths of children and juveniles in the care of private vendors undermine public confidence in government.



Recommendations

- **Legislature – problem solving, bipartisan, facts, quality > quantity**
 - Joint Chamber Committee Hearings on Audits
 - Assign contract oversight to specific standing committee
 - Bipartisan, equal membership, joint
 - Committee hearings on all audit reports (especially contract audit)
 - Include contract oversight as part of broad vision of oversight over course of session
- **Collaboration between procurement, agencies, legislature**
 - Idaho, procurement staff training manuals and workshop with state agency staff on day-to-day contract monitoring.
 - Add legislative representation to Michigan's State Administrative Board.

Recommendations

- **Everyone**
 - ✓ Public contact database
 - ✓ Waste and fraud tip lines
- **Initiating contract reforms by working with procurement office**
 - Include cost of oversight in initial contract
 - Language to ensure necessary data collection for oversight (Michigan Procurement Policy Manual)
 - Central Procurement Services contract monitoring plan, not necessarily contract specific
- **Ask State Auditor General to do more contract oversight**
 - Fund more staff
 - Require that OAG receive contract data directly from DTMB
- **Focus on large, risky, historically troublesome contracts**
 - Regular, routine oversight, not just reaction to scandals and crisis



Thank you

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Questions?